

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GARY KRELA, individually and on behalf of the Estate of GEORGE RAYMOND KRYLA, and LINDA KRELA

(b) County of Residence of First Listed Plaintiff Humboldt County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Steven M. McCarthy, Esq., 1265 Highway 51, Independence OR 97351
(503) 763-1888; email: Steve@McCarthyLegal.com

DEFENDANTS

FLORENCE KRYLA, etc.; SOUTH COAST HOSPICE & PALLIATIVE CARE SERVICES, INC.; THOMAS F. McAndrew

County of Residence of First Listed Defendant Coos County, Oregon
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC §§1332, 1367

Brief description of cause:
Wrongful death by Elder Abuse

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 06/18/2012 SIGNATURE OF ATTORNEY OF RECORD: _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, (except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

1 Steven M. McCarthy, Esq., OSB 081030
2 McCARTHY LAW OFFICES
3 1265 Highway 51
4 Independence, OR 97351
5 (503) 763-1888/2888 fax
6 Steve@McCarthyLegal.com

7 Attorney for Plaintiff

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF OREGON
10 EUGENE DIVISION

11 GARY KRELA, individually and on behalf)
12 of the Estate of GEORGE RAYMOND)
13 KRYLA, and LINDA KRELA,)

14 Plaintiffs,)

15 vs.)

16 FLORENCE KRYLA, aka FLORENCE)
17 KELLEY, aka FLORENCE GLEASON, aka)
18 FLORENCE FENTON; SOUTH COAST)

19 HOSPICE & PALLIATIVE CARE)
20 SERVICES, INC.; THOMAS F.)
21 McANDREW, M.D.; and DOES 1-10,)

22 Defendants.)

CASE NO.

COMPLAINT FOR DAMAGES FOR:

- 1. Wrongful Death
- 2. Survival Action
- 3. Elder Abuse
- 4. Professional Negligence

DEMAND FOR JURY TRIAL

23 Plaintiff alleges:

24 **I**

25 **JURISDICTION AND VENUE**

26 This Court has jurisdiction over this action pursuant to 28 USC §§ 1331 and 1332
27 because the matter in controversy exceeds \$75,000 exclusive of interest and costs, and
28 because the parties are residents of different states. The court also has supplemental
jurisdiction of the state court claims pursuant to 28 U.S.C. §§1367, 2201 and 2202..
Plaintiff's state law claims are related to Plaintiff's federal law claims, such that those claims
form part of the same case or controversy under Article III of the United States Constitution.

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II

INTRA-DISTRICT ASSIGNMENT

The Eugene Division is the proper venue for the trial of this action, as Defendant lives in Coos County, Oregon, and all of the facts occurred there. Plaintiff is informed and believes that most of the witnesses to these facts are also residents thereof.

III

PARTIES

1. Plaintiff Gary Krela is a domicile of the city of Eureka, California, and lived there at the time of the incidents complained of herein. He is the natural son of George Raymond Kryla (February 25, 1928 - June 20, 2009, hereinafter “George”), who was at all relevant times an elder within the meaning of ORS 124.100(2) . Plaintiff Linda Krela is the wife of Gary Krela, and also a resident of Eureka, California.

2. Defendant Florence Kryla, also known as Florence Kelley, Florence Gleason, and Florence Fenton, is and at all relevant times mentioned herein was, a resident of Coos County Oregon. Plaintiffs are informed and believe that she was born January 20, 1935, in Woodward County, Oklahoma. On August 6, 2005, after a brief relationship with him, she married George Raymond Kryla in Coos County, Oregon.

3. Defendant South Coast Hospice and Palliative Care Services, Inc., (hereinafter “South Coast Hospice”) is a corporation duly licensed by the State of Oregon, no. 135256-88, with its principal place of business at 1620 Thompson Road, Coos Bay, Oregon; and whose agents and employees are mandatory reporters within the meaning of ORS 124.050.

4. Defendant Thomas F. McAndrew, M.D., is a physician duly licensed by the State of Oregon, no. MD15517, with his principal place of business at 1900 Woodland Drive, Coos Bay, Oregon, and is a mandatory reporter within the meaning of ORS 124.050. Plaintiffs are informed and believe that this defendant was at all relevant times the primary health care provider for Plaintiffs' decedent.

5. Defendants DOES 1-10, are each responsible in some manner for the injuries and damages to Plaintiff alleged herein. The true names and capacities of said defendants are

1 presently unknown to Plaintiff. Plaintiff is informed and believes and thereon alleges, that
2 each of them is responsible in some manner for the injuries and damages complained of
3 herein, and each of them is a mandatory reporter within the meaning of ORS 124.050.
4 Plaintiff will amend this complaint to add their true names and capacities when the same
5 have been ascertained.

6
7 **IV**
8 **FACTS**

9 6. Plaintiffs enjoyed a positive and close family relationship with George. In April,
10 2008, Plaintiffs invited him and Defendant to their home in Eureka for Easter. As Easter
11 approached, George told Plaintiff over the telephone that he could not travel because there
12 was something wrong. He could not identify exactly what was wrong, but could not leave the
13 proximity of a toilet.

14 7. In June, 2008, Plaintiffs visited George in Coos Bay for Fathers' Day. Both
15 noticed that George was losing weight, but attributed it to aging. Plaintiff, his wife, George,
16 and Defendant went out to dinner, where George exhibited a good appetite and ate well.
17 Defendant was concerned about the event because of George's bathroom issues.

18 8. In November, 2008, Plaintiffs again invited George and Defendant to their home
19 in Eureka for Thanksgiving. Again, Defendant expressed concern about the trip because
20 George had something wrong with his bowels and was losing a lot of weight. She advised
21 Plaintiff that George had undergone a lot of health care testing, but the results were all
22 inconclusive. In telephone conversations, George told Plaintiff that he was dizzy and would
23 “fall over like a tree;” but he still had no idea what was wrong.

24 9. In February, 2009, Defendant invited Plaintiffs to their home for George's
25 birthday; and said she had something for them to see. When Plaintiffs arrived, Defendant
26 showed them a paper on the refrigerator from Hospice that George had signed purportedly
27 signed, stating that Defendant was not to take him to an emergency room or a doctor without
28 Hospice approval. Plaintiff believes this was a “Do Not Resuscitate” order or POLST.
George objected to the document, indicating that he never signed it and that he did not

1 understand why he could not go to the emergency room; as he had excellent health care
2 coverage. At this time Defendant displayed for Plaintiff a “comfort pack” apparently obtained
3 by Defendant from a local hospice enterprise, which included morphine. George was
4 constantly itching his head. Plaintiff then took his father to Thomas McAndrew, George's
5 family physician, who was fully apprised of the situation and confirmed that George was
6 under no restriction regarding medical care.

7 10. During the aforesaid February visit, Plaintiffs stayed for several days. During
8 this period, Plaintiff learned that over the few years of their marriage, Defendant had been
9 threatening George with being put in a nursing home. Defendant had arranged for hospice
10 visits and for an oxygen respirator he didn't need.. George never had respiratory difficulties
11 and never learned to use or used the respirator. Despite Defendant's assertions to the contrary,
12 Plaintiff observed George at several meals with a very healthy appetite. Over the period in
13 Coos Bay, George neither exhibited nor expressed any difficulties whatsoever with balance
14 or ambulation.

15 11. During this February visit Defendant complained to Plaintiff about how
16 miserable she was because George refused to allow her to re-arrange anything in their Flower
17 St. residence because he wanted it to remain as his deceased wife left it. She voiced multiple
18 other complaints about George's conduct, and told Plaintiff that eventually something will
19 happen and she will get a dumpster and throw everything out.

20 12. Also during this visit, Defendant identified George's medications, including little
21 brown pills, apparently a laxative, three of which “nearly” killed him, so she reduced his
22 intake to only two per day. Neither the morphine nor the laxatives were prescribed for him;
23 or alternatively Plaintiffs are informed and believe that any health care provider, including
24 South Coast Hospice and Dr. McAndrew, who may have issued any prescription therefore,
25 was misled by the representations of Defendant.

26 13. Over the next few months, George related several times on the phone to Plaintiff
27 that he thought he was being over-medicated and did not know what Defendant was giving
28 him. Plaintiff is informed and believes that agents of South Coast Hospice

14. Plaintiffs again visited George in mid-June, 2009. He was found in an apartment

1 Defendant owns, in a hospital bed, frail, and incoherent. He only could mumble and barely
2 open his eyes. Defendant said he had been this way for days; and that he was on morphine,
3 which she at first said was because of pain from an old shoulder injury. When challenged
4 because of the lack of any prior complaints of shoulder injury, Defendant abandoned the idea
5 and instead insisted that "He's 81 years old and that's reason enough." Defendant claimed that
6 the hospice program had prescribed the morphine, but later retracted the allegation, admitting
7 she did it herself, providing liquid morphine. After she agreed not to give him any more, by
8 the end of the next day he was perfectly lucid and said he was free of any pain anywhere.

9 15. During the June, 2009, visit, Plaintiffs' decedent had a nurse from South Coast
10 Hospice appear at Defendant's apartment. When asked why George was on morphine,
11 Plaintiffs were told "his body was shutting down, from end-of-life." Despite the
12 understanding of the nurse, George had a large appetite, and was vigorously and lucidly
13 conversational.

14 16. Plaintiffs discovered that Defendant had misled Dr. McAndrew and South Coast
15 Hospice personnel into the belief that George was unstable, incoherent, and would not eat.
16 When Plaintiffs intervened to stop the morphine use, George quickly rebounded into
17 completely coherent conversation and interaction with them. He announced to Defendant that
18 he was "sick and tired of her threats" to put him in a nursing home, whereupon she gave him
19 more Kool-Aid with morphine in it, telling Plaintiffs that was the only way she could control
20 him.

21 17. George died June 20, 2009. Defendant told Plaintiffs he was screaming at the
22 end; and that she had poured the rest of the morphine down the drain. Plaintiffs attended
23 George's funeral, which was the same day as the reading of his will, wherein he left all of his
24 worldly possessions to Defendant.

25 **FIRST CLAIM FOR RELIEF AGAINST DEFENDANT**

26 **AGAINST ALL DEFENDANTS**

27 (Wrongful Death)

28 18. Plaintiffs reallege paragraphs 1 through 17 and incorporates the same as though

1 fully set forth herein.

2 19. Defendants and each of them, named and fictitiously named, owed a duty to
3 George Raymond Kryla of ordinary care under the circumstances.

4 20. Defendants, and each of them, breached their duty of care by administering or
5 failing to stop the administration of laxatives, morphine, and other substances

6 21. As a direct and proximate cause of the foregoing, George Raymond Krela
7 unnecessary suffering by reason of unnecessary and unhealthful weight loss; by suffering the
8 harmful effects of morphine; by suffering acute emotional distress; and by suffering untimely
9 demise and death.

10 22. As a further direct and proximate result of the foregoing, George Raymong Kryla
11 suffered:

12 (a) economic damages in such amounts as shall be adduced by proof at the trial
13 hereof, including, but not limited to health care costs and returns on investments; together
14 with

15 (b) non-economic damages in the amount of \$5,000,000 as and for his pain, suffering,
16 and death.

17 23. As a further direct and proximate result of the negligence of Defendants as
18 aforesaid, Plaintiffs, and each of them, suffered:

19 (a) Non-economic damages in an amount not to exceed \$1,000,000 for their
20 suffering and pain, including for the loss of his society, companionship, comfort, and love
21 caused by his pre-mature death; and

22 (b) Economic damages for final expenses, according to proof.

23 24. The conduct of Defendant Kryla as alleged herein was wilful, knowing,
24 conscious, deliberate, intentional, malicious, and in conscious disregard for the rights, welfare
25 and safety of George Raymond Kryla, and therefor Plaintiffs and his estate are entitled to
26 damages by way of punishment and example, not to exceed \$10,000,000 or according to the
27 determination by a jury according to proof adduced at the trial hereof.
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SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS

(Survivor Action - ORS 30.075)

25. Plaintiffs reallege and incorporate by reference as though fully set forth, the allegations of Paragraphs 1-24 as if fully set forth herein.

26. Defendants, and each of them, named and fictitiously named, owed George a duty to adequately care for him.

27. Defendants breached this duty by failing to provide adequate and proper care as outlined herein.

28. As a direct and proximate result of Defendants' conduct, Plaintiffs' decedent suffered physical injuries resulting in his death. Prior to his death, Mr. Perez suffered extreme anxiety, fear, pain and suffering, over the course of time prior to his death when he failed to receive appropriate medical treatment and was subjected to the abuse of Defendant Kryla herein; and his estate is therefore entitled to recover compensatory damages as a result of the anxiety, fear, pain and suffering prior to his death according to Paragraphs 22 and 23 or in an amount to be proven at trial.

29. Plaintiffs' decedent's estate is entitled to attorney fees and costs pursuant to ORS 30.075(2).

THIRD CLAIM FOR RELIEF AGAINST DEFENDANT KRYLA

(Elder Abuse)

30. Plaintiffs refer to and herein incorporate the foregoing paragraphs 1-29, as though fully set forth herein.

31. From and after April, 2008, Defendant Kryla engaged in a course of conduct in acting upon the person of George Raymond Kryla by intentionally, deliberately, and wilfully, knowingly, unlawfully, and in conscious disregard for the rights, safety, and welfare of George Raymond Kryla, touched, injured, and violated his rights and his person, over his objection and without his consent, and within the meaning of ORS 124.100 et seq., by engaging in a unwanted harmful conduct and abuse within the meaning of ORS 124.005(1)(a,

1 b, d) by suffering him to overdoses of laxatives and morphine, for which there was no consent
2 or justification, and thereby invaded his rights and caused him, by the intentional, deliberate,
3 and improper touching of his person, to be injured and killed; and by engaging in financial
4 abuse within the meaning of ORS 124.110.

5 32. Plaintiffs are informed and believe and thereon allege that Defendant did engage
6 in the aforesaid conduct, without which the naturally life of George Raymond Kryla would
7 not have ended.

8 33. As a direct and proximate result of the foregoing, Plaintiffs and their decedent
9 suffered the damages herein alleged at Paragraphs 22 and 23.

10 34. By reason of the conduct of Defendant Kryla, Plaintiffs and their decedent are
11 entitled to treble damages, attorneys fees, and costs, pursuant to the provisions of ORS
12 124.100(2) .

13 **FOURTH CLAIM FOR RELIEF**
14 **AGAINST DEFENDANTS SOUTH COAST HOSPICE AND McANDREWS**
15 **(Professional Negligence)**

16 35. Plaintiffs reallege paragraphs 1 through 23 and incorporate the same by reference
17 as though fully set forth herein.

18 36. Each and every employee or staff member of Defendants South Coast Hospice
19 and Dr. McAndrew were at all relevant times acting within the scope and course of their
20 employment..

21 37. Defendants held themselves out as possessing special skills relating to the care
22 and treatment of elderly persons, and were mandatory reporters within the meaning of ORS
23 124.060.

24 38. Defendants owed Plaintiffs' decedent a duty to adequately treat and care for him
25 with the degree of care, skill and diligence which is used by ordinarily careful professional
26 in the same or similar circumstances in the community in which they practice or in a similar
27 community, and according to law. Defendants, as a provider of medical treatment for
28 vulnerable elders, were also professionally obligated to protect George from harm.

1 39. Defendants breached their aforesaid duties in one or more of the following
2 particulars:

3 (a) Failing in their duty to use that degree of care, skill and diligence which is used
4 by ordinarily careful professionals in the same or similar circumstances in the community in
5 which they practice or in a similar community;

6 (b) Failing to provide the standard of care for their respective professions in one or
7 more of the acts or omissions outlined herein in the wrongful death and negligence claims
8 herein;

9 (c) Failing to properly train and supervise employees to provide adequate care to
10 Plaintiffs' decedent, including, but not limited to, the identification of elder abuse within the
11 meaning of ORS 124.005 and 124.050; and

12 (d) Failing to monitor and enforce proper policies developed to provide appropriate
13 care and treatment to patients, including the elderly.

14 40. As a direct and proximate result of Defendants' failures, George suffered
15 debilitating injury, distress, drug and laxative overdose, and other physical injuries resulting
16 in his death. Prior to his death, Mr. Perez suffered extreme anxiety, fear, pain and suffering,
17 over the course of time when he failed to receive appropriate medical treatment. or
18 intervention, and therefore his estate is entitled to recover compensatory damages
19 as a result of his death and the anxiety, fear, pain and suffering prior to his death in an amount
20 set forth in Paragraph 22, or as proven at trial.

21 41. As a further result of Defendants DHS's and OSH's negligence, Mr. Perez's estate
22 is entitled to recover the pecuniary loss to the estate, including, but not limited to reasonable
23 charges for burial and memorial services rendered for the decedent, according to Paragraph
24 23.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs herewith demand a trial by jury on all issues in this action.

27 **RIGHT TO AMEND**

28 Plaintiffs reserve the right to amend their complaint to include such additional causes

1 of action and defendants as may appear, and to seek punitive damages as the law allows.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiffs pray for Judgment against defendants as follows:

4 1. On the First and Second Claims for Relief:

5 (a) for non-economic compensatory damages such as would justly, fairly and
6 reasonably compensate George Raymond Kryla for disability, pain, suffering and loss of
7 income during the period he suffered injury to his death, and such as would compensate his
8 estate, in the amount of \$5,000,000 or according to proof;

9 (b) for economic losses including medical and final expenses necessarily incurred for
10 doctors' services, hospital services, nursing services, other medical services, burial services
11 and memorial services rendered for Plaintiffs' decedent;

12 (c) for non-economic damages such as would justly, fairly and reasonably compensate
13 Plaintiffs for the loss of the society, companionship and services of their decedent; and

14 (d) for punitive damages, if any, which the George Raymond Kryla and Plaintiffs
15 would have been entitled to recover from Defendant Kryla had he lived.

16 2. On the Third Claim for Relief,

17 (a) for non-economic compensatory damages such as would justly, fairly and
18 reasonably compensate George Raymond Kryla for disability, pain, suffering and loss of
19 income during the period he suffered injury to his death, and such as would compensate his
20 estate, in the amount of \$5,000,000 or according to proof;

21 (b) for economic losses including medical and final expenses necessarily incurred for
22 doctors' services, hospital services, nursing services, other medical services, burial services
23 and memorial services rendered for Plaintiffs' decedent;

24 (c) for non-economic damages such as would justly, fairly and reasonably compensate
25 Plaintiffs for the loss of the society, companionship and services of their decedent; and

26 (d) for treble damages, attorneys fees, and costs pursuant to ORS 124.100; and

27 (e) for a constructive trust upon the assets or assets derived from the estate of George
28 Raymond Kryla, for the purpose of avoiding unjust enrichment of Defendant Kryla;

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3. On the Fourth Claim for relief:

(a) for non-economic compensatory damages such as would justly, fairly and reasonably compensate George Raymond Kryla for disability, pain, suffering and loss of income during the period he suffered injury to his death, and such as would compensate his estate, in the amount of \$5,000,000 or according to proof;

(b) for economic losses including medical and final expenses necessarily incurred for doctors' services, hospital services, nursing services, other medical services, burial services and memorial services rendered for Plaintiffs' decedent;

(c) for non-economic damages such as would justly, fairly and reasonably compensate Plaintiffs for the loss of the society, companionship and services of their decedent; and

(d) for costs of suit herein; and

5. For such other and further relief as the Court in the interests of justice deems appropriate.

Dated: June 18, 2012

McCarthy Law Offices

/s/ Steven M. McCarthy

Steven M. McCarthy, OSB 081030