

No. 18-2193

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

VICTOR MONDELLI,

Plaintiff-Appellant,

v.

**BERKELEY HEIGHTS NURSING & REHABILITATION CENTER; ET
AL.,**

Defendant-Appellee.

On Appeal from the United States District Court
For the District of New Jersey,
Civil Action No. 2:16-cv-01569-ES-SCM
Judge Esther Salas, Presiding

VOLUME 2 OF THE JOINT APPENDIX (JA022 to JA129)

Michael L. Foreman
PENN STATE LAW, CIVIL RIGHTS APPELLATE CLINIC
329 Innovation Blvd., Suite 118
University Park, PA 16802
Phone: (814) 865-3832
Fax: (814) 865-3851
mlf25@psu.edu
PA Bar 30231

Court-Appointed *Amicus Curiae* Counsel

JOINT APPENDIX TABLE OF CONTENTS

JOINT APPENDIX VOLUME II.....	JA022
A. Table of Contents	JA022
B. Plaintiff Victor Mondelli’s Complaint dated March 21, 2016 (District Court Docket No. 1)	JA024
C. Defendants Berkeley Heights Nursing & Rehabilitation Center; Marian Ferrer and Diane Wilverding’s Answer to Plaintiff’s Complaint, Separate Defense, Demand for Statement of Damages, Demand for Discovery, Designation of Trial Counsel, and Jury Demand dated August 15, 2016 (District Court Docket No. 7).....	JA037
D. Letter to Judge Mannion from Defendants Requesting to File Motion to Dismiss dated April 25, 2017 (District Court Docket No. 16).....	JA052
E. Exhibit C of Letter to Judge Mannion from Defendants Requesting to File Motion to Dismiss dated April 25, 2017 (District Court Docket No. 16-3)	JA057
F. Exhibit D of Letter to Judge Mannion from Defendants Requesting to File Motion to Dismiss dated April 25, 2017 (District Court Docket No. 16-4)	JA062
G. Exhibit E of Letter to Judge Mannion from Defendants Requesting to File Motion to Dismiss dated April 25, 2017 (District Court Docket No. 16-5)	JA064
H. Exhibit F of Letter to Judge Mannion from Defendants Requesting to File Motion to Dismiss dated April 25, 2017 (District Court Docket No. 16-6)	JA077
I. Exhibit G of Letter to Judge Mannion from Defendants Requesting to File Motion to Dismiss dated April 25, 2017 (District Court Docket No. 16-7)	JA079
J. Exhibit H of Letter to Judge Mannion from Defendants Requesting to File Motion to Dismiss dated April 25, 2017 (District Court Docket No. 16-8)	JA081

- K. District Court Order to Show Cause dated May 3, 2017 (District Court Docket No. 17).....JA083
- L. Certification of Plaintiff Victor Mondelli dated May 19, 2017 (District Court Docket No. 18).....JA085
- M. District Court Order Administratively Terminating Action dated May 22, 2017 (District Court Docket No. 19) JA111
- N. District Court Notice of Plaintiff's Motion to Extend Time to Reopen Case or, in the Alternative, to Reopen Case dated November 20, 2017 (District Court Docket No. 20).....JA113
- O. Plaintiff's Affidavit of Prejudice of the Honorable Steve Mannion, U.S.M.J. for Recusal and Assignment of New Judge Pursuant to 28 U.S.C.A. §144 dated November 20, 2017 (District Court Docket No. 21)JA114
- P. Defendants Berkeley Heights Nursing & Rehabilitation Center; Marian Ferrer and Diane Wilverding's Opposition Brief to Plaintiff's Motion to Extend Time to Reopen Case or in the Alternative to Reopen Case and Plaintiff's Motion to Recuse the Honorable Steve Mannion, U.S.M.J. filed December 18, 2017 (District Court Docket No. 23)..... JA117

KENNETH ROSELLINI (6047)

ATTORNEY AT LAW

636A Van Houten Avenue

Clifton, New Jersey 07013

(973) 998-8375 Fax (973) 998-8376

Attorney for Plaintiff, Victor Mondelli

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR MONDELLI, Plaintiff, v. BERKELEY HEIGHTS NURSING & REHABILITATION CENTER, MARINA FERRER, DIANE WILVERDING AND JOHN/JANE DOES 1 through 5, Defendants.	CIVIL ACTION Case No. : JURY TRIAL DEMANDED COMPLAINT and JURY DEMAND
---	---

Plaintiff Victor Mondelli in the above-captioned matter, by and through his counsel of record, for his cause of action against Defendants, states as follows:

PARTIES

1. Plaintiff, Victor Mondelli (“Mondelli”) is currently a resident of the State of New Jersey, whom was residing in Union County, New Jersey at times relevant to this Complaint.

2. The Defendant, Berkeley Heights Nursing & Rehabilitation Center (“BHNRC”) is, upon information and belief, a New Jersey licensed Health Facility/Nursing Home.

3. Defendant Marina Ferrer is upon information and belief a New Jersey resident and the Administrator of BHNRC.

4. Defendant, Diane Wilverding, is upon information and belief a New Jersey resident and Director of Recreation for BHNRC.

5. Mary Chmura is upon information and belief a New Jersey resident and a former employee of BHNRC.

6. Leanne Fiet is upon information and belief a New Jersey resident and employed by BHNRC as a consultant and or compliance advisor/supervisor.

7. Pamela McCarthy is upon information and belief a New Jersey resident and employed by BHNRC as a long term care nurse.

8. Virginia Doe is upon information and belief a New Jersey resident and employed by BHNRC as a supervising nurse.

9. John/Jane Does 1 through 5 are persons who were responsible for the care and visitation of Anna Mondelli while she resided at BHNRC.

JURISDICTION AND VENUE

10. The jurisdiction of this Court is invoked by Plaintiff pursuant to 28 *U.S.C.* §1331 which confer original jurisdiction upon the Court on the grounds that the instant action arises under the Title II of the Americans with Disabilities Act (42 *U.S.C.* §§12131-12165) and Supplemental Jurisdiction under 28 *U.S.C.* §1337.

11. Venue in the New Jersey District is properly laid pursuant to 28 *U.S.C.* §1391, in so far as the following alleged unlawful conduct complained of in this Complaint, which forms the factual and legal basis of the claims of the Plaintiff, arose within the geographical limits of this District.

FACTUAL BACKGROUND

12. Plaintiff, Victor Mondelli, is currently a resident of New Jersey, whom was residing in Union County, New Jersey at times relevant to this Complaint.

13. Anna Mondelli, the Plaintiff's biological mother, was a resident of Berkeley Heights Nursing & Rehabilitation Center from January of 2012 through March of 2015.

14. Anna Mondelli passed away in May of 2015.

15. Plaintiff has a mental health disability for which he receives SSI benefits.

16. Plaintiff had a strong emotional bond and attachment with his mother, which they had maintained daily for his entire life.

17. In fact, until July 25, 2013, Plaintiff had continuously visited with his mother Anna Mondelli twelve hours per day at the Berkeley Heights Nursing & Rehabilitation Center.

18. During the visits, Plaintiff observed the Defendants providing improper care to Anna Mondelli.

19. Plaintiff observations of the improper care that Anna Mondelli received at BHNRC resulted in him filing numerous complaints with the New Jersey Board of Health and the Office of the Ombudsman for the Institutionalized Elderly ("Ombudsman").

20. For example, the Ombudsman also helped reverse a "do not resuscitate" directive that appeared on Plaintiff's mother's medical file without her authorization or anyone else's with a power of attorney. This was reversed after the complaints-and there still no answer as to why it was placed in there, but it was pulled from her file.

21. On July 25, 2013, Plaintiff observed that a temporary feeding tube (in fact a Foley Catheter) that was used to feed his mother, Anna Mondelli, was not properly connected and was out.

22. Plaintiff observed this right after the nurse's aide had changed her clothes for her

23. Anna Mondelli was complaining of bad stomach pains at the time.

24. The feeding tube was in fact a temporary feeding tube, which was the third Foley

Catheter used as a feeding tube over the previous two months.

25. In fact, BHNRC was aware of its responsibility to get Anna Mondelli the correct type of feeding tube, which it failed to do.

26. The Ombudsman substantiated the fact that the Foley Catheter was being improperly utilized as a permanent, rather than a temporary tube.

27. Upon information and belief, the improper use of the Foley Catheter caused damage to Anna Mondelli's health, including serious internal bleeding ulcers.

28. In the fall of 2012, Anna Mondelli and Plaintiff demanded that the doctor put the original feeding tube in at Overlook Hospital.

29. BHNRC continuously misrepresented to the State of New Jersey and the Superior Court of New Jersey, the amount and quality of care it provided to Anna Mondelli.

30. In fact, BHNRC was providing but minimal care to Anna Mondelli through nurses aids.

31. In retaliation for the Plaintiff's complaints about BHNRC's care of Anna Mondelli, BHNRC demanded that he sign a "Service Agreement" on July 26, 2013 to restrict him from helping his mother Anna Mondelli in ways that BHNRC failed to do for the previous sixteen months.

32. For example, in September of 2012, the Assistant Director of Nursing advised Plaintiff that, because of Anna Mondelli's age, she wouldn't be able to get out of bed anymore.

33. By January of 2013, BHNRC completely stopped assisting Anna Mondelli with exercising her to keep her healthy.

34. Because of this, Plaintiff was the only person assisting her so that she maintained movement to stay strong and healthy.

35. On July 26, 2013, Plaintiff got Anna Mondelli up to exercise in the same way he had done for the sixteen months prior.

36. Plaintiff had many other concerns about BHNRC's failure to care for Anna Mondelli.

37. For example, Anna Mondelli had a bad rash on the inside of her legs as red as a tomato from BHNRC neglect in failing to wash her and treat her with the appropriate creams.

38. There were many other incidents.

39. For example, on July 27, 2013, Plaintiff arrived at Anna Mondelli's room at 8:00 A.M. to find her air mattress was unplugged and flat—and she had no oxygen on her.

40. In July 28, 2013, Plaintiff arrived at 8:00 A.M. to find his mother shivering cold because BHNRC had not properly dried her after washing her.

41. This occurred again on July 29, 2013, and the treating nurse acknowledged the problem both times.

42. On July 30, 2013, BHNRC had failed to properly adjust the oxygen and it was attached in a way that was choking Anna Mondelli.

43. Plaintiff advised the treating nurse, and the oxygen was adjusted to give Anna Mondelli relief.

44. On July 31, 2015, the air mattress was flat again, and Anna Mondelli was complaining of chest pains.

45. All of the above demonstrates that Anna Mondelli was not receiving proper care at the BHNRC in July of 2013, and Plaintiff's complaints were substantiated.

46. In fact, Leanne Fiet, a supervisor of BHNRC, acknowledged in an Email that Plaintiff complained about BHNRC on a daily basis.

47. In fact, Defendants were more concerned with the fact that Plaintiff was making complaints than addressing those complaints.

48. Several of Plaintiff's complaints to the State Ombudsman regarding Anna Mondelli's care resulted in action, as stated *supra.* and *infra.*

49. For example, as a result of the Plaintiff's complaints the Ombudsman stopped BHNRC from discharging her home in April of 2013 before she or Plaintiff was ready to move her back there.

50. For example, as a result of the Plaintiff's complaints, the Ombudsman stopped BHNRC's use of Canned Protein, because feeding her this was making her sick.

51. For example, as a result of the Plaintiff's complaints, the Ombudsman stopped Berkeley Heights Nursing & Rehabilitation Center from transferring Anna Mondelli to a facility in Cape May, New Jersey where it would have been impossible for Plaintiff to visit her.

52. For example, as a result of the Plaintiff's complaints, the Ombudsman also stopped Berkeley Heights Nursing & Rehabilitation Center from leaving her in parts of her room where the sun was too hot and from which she would get too hot and bake.

53. By July of 2013, Plaintiff had been giving Anna Mondelli Ensure by way of the feeding tube on a daily basis because BHNRC was not providing her with the proper nutrition.

54. Anna Mondelli's nutritionist was fully aware that Plaintiff was feeding Anna Mondelli the Ensure so that she would have proper nutrition.

55. In fact, BHNRC had taught Plaintiff this method of feeding Anna Mondelli when it wanted to release Anna Mondelli to Plaintiff's care in April of 2013.

56. A BHNRC Nurse for the facility's Wing A, whose first name is Virginia (and whose last name is unknown at this time to the Plaintiff) stored the Ensure bottles that Victor

Mondelli provided to BHNRC in her office.

57. Pamela McCarthy acted as Anna Mondelli's longer term care nurse, and fed Anna Mondelli the Ensure.

58. Pamela McCarthy also knew that Victor Mondelli was providing the Ensure and feeding it to Anna Mondelli

59. These Ensure bottles were fed to Anna Mondelli through a feeding tube (or the Foley Catheter when improperly utilizing that device as a feeding tube) by either BHNRC staff or Victor Mondelli himself, with the full knowledge of the Defendants.

60. On July 31, 2013, 2:10 P.M., Plaintiff was advised by BHNRC to leave the room where he was visiting his mother, with two nurse's aides and one nurse coming in to examine Anna Mondelli, the same nurse that Plaintiff had been complaining to in the mornings as to the bed being flat.

61. After about 10 minutes, Plaintiff was summoned to come back in the room.

62. When he went in the room, the nurse held up his mother's pants and sheet, and pointed to a bag where she purportedly found Ensure with a syringe—despite the fact no authorization had been given to search the bags.

63. Chmura came into the room and Plaintiff informed her that he was going to call the police due to BHNRC's improper conduct.

64. Chmura stated to Plaintiff that if he called the police, he would have to leave the facility.

65. Chmura communicated to the Plaintiff in a threatening and outrageous manner.

66. Plaintiff did call the police and later filed criminal charges against Defendant Chmura for which probable cause was found by the Scotch Plains Municipal Court, but Chmura

could not be located for service of the criminal summons and complaint.

67. In retaliation for the Plaintiff's concerns and complaints, in despite the Plaintiff's mental health condition, BHNRC and its Administrator, Defendant Marina Ferrer, restricted Plaintiff's visitation with Anna Mondelli to one or two hours a day for the rest of Anna Mondelli's life.

68. The restriction placed upon the visitation limited Plaintiff's visitation to one or two hours a day in BHNRC's Cafeteria.

69. By March 19, 2014, Plaintiff's visitation with Anna was further restricted upon the direction of Defendants Wilverding and Ferrer.

70. Wilverding directed that Plaintiff could no longer visit with his mother in the Cafeteria, claiming that their talking was interfering with other residents.

71. In fact, Plaintiff's mother was hard-of-hearing, so Plaintiff had to speak loud for her to hear him.

72. In fact, Plaintiff's talking with his mother had been the same as it had been for the previous seven months.

73. When Plaintiff left BHNRC, he filed a police report with the Berkeley Heights Police Department complaining that Wilverding was interfering with his rights of visitation with his mother and failing to provide proper accommodations.

74. A police officer went to BHNRC to investigate on March 19.

75. On March 20, 2014, Defendants' retaliation continued and Defendant Ferrer called the local police as soon as Plaintiff arrived at the facility to meet with mother in the cafeteria, accusing him of disorderly conduct, to intimidate Plaintiff to further restrict his visitation, and to prevent him from filing complaints against Defendants concerning their

wrongful conduct.

76. Defendants thereafter violated the Plaintiff's rights and failed to make proper accommodation for his disabilities so that he could visit with his mother, and caused him to meet with his mother solely in the lobby, which was not conducive to visitations and which was not properly heated.

**FIRST CLAIM FOR RELIEF
(AMERICANS WITH DISABILITIES ACT)**

77. Plaintiff incorporates by reference the allegations contained above, as though fully set forth here.

78. Defendants refused to provide Plaintiff with services to visit with his mother and used his disabilities as a means to deprive him of rights.

79. Defendants failed to take into account Plaintiff's disability when restricting his visitation with his mother.

80. Defendants failed to provide any service or accommodation for Plaintiff's disability so that Plaintiff could be with his mother in accordance with 42 C.F.R. 483.10.

81. By virtue of the foregoing acts, Defendants have violated Plaintiff's rights under Title II of the Americans with Disabilities Act (42 U.S.C. §§12131-12165), and as a result which Plaintiff has been damaged.

WHEREFORE, Plaintiff, Victor Mondelli, respectfully demands judgment against the Defendants, BERKELEY HEIGHTS NURSING & REHABILITATION CENTER, MARINA FERRER, DIANE WILVERDING, and JANE/JOHN DOES 1-5, jointly and severally, molded

by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth in applicable federal and state law and for:

- A) Damages in the amount of \$10,000,000.00; and
- B) Punitive Damages in the amount of \$50,000,000.00; and
- C) Awarding counsel fees to Plaintiff's legal counsel; and
- D) Awarding Costs of Suit; and
- E) Interest; and
- F) Damages for Pain and Suffering; and
- G) For such other relief as the Court may determine to be appropriate.

SECOND CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

82. Plaintiff incorporates by reference all prior facts and allegations in this Complaint here as if set forth at length herein.

83. The Defendants acted in conspiracy with one another and willfully and intentionally, and their actions were designed to cause plaintiff distress in retaliation for the meritorious complaints which Plaintiff filed against BHNRC.

84. As a result of this relentless barrage of harassment by the Defendants jointly, plaintiff suffered health problems and has suffered other pecuniary injuries.

WHEREFORE, Plaintiff, Victor Mondelli, respectfully demands judgment against the Defendants, BERKELEY HEIGHTS NURSING & REHABILITATION CENTER, MARINA FERRER, DIANE WILVERDING, AND JANE/JOHN DOES 1-5, jointly and severally, molded

by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth in applicable federal and state law and for:

- A) Damages in the amount of \$10,000,000.00; and
- B) Punitive Damages in the amount of \$50,000,000.00; and
- C) Awarding counsel fees to Plaintiff's legal counsel; and
- D) Awarding Costs of Suit; and
- E) Interest; and
- F) Damages for Pain and Suffering; and
- G) For such other relief as the Court may determine to be appropriate.

DAMAGE CLAIMS AS AGAINST ALL DEFENDANTS

PUNITIVE DAMAGES

85. Plaintiff incorporates by reference the allegations contained in paragraphs above, as though fully set forth here.

86. In addition to compensatory damages, Plaintiff hereby make a claim for punitive damages against Defendants in an amount to be proven at trial for the willful and wanton acts and omissions of Defendants,

87. Defendants committed the acts and omissions alleged in this complaint and subjected Plaintiff to improper treatment that caused Plaintiff to suffer emotional distress so severe that no person should be expected to endure it.

88. Defendants' actions should be punished, and an example should be made so that these actions and omissions are not repeated.

ATTORNEY'S FEES

89. Plaintiff incorporates by reference the allegations contained in paragraphs above, as though fully set forth here.

90. As a result of Defendants' actions as alleged in this complaint, Plaintiff has been required to retain the service of attorneys and are entitled to a reasonable amount for attorney's fees.

DAMAGES

91. Plaintiff incorporates by reference the allegations contained in paragraphs above, as though fully set forth here.

92. The acts and omissions of Defendants as set forth above have resulted in injury to Plaintiff.

93. By virtue of these injuries, Plaintiff is entitled to the following damages from all defendants:

- a) Mental and emotional pain and suffering; and
- b) Humiliation and sociological distress; and
- c) Compensatory Damages in the amount of \$10,000,000.00; and
- d) Punitive damages in \$50,000,000 or a reasonable amount that is sufficient to adequately punish all defendants and to deter future conduct of the type alleged in this complaint; and
- e) The costs of this action, attorney's fees, and such other and further relief as this Court deems just and proper.

JURY DEMAND AND DESIGNATION OF PLACE OF TRIAL

Plaintiff demands that this matter be tried to a jury of twelve in the United States District Court for the District of New Jersey, Newark Vicinage.

/S/ Kenneth Rosellini

Dated: March 21, 2016

KENNETH ROSELLINI, ESQ. (6047)
Attorney at Law

CERTIFICATION

I hereby certify that to the best of my information, knowledge and belief that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, that no other action or arbitration is contemplated, and I am not aware of any other person whom should be joined in this matter.

/S/ Kenneth Rosellini

Dated: March 21, 2016

KENNETH ROSELLINI, ESQ. (6047)
Attorney at Law

TRIAL COUNSEL DESIGNATION

Kenneth Rosellini, Esq. is hereby designated trial counsel in this matter.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

VICTOR MONDELLI

Plaintiff

**BERKELEY HEIGHTS NURSING &
REHABILITATION CENTER, MARINA
FERRER, DIANE WILVERDING, and
JOHN/JANE DOES 1 THROUGH 5,**

Defendants

)
)
) **CASE NO: 2:16-cv-01569-ES-SCM**
)
) **DEFENDANTS, BERKELEY HEIGHTS**
) **NURSING & REHABILITATION**
) **CENTER; MARIAN FERRER AND**
) **DIANE WILVERDING'S ANSWER TO**
) **PLAINTIFF'S COMPLAINT,**
) **SEPARATE DEFENSE, DEMAND FOR**
) **STATEMENT OF DAMAGES,**
) **DEMAND FOR DISCOVERY,**
) **DESIGNATION OF TRIAL COUNSEL,**
) **AND JURY DEMAND**

Defendants, Berkeley Heights Nursing and Rehabilitation Center, (hereinafter "BHNRC), Marina Ferrer and Diane Wilverding, (hereinafter, "Answering Defendants") by and through their attorneys, Marshall, Dennehey, Warner, Coleman & Goggin, P.C., responds to Plaintiff's Complaint, as follows:

PARTIES

1. Denied. Plaintiff is left to his proofs.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied as stated. Mary Chmura was an employee of answering defendant, BHNRC.
6. Denied as stated. Plaintiff is left to his proofs.
7. Admitted .

8. Denied as plaintiff's allegations are directed to a defendant other than the answering defendant.

9. Denied as plaintiff's allegations are directed to a defendant other than the answering defendant.

JURISDICTION AND VENUE

10. Denied. Plaintiff is left to his proofs.

11. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied.

FACTUAL BACKGROUND

12. Denied. Plaintiff is left to his proofs.

13. Denied. Plaintiff is left to his proofs.

14. Denied. Plaintiff is left to his proofs.

15. Denied. Plaintiff is left to his proofs.

16. Denied. Plaintiff is left to his proofs.

17. Denied. Plaintiff is left to his proofs.

18. Denied. Plaintiff is left to his proofs. It is further denied that the answering defendants, agents, servants, workman and/or employees were acting improper but to the contrary acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community and for nurses and administrators.

19. Denied. Plaintiff is left to his proofs.

20. Denied. Plaintiff is left to his proofs.

21. Denied. Plaintiff is left to his proofs.

22. Denied. Plaintiff is left to his proofs.

23. Denied. Plaintiff is left to his proofs.

24. Denied. Plaintiff is left to his proofs.

25. Denied as stated. It is admitted only that while Anna Mondelli was under the care of the answering defendants, its agents, servants, workman and/or employees, she at all times received proper care including a proper feeding tube and the answering defendants, its agents, servants, workman and/or employees acted reasonably under the circumstances in accordance with the standards set forth in the nursing home community.

26. Denied. Plaintiff is left to his proofs.

27. Denied. Plaintiff is left to his proofs.

28. Denied. Plaintiff is left to his proofs.

29. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent or grossly negligent but to the contrary at all times acted with due care reasonably under the circumstances in accordance with the standards set forth in the medical community.

30. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent or grossly negligent but to the contrary at all times acted with due care reasonably under the circumstances in accordance with the standards set forth in the medical community.

31. Denied. Plaintiff is left to his proofs. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Denied

that the answering defendants, their agents, servants, workman and/or employees were negligent or grossly negligent but to the contrary at all times acted with due care reasonably under the circumstances in accordance with the standards set forth in the medical community.

32. Denied. Plaintiff is left to his proofs.

33. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent or grossly negligent but to the contrary at all times acted with due care reasonably under the circumstances in accordance with the standards set forth in the medical community.

34. Denied. Plaintiff is left to his proofs.

35. Denied. Plaintiff is left to his proofs.

36. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent or grossly negligent but to the contrary at all times acted with due care reasonably under the circumstances in accordance with the standards set forth in the medical community.

37. Denied. Plaintiff is left to his proofs. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent or grossly negligent but to the contrary at all times acted with due care reasonably under the circumstances in accordance with the standards set forth in the medical community.

38. Denied. Plaintiff is left to his proofs.

39. Denied. Plaintiff is left to his proofs.

40. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.
41. Denied. Plaintiff is left to his proofs.
42. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.
43. Denied. Plaintiff is left to his proofs.
44. Denied. Plaintiff is left to his proofs.
45. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.
46. Denied. Plaintiff is left to his proofs.
47. Denied. Plaintiff is left to his proofs.
48. Denied. Plaintiff is left to his proofs.
49. Denied. Plaintiff is left to his proofs.
50. Denied. Plaintiff is left to his proofs.
51. Denied. Plaintiff is left to his proofs.
52. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all

times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.

53. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.

54. Denied. Plaintiff is left to his proofs.

55. Denied. Plaintiff is left to his proofs.

56. Denied. Plaintiff is left to his proofs.

57. Denied. Plaintiff is left to his proofs.

58. Denied. Plaintiff is left to his proofs.

59. Denied. Plaintiff is left to his proofs.

60. Denied. Plaintiff is left to his proofs.

61. Denied. Plaintiff is left to his proofs.

62. Denied. Plaintiff is left to his proofs.

63. Denied. Plaintiff is left to his proofs.

64. Denied. Plaintiff is left to his proofs.

65. Denied. Plaintiff is left to his proofs.

66. Denied. Plaintiff is left to his proofs.

67. Denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.

68. Denied. Plaintiff is left to his proofs.

69. Denied. Plaintiff is left to his proofs.

70. Denied. Plaintiff is left to his proofs.

71. Denied. Plaintiff is left to his proofs.

72. Denied. Plaintiff is left to his proofs.

73. Denied. Plaintiff is left to his proofs.

74. Denied. Plaintiff is left to his proofs.

75. Denied. Plaintiff is left to his proofs. It is further denied that any acts or omissions to act on the part of the answering defendant, their agents, servants, workman and/or employees were a direct or proximate cause of any damages or injuries that plaintiff may be able to prove at trial of this matter including but not limited to those alleged in plaintiff's complaint. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.

76. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.

**FIRST CLAIM FOR RELIEF
AMERICANS WITH DISABILITIES ACT**

77. Answering defendants incorporate by reference their answers and denials in paragraphs 1-76 as if the same were more fully set forth at length herein.

78. Denied. Plaintiff is left to his proofs.

79. Denied. Plaintiff is left to his proofs. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied.

80. Denied. Plaintiff is left to his proofs. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied.

81. Denied. Plaintiff is left to his proofs. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied.

WHEREFORE, answering defendants hereby request this Honorable Court to dismiss the plaintiff Complaint and award costs and fees in favor of answering defendants.

**SECOND CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

82. Answering defendants incorporate by reference their answers and denials to paragraphs 1-81 as if the same were fully set forth herein.

83. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Plaintiff is left to his proofs. Denied that the answering defendants, their agents, servants, workman and/or employees were negligent but to the contrary at all times acted with due care, reasonably or under the circumstances in accordance with the standards set forth in the nursing home community reasonably or under the circumstances in accordance with the standards set forth in the nursing home community.

84. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Plaintiff is left to his proofs. It is further denied that any acts or omissions to act on the part of the answering defendant, their agents, servants, workman and/or employees were a direct or proximate cause of any damages or injuries that plaintiff may be able to prove at trial of this matter including but not limited to those alleged in plaintiff's complaint.

WHEREFORE, answering defendants hereby request this Honorable Court to dismiss the plaintiff Complaint and award costs and fees in favor of answering defendants

DAMAGE CLAIMS AS AGAINST ALL DEFENDANTS
PUNITIVE DAMAGES

85. Answering defendants incorporate by reference their answers and denials to Paragraphs 1-84 as if the same were more fully set forth at length herein.

86. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. It is further denied that any acts or omissions to act on the part of the answering defendant, their agents, servants, workman and/or employees were a direct or proximate cause of any damages or injuries that plaintiff may be able to prove at trial of this matter including but not limited to those alleged in plaintiff's complaint. Denied that answering defendants, their agents, servants, workman and/or employees were willful, wanton, reckless or negligent but to the contrary at all times acted with due care reasonably under the circumstances and in accordance with the standards set forth in the nursing home community.

87. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Plaintiff is left to his proofs. It is further denied that any acts or omissions to act on the part of the answering defendants, their agents, servants, workman and/or employees were a direct or proximate cause of any damages or injuries that plaintiff may be able to prove at trial of this matter including but not limited to those alleged in plaintiff's complaint.

88. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Plaintiff is left to his proofs.

ATTORNEY'S FEES

89. Answering defendants incorporate by reference their answers and denials to Paragraphs 1-88 as if the same were more fully set forth at length herein.

90. Denied. Plaintiff is left to his proofs.

DAMAGES

91. Answering defendants incorporate by reference their answers and denials to paragraphs 1-90 as if the same were more fully set forth at length herein.

92. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Denied. It is further denied that any acts or omissions to act on the part of the answering defendants, their agents, servants, workman and/or employees were a direct or proximate cause of any damages or injuries that plaintiff may be able to prove at trial of this matter including but not limited to those alleged in plaintiff's complaint.

93. A-E. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and are deemed denied. Denied. It is further denied that any acts or omissions to act on the part of the answering defendants, their agents, servants, workman and/or employees were a direct or proximate cause of any damages or injuries that plaintiff may be able to prove at trial of this matter including but not limited to those alleged in plaintiff's complaint.

SEPARATE DEFENSES

1. Answering Defendants deny the negligence alleged.
2. Answering Defendants performed each and every duty required.
3. Answering Defendants breached no duties to the plaintiff.
4. The occurrences complained of were neither intended by the Answering Defendants, foreseeable, nor preventable by the exercise of reasonable care.
5. At all times relevant hereto, Answering Defendants were in compliance with local, state and federal statutes, rules, regulations and ordinances.
6. The Answering Defendants deny that there were any deviations from the applicable standards of medical and/or nursing rehabilitation care.
7. The occurrences described in the Complaint were caused wholly or partly by the negligence or intentional acts of the Plaintiff, and Plaintiff is barred from recovery or the recovery is reduced thereby.
8. Plaintiff's damages, if any, were the direct result of the negligence of others, over whom the Answering Defendants exercised no right of control.
9. Answering Defendants are not responsible for intentional or reckless acts of others.

10. Plaintiff's injuries are due to his existing and/or pre-existing physical condition.
11. Injuries complained of were not proximately caused by Answering Defendants.
12. Plaintiff's claims against Answering Defendants are eliminated and/or reduced by the applicable provisions of the New Jersey Comparative Negligence Act, N.J.S.A. 2A:15-5.1, et seq.
13. Plaintiff's claims are barred by the Doctrines of Laches, Estoppel, Unclean Hands, and Waiver.
14. Plaintiff's claims are barred by reason of the Doctrines of Res Judicata and/or Collateral Estoppel.
15. Plaintiff has failed to comply with the provisions of N.J.S.A. 2A:15-3.
16. Plaintiff's claims are governed by N.J.S.A. 2A:53A-26, et seq.
17. Damages recovered on the Complaint, if any, are to be reduced by any benefits from collateral sources pursuant to N.J.S.A. 2A:15-97.
18. Plaintiff has failed to mitigate damages.
19. Plaintiff is barred from recovery pursuant to the applicable Statute of Limitations.
20. Plaintiff's claims are barred by Plaintiff's failure to timely assert same in accordance with the requirements of the Entire Controversy Doctrine.
21. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted against the Answering Defendants, and Answering Defendants reserve the right to move at the time of Trial or prior thereto to dismiss Plaintiff's Complaint.
22. Plaintiff's claims may be barred in whole or in part by any and all applicable releases.
23. Plaintiff's claims are barred by the Workers' Compensation Statute.

24. Plaintiff lacks standing as to individual claims for injuries pursuant to the New Jersey Nursing Home Statutes.

25. Plaintiff's claims are barred because the Answering Defendants are not amenable to the jurisdiction of this Court as there is no personal jurisdiction, venue is improper, service was insufficient and process was insufficient.

26. Plaintiff's claims are barred by the Charitable Immunity Statute.

27. Plaintiff's Complaint fails to state a cause of action under the American With Disabilities Act.

28. To the extent that any of plaintiff's claims are barred and/or limited pursuant to any applicable statute of limitations or failure to exhaust administrative remedies, defendants claim same.

29. Defendants have at all times a policy regarding the ADA and to the extent plaintiff unreasonably failed to take advantage of the preventive and/or corrective opportunities provided, defendant claims same as a defense.

30. Defendants' conduct was objectionably reasonable under the circumstances.

31. Plaintiff's Complaint fails to state a cause of action for punitive damages.

32. Plaintiff does not suffer from a disability as defined by the ADA.

33. Defendants did not retaliate against plaintiff for exercising rights under the ADA since plaintiff never exercised any rights.

34. All decisions regarding plaintiff were based on legitimate non-discriminatory reasons which were not pre-textual.

RESERVATION OF DEFENSES AND OBJECTIONS

Answering Defendants hereby reserve the right to interpose such other defenses and objections as a continuing investigation and discovery may disclose.

DEMAND FOR STATEMENT OF DAMAGES CLAIMED

Pursuant to the provisions of R. 4:5-2, it is hereby requested that within five (5) days of service of a copy hereof, plaintiff furnish to the answering defendant a written statement specifying the amount of damages claimed herein.

DEMAND FOR ANSWERS TO INTERROGATORIES

Answering Defendants hereby demand Plaintiff's responses to Interrogatories Form A and Form A1.

DEMAND FOR AFFIDAVIT OF MERIT

Pursuant to N.J.S.A. 2A:53A-26, et seq., Answering Defendants hereby demand Plaintiff to produce an Affidavit of Merit within the time allotted therein.

DEMAND FOR TRIAL BY JURY

Answering Defendants hereby demand a trial by jury, pursuant to R. 1:8-2 and R. 4:35-1.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4, the Court is advised that **LYNNE N. NAHMANI, ESQUIRE** is hereby designated as trial counsel.

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that to my knowledge, the matter in controversy is not the subject of any other action pending in any Court or of a pending Arbitration proceeding, that no other action or Arbitration proceeding is contemplated, and that I have no knowledge at this time of the names of any other party who should be joined in this action.

//Lynne N. Nahmani, Esquire//

LYNNE NAHMANI, ESQUIRE

NJ Atty ID #016711989

Woodland Falls Corporate Park

200 Lake Drive East ■ Suite 300

Cherry Hill, NJ 08002

☎ 856-414-6000

☎ 856-414-6077

✉ Innahmani@mdwecg.com

Attorney for Defendants, Berkeley Heights Nursing &
Rehabilitation Center, Marina Ferrer and Diane
Wilverding

Dated: August 15, 2016

LEGAL/106492881.v1

A PROFESSIONAL CORPORATION

15000 Midlantic Drive, Suite 200, Mount Laurel, NJ 08054
(856) 414-6000 Fax (856) 414-6077

Direct Dial: (856) 414-6022

Email: Innahmani@mdwcg.com

April 25, 2017

The Honorable Steven C. Mannion
USDC - District of New Jersey
M.L. King Jr. Federal Bldg & US Courthouse
50 Walnut Street, Courtroom 3C
Newark, NJ 07101

RE: Mondelli, Victor v. Berkeley Heights Nursing & Rehab
Docket No.: 2:16-CV-01569
Document Label: Chartis/AIG Label
Our File No.: 40293.00163

Dear Judge Mannion,

This office represents Defendants Berkeley Heights Nursing and Rehabilitation Center, Marina Ferrer and Diane Wilverding (hereinafter collectively "Defendants") in the above referenced matter. As requested at the time of the Court's March 29, 2017 case management conference, please accept this letter as an update to both the status of discovery in this matter and a request for leave to file motion practice seeking a dismissal for failure to make discovery and summary judgment.

Motion to Dismiss with Prejudice for Failure to Provide Discovery:

To date, Plaintiff has not provided any discovery in this matter. By way of brief procedural history, Plaintiff, Victor Mondelli, filed his Complaint in this matter on March 22, 2016. (See Complaint, attached hereto as "Exhibit A"). Defendants Berkeley Heights Nursing and Rehabilitation Center, Marina Ferrer and Diane Wilverding thereafter filed their Answer to

April 25, 2017
Page 2

Plaintiff's Complaint on August 18, 2016. (See Answer of Defendants, attached hereto as "Exhibit B"). Plaintiff's Complaint contains claims for intentional infliction of emotional distress and for violations under the Title II of the Americans with Disabilities Act (hereinafter "ADA"). Additionally, though not specifically provided for in a separate count, Plaintiff's complaint suggests he is stating a professional negligence claim for his deceased mother.

A telephonic Rule 16 case management conference was held with Your Honor on November 17, 2016. At this November 17 conference all parties agreed to deadlines for case management which were codified in the Court's Pre-trial Order of November 17, 2016. (See Pre-trial Order, attached hereto as "Exhibit C").

The Pre-trial Order states, all parties were to provide Rule 26 initial disclosures by December 10, 2016. Defendants provided their Rule 26 initial disclosures on December 9, 2016. A follow-up letter requesting the Plaintiff's Rule 26 disclosures was sent on January 3, 2017. (See Letter to Plaintiff's counsel of January 3, 2017, attached hereto as "Exhibit D") To date Plaintiff has not provided any Rule 26 disclosures.

All parties were also required to serve all interrogatories, notices to produce and requests to admit by December 30, 2016. Defendants served the attached discovery requests on December 5, 2016, which included a request to admit. (See Letter to Plaintiff with attached discovery requests, attached hereto as "Exhibit E"). A telephonic case management conference was held on January 20, 2017. During this conference Plaintiff requested additional time to respond to all outstanding discovery, including the responses to the request to admit which had been due on January 4, 2017. This Court granted the Plaintiff additional time and the Plaintiff agreed to provide all outstanding discovery by February 3, 2017. This agreement was confirmed

April 25, 2017
Page 3

via letter to Plaintiff's counsel. (See Letter to Plaintiff dated January 23, 2017, attached hereto as "Exhibit F"). Plaintiff once again failed to provide discovery and meet the new deadline of February 3, 2017. Defendants informed Plaintiff of their intention to seek leave of Court to file a motion if discovery was not produced. (See Letter to Plaintiff dated March 27, 2017, attached hereto as "Exhibit G").

A third telephonic case management conference was held on March 29, 2017. At this time Plaintiff's counsel stated he had not been able to get in touch with his client and once again requested additional time. The Court gave the Plaintiff fourteen (14) days from the date of the conference to produce all outstanding discovery or consider an administrative termination of the proceeding. (See Text Order, attached hereto as "Exhibit H") The fourteen day deadline expired on April 12, 2017. Despite this second extension, Plaintiff still has not provided any discovery responses and has not requested an administrative extension.

As Plaintiff has not provided any discovery responses, in spite of the multiple extensions granted, Defendants now seek leave to file a motion to dismiss with prejudice for failure to provide discovery.

Summary Judgment:

Irrespective of Plaintiff's answers to discovery, Defendants also seek to include a substantive dispositive motion as Defendants believe this matter is ripe for substantive dismissal as to all of Plaintiff's claims for the reasons outlined below.

ADA Claims:

April 25, 2017
Page 4

Plaintiff filed a claim under Title II of the ADA alleging that the Defendants did not accommodate his mental health disability when he visited his mother at the Defendant Berkeley Heights home. Title II of the ADA allows for private causes of action only against public entities and their employees. Defendants in this matter are a private corporation and its employees. Additionally, Title II of the ADA only allows for injunctive relief. Plaintiff's mother left Defendant Berkley Heights in March 2015 and subsequently passed away in May 2015. Even if the Defendants were public entities and employees, there is no available injunctive relief. Therefore, Plaintiff cannot pursue an ADA claim against Defendants.

Intentional Infliction of Emotional Distress Claims:

Plaintiff states claims for intentional infliction of emotional distress based upon the alleged acts of the Defendants in limiting the visiting time with his mother, when she was a resident at the Defendant facility. Assuming Plaintiff's allegations are to be believed, they are not "so extreme and outrageous in degree as to go beyond all bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community." Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 365-67, 544 A.2d 857 (1988). No reasonable trier of fact could conclude that Plaintiff had met his necessary burden and so Defendants' summary judgment on this issue is ripe.

Negligence Claims – No Standing, No Affidavit of Merit:

April 25, 2017
Page 5

Plaintiff does not have standing to bring negligence claims on behalf of his mother. Mr. Mondelli is the only party listed as the Plaintiff in this matter. Mr. Mondelli's mother passed away in May 2015. Plaintiff has provided no proof that he has been appointed the Executor, General Administrator or Administrator ad Prosequendum for his mother's estate. Accordingly, he has no standing to assert any cause of action on behalf of her Estate on negligence, wrongful death or survival. Even if the Court were to find the standing issue a procedural defect easily remedied, Plaintiff has failed to file an appropriate affidavit of merit against the Defendants within the one-hundred twenty day time deadline from the filing of Defendants' Answer. The one-hundred twenty day period expired on December 16, 2016. As Plaintiff has not provided the necessary affidavit of merit to pursue a professional negligence claim in the prescribed time by statute, Plaintiff is now foreclosed from pursuing any intended such claims.

Consistent with the Pre-trial Order, Defendants request a dispositive motion conference so that these issues can be further addressed with the Court.

Respectfully,

Lynne N. Nahmani

(Electronic signature for E-mail purposes)

Lynne N. Nahmani

MCF:djm
Enclosures

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR MONDELLI

Plaintiff,

v.

BERKELEY HEIGHTS NURSING, et
al

Defendants.

Civil Action

2:16-CV-1569-ES-SCM

PRETRIAL SCHEDULING ORDER

THIS MATTER having come before the Court for a scheduling conference pursuant to Rule 16 of the Federal Rules of Civil Procedure on November 17, 2016; and for good cause shown:

IT IS on this Thursday, November 17, 2016,

ORDERED THAT:

I. DISCLOSURES

1. Fed.R.Civ.P. 26 initial disclosures shall be exchanged on or before 12/10/2016.
2. If parties are served or joined after this scheduling order, such parties must make their initial disclosures, and all other parties provide their disclosures to the new party within 30 days. Fed.R.Civ.P. 26(a)(1)(D).

II. DISCOVERY

3. Fact discovery is to remain open through 7/31/2017. No *discovery* is to be issued or engaged in beyond that date, except upon application and for good cause shown.
4. The parties may serve interrogatories limited to twenty-five (25) single question, and requests for production of documents and requests to admit on or before 12/30/2016, to be responded to **within thirty (30) days of receipt**.
5. Depositions, limited to **ten (10)** per side, of fact witnesses and individuals who will give lay opinion testimony based on particular competence in an area (including but not limited to treating physicians). No objections to questions posed at depositions shall be made other than as to lack of foundation, form, or privilege. *See* Fed.R.Civ.P. 32(d)(3)(A). No instruction not to answer shall be given unless privilege is implicated.
6. Counsel shall confer in a good faith attempt to informally resolve any and all discovery disputes **before** seeking the Court's intervention. Should informal efforts fail to resolve the dispute, the matter shall be brought to the Court's attention via a **joint**

letter that sets forth: (a) the specific discovery requested; (b) the response; (c) efforts to resolve the dispute; (d) why the complaining party believes the information is relevant and why the responding party's response continues to be deficient; including citations to appropriate caselaw; and (e) why the responding party believe the response is sufficient. If necessary, the Court will thereafter schedule a telephone conference to resolve the dispute.

Failure by any party to meet and confer in good faith, or to participate in the joint-letter protocol described above, absent good cause, will result in the Court deeming that party to have waived its right to take any position on the discovery issue(s) in dispute.

No discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court.

Discovery disputes (other than those arising during depositions) shall be brought to the Court's attention no later than 60 days before the fact end date. **The Court will not consider any discovery dispute (other than those arising during depositions) brought to its attention after this date.** If an unresolved dispute arises at a deposition, then the parties shall contact the Chambers of the Undersigned for assistance during the deposition.

III. DISCOVERY CONFIDENTIALITY ORDERS

7. Any proposed confidentiality order agreed to by the parties must strictly comply with Fed.R.Ci.P. 26(c) and Local Civil Rule 5.3. *See also Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994); *Glenmede Trust Company v. Thompson*, 56 F.3d 476 (3d Cir. 1995). Any such form of order must be accompanied by an affidavit or attorney certification filed electronically under the designation "affidavit/certification in support of discovery confidentiality order." The affidavit or attorney certification shall describe (a) the nature of the materials to be kept confidential, (b) the legitimate private or public interests which warrant confidentiality and (c) the clearly defined and serious injury that would result should the order not be entered. Any such order must be clearly designated "**Discovery Confidentiality Order.**" *See* Local Civil Rule 5.3.

IV. FUTURE CONFERENCES

8. There shall be a telephone status conference on 1/20/2017 **at 10:30 a.m.** Counsel for plaintiff shall initiate the call.

9. The Court may from time to time schedule conferences as may be required, either *sua sponte* or at the request of a party.

10. Counsel should be prepared to discuss settlement at every conference with the Court. The senior attorney in charge of the case must attend all settlement conferences and

client(s) with full settlement authority must either attend or be immediately available by telephone. In cases involving insurance companies and other corporate or business entities, it is expected that the executive who will make the final decision on the settlement will be the person available for the conference.

11. Since all dates set forth herein are established with the assistance and knowledge of counsel, there will be no extensions except for good cause shown and by leave of Court, even with consent of all counsel.

12. A copy of every pleading, document or written communication with the Court shall be served on all other parties to the action. Any such communication which does not recite or contain a certification of such service may be disregarded by the Court.

V. MOTIONS

13. Any motion to add new parties or amend pleadings, whether by amended or third-party complaint, must be filed not later than 3/10/2017.

14. Leave is not required for Rule 12(b) motions, motions to seal, or motions to admit *pro hac vice*. No other motions are to be filed without prior written permission from this Court. All dispositive motions must first be subject to a dispositive motion pre-hearing. Discovery must be completed prior to the filing of a dispositive motion. These prerequisites must be met before any motions are filed and the motions will be returned if not met. All calendar or dispositive motions, if permitted, shall comply with Local Civil Rules 7.1(b) and 56.1.

15. Dispositive motions, if any, are to be filed by [TO BE DETERMINED].

VI. EXPERTS

16. All affirmative expert reports shall be delivered by 9/1/2017. Any such report is to be in the form and content as required by Fed.R.Civ.P. 26(a)(2)(B).

17. All responding expert reports shall be delivered by 10/6/2017.

18. All expert discovery, including the completion of depositions, shall be completed by 11/30/2017.

19. No expert shall testify at trial as to any opinions or base those opinions on facts not substantially disclosed in his report.

VII. FINAL PRETRIAL CONFERENCE

20. A final pretrial conference shall be conducted pursuant to Fed.R.Civ.P. 16(e) on TBD.
21. All counsel are directed to assemble at the office of plaintiff's counsel not later than **ten (10) days** before the pretrial conference to prepare the Final Pretrial Order in the form and content required by the Court. Plaintiff's counsel shall prepare the Pretrial Order and shall submit it to all other counsel for approval.
22. With respect to non-jury trials, each party shall submit to the District Judge and to opposing counsel proposed Findings of Fact and Conclusions of Law, trial briefs and any hypothetical questions to be put to an expert witness on direct examination.
23. All counsel are responsible for the timely submission of the Pretrial Order and submissions.
24. The original of the Final Pretrial Order shall be delivered to Chambers not later than **forty-eight (48) hours** before the pretrial conference. All counsel are responsible for the timely submission of the Final Pretrial Order.
25. **FAILURE TO FOLLOW THIS ORDER OR ANY SUBSEQUENT SCHEDULING ORDERS WILL RESULT IN SANCTIONS PURSUANT TO Fed.R.Civ.P. 16(f) and 37.**



Steven C. Mannion

Honorable Steve Mannion, U.S.M.J.
United States District Court,
for the District of New Jersey
phone: 973-645-3827

11/17/2016 4:46:55 PM

Original: Clerk of the Court
Hon. Esther Salas, U.S.D.J.
cc: All parties
File

Exhibit D

MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

ATTORNEYS-AT-LAW WWW.MARSHALLDENNEHEY.COM

A PROFESSIONAL CORPORATION
200 Lake Drive East, Suite 300, Cherry Hill, NJ 08002
(856) 414-6000 Fax (856) 414-6077

Richard L. Goldstein, Resident Managing Attorney

Direct Dial: (856) 414-6005
Email: mcfillmore@mdwecg.com

PENNSYLVANIA
Allentown
Doylestown
Erie
Harrisburg
King of Prussia
Philadelphia
Pittsburgh
Scranton

NEW JERSEY
Cherry Hill
Roseland
DELAWARE
Wilmington

OHIO
Cincinnati
Cleveland

FLORIDA
Ft. Lauderdale
Jacksonville
Orlando
Tampa

NEW YORK
Long Island
New York City
Westchester

January 3, 2017

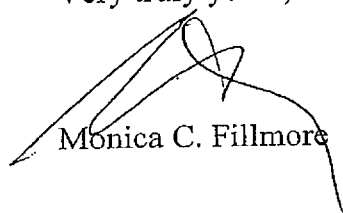
Kenneth Rosellini, Esquire
636A Van Houten Avenue
Clifton, NJ 07013

RE: Mondelli, Victor v. Berkeley Heights Nursing & Rehab
Docket No.: 2:16-CV-01569
Our File No.: 40293.00163

Dear Mr. Rosellini:

Please be advised that we have not received your client's responses to Rule 26 Disclosures in the above referenced matter. These responses are now overdue. Please provide them at your earliest convenience.

Very truly yours,


Monica C. Fillmore

MCF:djm

LEGAL/108472409.v1

EXHIBIT E

MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

ATTORNEYS-AT-LAW - WWW.MARSHALLDENNEHEY.COM

A PROFESSIONAL CORPORATION
200 Lake Drive East, Suite 300, Cherry Hill, NJ 08002
(856) 414-6000 Fax (856) 414-6077
Richard L. Goldstein, Resident Managing Attorney

Direct Dial: (856) 414-6005
Email: mcfillmore@mdwecg.com

PENNSYLVANIA
Allentown
Doylestown
Erie
Harrisburg
King of Prussia
Philadelphia
Pittsburgh
Scranton

NEW JERSEY
Cherry Hill
Roseland

DELAWARE
Wilmington

OHIO
Cincinnati
Cleveland

FLORIDA
Ft. Lauderdale
Jacksonville
Orlando
Tampa

NEW YORK
Long Island
New York City
Westchester

December 5, 2016

Via Electronic and First Class Mail

Kenneth Rosellini, Esquire
636A Van Houten Avenue
Clifton, NJ 07013

RE: Mondelli, Victor v. Berkeley Heights Nursing & Rehab et al
Docket No.: 2:16-CV-01569
Our File No.: 40293.00163

Dear Mr. Rosellini:

Enclosed herein please find defendants' First Set of Interrogatories and First Request for Admissions directed to plaintiff. Please respond pursuant to the Rules of Court.

Thank you for your attention in this regard.

Very truly yours,


Monica C. Fillmore

MCF:djm
Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR MONDELLI

Plaintiff

BERKELEY HEIGHTS NURSING &
REHABILITATION CENTER, MARINA
FERRER, DIANE WILVERDING, and
JOHN/JANE DOES 1 THROUGH 5,

Defendants

)
)
) CASE NO: 2:16-cv-01569-ES-SCM
)
) DEFENDANTS, BERKELEY HEIGHTS
) NURSING & REHABILITATION
) CENTER; MARIAN FERRER AND
) DIANE WILVERDING'S
) INTERROGATORIES DIRECTED TO
) PLAINTIFF
)

To: Kenneth Rosellini, Esquire
636S Van Houten Ave
Clifton, New Jersey 07013
Attorney for Plaintiff

PLEASE TAKE NOTICE that defendants, Berkeley Heights Nursing and Rehabilitation Center; Marina Ferrer and Diane Wilverding, demand of plaintiff, Victor Mondelli, answers to the following interrogatories within sixty (60) days as required by the rules of court.

PLEASE TAKE FURTHER NOTICE that this is a continuing demand and any information obtained subsequent to providing your answers to interrogatories shall be supplied by supplemental answers to interrogatories.

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

BY: 

MONICA C. FILMORE, ESQUIRE

Dated: December 5, 2016

INTERROGATORIES

1. State your full name, address, date and place of birth and social security number.

ANSWER:

2. State the name of each defendant that you contend was negligent, and state what you contend that each such defendant did that should not have been done and what you contend that each defendant did not do that should have been done, and the date thereof. Set forth all facts on which you base your contentions. If you are relying on any written documents of records, identify those documents and records, and state the material in each document which you contend demonstrates negligence.

ANSWER:

3. State the names and addresses of all persons having knowledge of relevant facts relating to this lawsuit and specify those who are eyewitnesses to any act of negligence.

ANSWER:

4. State the names and addresses of any and all proposed expert witnesses. Set forth in detail the qualifications of each expert named and attach a copy of each expert's current resume.

Also attach true copies of all written reports provided to you by any such proposed expert witnesses.

With respect to all expert witnesses, including treating physicians, who are expected to testify at trial, and with respect to any person who has conducted an examination state each such witness' name, address and area of expertise and attach a true copy of all written reports provided to you. If a report is not written, supply a summary of any oral report provided to you.

State the subject matter on which your experts are expected to testify.

State the substance of the facts and opinions to which your experts are expected to testify and provide a summary of the factual grounds for each opinion.

ANSWER:

5. If you or your expert intend to rely on or use in any way at trial any treatise, identify the treatise by title, author and edition and indicate the pertinent portions to be relied on or used at trial.

ANSWER:

6. State whether or not you have been admitted to any hospital or other medical treatment facility in the last ten years and if so, state the name of the hospital or facility, the dates of admission and discharge, the illness, disease or condition that caused such admission and the names and addresses of the doctor(s) who treated you during such admission.

ANSWER:

7. State whether you have undergone a physical examination in connection with employment or any application for employment in the last ten years. If so, state the date of any such examination, where it was conducted, who conducted the examination and whether there is a report of such physical examination. If a report was made, attach a true copy. If any such physical examination resulted in action being taken on your behalf or against you, please describe such action.

ANSWER:

8. State whether you have ever suffered from any injury or disease. If so, specify in detail the nature of each such injury or disease and the name and present address of each health care provider, if any, whoever provided treatment for the condition.

ANSWER:

9. State whether you have consulted any health care provider in the past ten years, including but not limited to a family physician. If so, specify in detail the nature of the condition for which you consulted the health care provider and the name and present address of each health care provider who ever provided treatment for the condition.

ANSWER:

10. State whether any admissions or statements were made by any party to this action or their agents, servants or employees and if so, state:

- a. whether oral, written or other recorded;
- b. the date, time and place made;
- c. if oral, the words used, or a summary of same;
- d. if written, attach a copy; and
- e. the names and addresses of all persons present at the time and place the statements or admissions were made.

ANSWER:

11. State whether you have ever made a claim or filed a lawsuit against anyone and if so, state for each such claim or lawsuit:

- a. the court or place of filing;
- b. the date of filing;
- c. the names and addresses of all parties and their attorneys;
- d. the nature and extent of all injuries;
- e. the docket or claim number; and
- f. the present status of each such lawsuit or claim and if concluded describe the manner in which the lawsuit or claim was concluded and the payment, if any, you received.

ANSWER:

12. Describe the damages you sustained as a result of the allegations claimed in this lawsuit.

ANSWER:

13. If you were treated, attended or examined by any physician(s) or others for the injuries identified in response to Question 12, state:

- a. the names and addresses of all such persons;
- b. whether you were admitted to a hospital or other medical treatment facility and if so provide the name and address of the facility and the dates of admission and discharge;
- c. the dates of every treatment or examination and where they took place; and
- d. state the nature of the medical treatment given by each physician or other person.

ANSWER:

14. State whether you are still afflicted with or suffering from the effects of any injury, illness or disability as a result of defendant's negligence. If so, describe in detail.

ANSWER:

15. Set forth all claims for economic damages against the defendant(s), including lost wages and itemize the amounts paid or owed, dates incurred, and the names and addresses of each person to whom paid or owed.

ANSWER:

CERTIFICATION

I hereby certify that the copies of the reports annexed hereto rendered by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

VICTOR MONDELLI

Dated: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR MONDELLI

Plaintiff

**BERKELEY HEIGHTS NURSING &
REHABILITATION CENTER, MARINA
FERRER, DIANEE WILVERDING, and
JOHN/JANE DOES 1 THROUGH 5,**

Defendants

)
)
) **CASE NO: 2:16-cv-01569-ES-SCM**
)
) **DEFENDANTS, BERKELEY HEIGHTS**
) **NURSING & REHABILITATION**
) **CENTER; MARIAN FERRER AND**
) **DIANEE WILVERDING'S**
) **FIRST REQUESTS FOR ADMISSIONS**
)
)

To: Kenneth Rosellini, Esquire
636S Van Houten Ave
Clifton, New Jersey 07013
Attorney for Plaintiff

Defendants, Berkeley Heights Nursing & Rehabilitation Center, Marian Ferrer and Diane Wilverding, by way of counsel, tenders the following Requests For Admissions to Victor Mondelli pursuant to Rule 36 of the Federal Rules of Civil Procedure. You are required to answer these Requests for Admission under oath and within thirty (30) days of service.

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

BY:


MONICA C. FILLMORE, ESQUIRE

Dated: December 5, 2016

INSTRUCTIONS

If Victor Mondelli fails to respond or object to any request within 30 days of service of the Requests, the matter shall be deemed admitted under Fed. R. Civ. P. 36.

As is more fully set out in Fed. R. Civ. P. 36(a), Victor Mondelli, must admit or deny each request, and, where necessary, specify the parts of each request to which it objects or cannot in good faith admit or deny. If Victor Mondelli objects to only part of a Request, it must admit or deny the remainder of the Request. In the event that Victor Mondelli objects to or denies any Requests or portion of a Request, a reason for the objection or denial must be stated.

These Requests shall be deemed continuing and supplemental answers shall be required if Victor Mondelli directly or indirectly obtain further information after your initial response as provided by Fed. R. Civ. P. 26(e).

Each Request solicits all information obtainable by Victor Mondelli from its attorneys, investigators, agents, employees and representatives. If you answer a Request on the basis that you lack sufficient information to respond, describe any and all efforts you made to inform yourself of the facts and circumstances necessary to answer or respond.

DEFINITIONS

- A. "Plaintiff" is defined herein as Victor Mondelli.
- B. "Defendant" and " Berkeley Heights Nursing & Rehabilitation Center, Marian Ferrer and Diane Wilverding" and "You" means Berkeley Heights Nursing & Rehabilitation Center, Marian Ferrer and Diane Wilverding, its subsidiaries its employees, agents and/or representatives.

REQUESTS FOR ADMISSION

1. Admit that you have not returned to Berkeley Heights Nursing and Rehabilitation Center since the death of your mother, other than any visits to collect her belongings and close out any administrative affairs.

Response:

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

BY: _____
MONICA C. FILLMORE, ESQUIRE

Dated: December 5, 2016

EXHIBIT F

**MARSHALL DENNEHEY
WARNER COLEMAN & GOGGIN**

ATTORNEYS-AT-LAW WWW.MARSHALLDENNEHEY.COM

A PROFESSIONAL CORPORATION
200 Lake Drive East, Suite 300, Cherry Hill, NJ 08002
(856) 414-6000 Fax (856) 414-6077
Richard L. Goldstein, Resident Managing Attorney

Direct Dial: (856) 414-6005
Email: mcfillmore@mdwecg.com

PENNSYLVANIA	OHIO
Allentown	Cincinnati
Doylestown	Cleveland
Erie	FLORIDA
Harrisburg	Ft. Lauderdale
King of Prussia	Jacksonville
Philadelphia	Orlando
Pittsburgh	Tampa
Scranton	NEW YORK
NEW JERSEY	Long Island
Cherry Hill	New York City
Roseland	Westchester
DELAWARE	
Wilmington	

January 23, 2017

VIA EMAIL AND US MAIL

Kenneth Rosellini, Esquire
636A Van Houten Avenue
Clifton, NJ 07013

RE: Mondelli, Victor v. Berkeley Heights Nursing & Rehab
Docket No.: 2:16-CV-01569
Our File No.: 40293.00163

Dear Mr. Rosellini, Esquire:

Please allow this letter to serve as confirmation as to your representation to the Court during the telephonic Case Management Conference on January 20, 2017 that you would be providing all responses to any outstanding discovery including but not limited to the Rule 26 Disclosures and Requests to Admit by Friday, February 3, 2017.

Very truly yours,

Monica C. Fillmore
(Electronic signature for E-mail purposes)

Monica C. Fillmore

MCF:djm

LEGAL/108798968.v1

EXHIBIT G

**MARSHALL DENNEHEY
WARNER COLEMAN & GOGGIN**

ATTORNEYS-AT-LAW WWW.MARSHALLDENNEHEY.COM

A PROFESSIONAL CORPORATION
200 Lake Drive East, Suite 300, Cherry Hill, NJ 08002
(856) 414-6000 Fax (856) 414-6077
Richard L. Goldstein, Resident Managing Attorney

Direct Dial: (856) 414-6005
Email: mcfillmore@mdwecg.com

PENNSYLVANIA	OHIO
Allentown	Cincinnati
Doylestown	Cleveland
Erie	
Harrisburg	FLORIDA
King of Prussia	Fl. Lauderdale
Philadelphia	Jacksonville
Pittsburgh	Orlando
Scranton	Tampa
NEW JERSEY	NEW YORK
Cherry Hill	Long Island
Roseland	New York City
DELAWARE	Westchester
Wilmington	

March 27, 2017

VIA EMAIL [kennethrosellini@gmail.com] and VIA FAX

Kenneth Rosellini, Esquire
636A Van Houten Avenue
Clifton, NJ 07013

RE: Mondelli, Victor v. Berkeley Heights Nursing & Rehab
Docket No.: 2:16-CV-01569
Our File No.: 40293.00163

Dear Mr. Rosellini:

In follow up to our letter dated January 23, 2017, attached for your convenience, you were to have provided us with all outstanding discovery by February 3, 2017. To date we have never received any discovery responses from you related to this matter. As you have not provided all discovery by the last two set deadlines by the Court, we will be requesting motion practice on this issue at the upcoming Case Management Conference in this matter on March 29, 2017.

Very truly yours,
Monica C. Fillmore
(Electronic signature for E-mail purposes)
Monica C. Fillmore

MCF:djm

LEGAL/109814806.v1

EXHIBIT H

Fillmore, Monica C.

From: njdefiling@njd.uscourts.gov
Sent: Wednesday, March 29, 2017 10:51 AM
To: njdefiling@njd.uscourts.gov
Subject: Activity in Case 2:16-cv-01569-ES-SCM MONDELLI v. BERKELEY HEIGHTS NURSING & REHABILITATION CENTER et al Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered on 3/29/2017 at 10:51 AM EDT and filed on 3/29/2017

Case Name: MONDELLI v. BERKELEY HEIGHTS NURSING & REHABILITATION CENTER et al
Case Number: 2:16-cv-01569-ES-SCM
Filer:
Document Number: 15(No document attached)

Docket Text:

TEXT ORDER: Plaintiff to produce discovery within 14 days or consider admin termination for reasons discussed today. A telephone conference is scheduled with Judge Mannion on 6/1/2017 at 10:30 A.M. Defendant(s)' counsel is to initiate the call. So Ordered by Magistrate Judge Steven C. Mannion on 3/29/17. (SCM)

2:16-cv-01569-ES-SCM Notice has been electronically mailed to:

KENNETH J. ROSELLINI kennethrosellini@gmail.com, kjrosellini@aol.com

LYNNE N. NAHMANI lnnahmani@mdwgc.com, dlcooke@mdwgc.com, mcfillmore@mdwgc.com

2:16-cv-01569-ES-SCM Notice will not be electronically mailed to::

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Chambers of
STEVEN C. MANNION
United States Magistrate Judge

**Martin Luther King Jr, Federal Bldg.
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07102
(973) 645-3827**

May 3, 2017

ORDER TO SHOW CAUSE

**Re: Victor Mondelli v. Berkeley Heights Nursing
Civil Action No. 2:16-cv-01569 (ES-SCM)**

Dear Counsel:

Plaintiff Victor Mondelli ("Mr. Mondelli") is directed to show cause in writing by May 18, 2017 why sanctions should not be imposed against him pursuant to Federal Rules of Civil Procedure 16(f) and 37. This Order to Show Cause arises out of Mr. Mondelli's failure to comply with the Court's Orders and alleged failure to produce discovery.¹

The Court is considering the imposition of sanctions, costs, attorneys' fees and an order dismissing Mr. Mondelli's pleading. Mr. Mondelli shall file a written submission (affidavit or declaration) with the Court in response to this Order to Show Cause by May 18, 2017. Defendant(s) may file a written reply up to seven days later. Mr. Mondelli and all counsel shall appear before Judge Mannion for oral argument and a status conference in Courtroom 2B on 6/1/2017 at 10:30 a.m.

IT IS SO ORDERED.



Honorable Steve Mannion, U.S.M.J.
United States District Court,
for the District of New Jersey
phone: 973-645-3827

5/3/2017 12:29:10 PM

¹ (See ECF Docket No. ("D.E.") 10, 15, 16).

Original: Clerk of the Court
Hon. Esther Salas, U.S.D.J.
cc: All parties
File

KENNETH ROSELLINI (6047)

ATTORNEY AT LAW

636A Van Houten Avenue

Clifton, New Jersey 07013

(973) 998-8375 Fax (973) 998-8376

Attorney for Plaintiff, Victor Mondelli

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

<p>VICTOR MONDELLI, Plaintiff, v. BERKELEY HEIGHTS NURSING & REHABILITATION CENTER, MARINA FERRER, DIANE WILVERDING AND JOHN/JANE DOES 1 through 5, Defendants.</p>	<p>CIVIL ACTION Case No. : 2:16-cv-01569-ES-SCM JURY TRIAL DEMANDED CERTIFICATION OF VICTOR MONDELLI</p>
--	--

I, Victor Mondelli, do hereby certify the following in lieu of oath or affidavit:

1. I am the Plaintiff Victor Mondelli in the above-captioned action, and make this Certification in this matter in Response to the Order to Show Cause in this matter issued on May 3, 2017.

2. I have physical and mental health conditions which have prevented me from being able to prosecute the action in this matter.

3. In fact, I was a Defendant in a municipal zoning matter in the municipal court of Fanwood, New Jersey in which the Judge found me incompetent to stand trial on April 6, 2017 and dismissed the case on the motion of the prosecutor due to my incompetence to stand trial.

4. My current psychiatric care provider at Rutgers, Robert Wood Johnson Medical School, has issued several letters these past few months addressing my inability to appear in court and handle certain matters. See Attached Exhibit A, true and accurate copies of these letters dated May 2, 2017, August 17, 2016, June 20, 2016, and March 13, 2017.

5. I was previously treated for several years at Trinitas Regional Medical Center, which recognized that I am a diagnosed Schizophrenic and suffer from Major Depression. See

Attached Exhibit B, true and accurate copies of letters from Trinitas dated October 1, 2013, January 20, 2016, July 11, 2016, August 14, 2013, June 6, 2016, August 4, 2016 and December 16, 2016.

6. My mental health problems were recognized by my school when I was a child. See Attached Exhibit C, true and accurate copy of a June 12, 1967 letter from my grammar school.

7. My mental and physical health have deteriorated since my mother, my last close family member (my father and sister having passed some time ago) passed away on May 29, 2015.

8. My mental and physical health have also deteriorated due to the fact my home, which I have lived in all my life, is in jeopardy of sale or eviction. See Attached Exhibit D, which is a true and accurate copy of lease, notice to cease and for sale signs.

9. I also suffer from physical ailments of asthma, anxiety, digestive problems, and high blood pressure, among others, for which I receive medication and have been recently treated. See Attached Exhibit E, which is a true and accurate copy of relevant medical records.

10. I am disabled, and believe that the Court has discriminated against me by requiring me to submit to the Order to Show Cause without first inquiring into my health, when my complaint clearly states I have a disability.

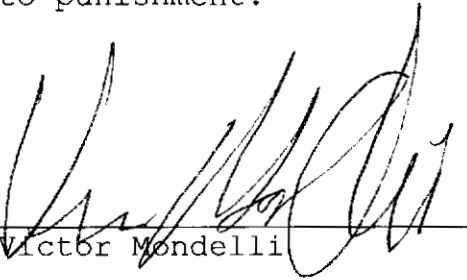
11. Because of my current mental and physical health, I have been unable to properly communicate with my lawyer and prosecute this case at this time.

12. I request that this matter be placed on administrative hold, and then be transferred to Trenton so that I am not prejudiced.

I certify that the foregoing statements made by me are true.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

May 18, 2017



Victor Mondelli

EXHIBIT A

RUTGERS

Robert Wood Johnson
Medical School

Eric B. Chandler - George Street
277 George Street New Brunswick, NJ 08901
Tel: 732-235-6700 Fax: 732-235-6729

May 2, 2017

VICTOR MONDELLI

To Whom It May Concern:

Please do not shut off Mr. Mondelli's gas, light, and power as he plans to pay every month.

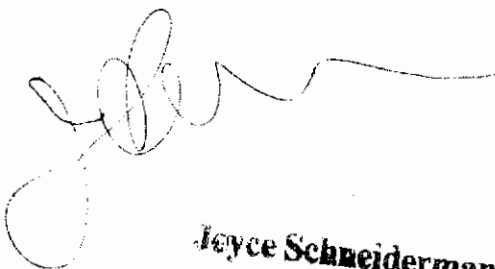
Please excuse Mr. Mondelli from court in May 2017 as he has a medical condition.

Mr. Mondelli is not a harm to himself or others.

Sincerely,



Padma S Chamarthy MD



Joyce Schneiderman, MD
NPI #1891805305

Attending
Physician

RUTGERS

Robert Wood Johnson
Medical School

Eric B. Chandler - George Street
277 George Street New Brunswick, NJ 08901
Tel: 732-235-6700 Fax: 732-235-6729

August 17, 2016

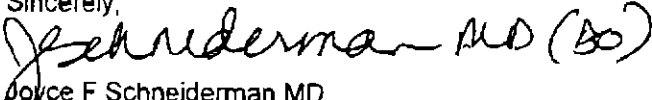
Re: Mondelli, Victor
DOB: 04/28/1958

To Whom It May Concern:

I'm writing in regards to Victor Mondelli. The patient is under my care for asthma. Air conditioning is medically required. He requires electricity service for his health.

Thank you for your consideration in this matter and feel free to contact my office with any questions.

Sincerely,


Joyce F Schneiderman MD

TOTAL P.002

RUTGERS

Robert Wood Johnson
Medical School

Eric B. Chandler - George Street
277 George Street New Brunswick, NJ 08901
Tel: 732-235-6700 Fax: 732-235-6729

June 20, 2016

Re: Mondelli, Victor
DOB: 04/28/1958

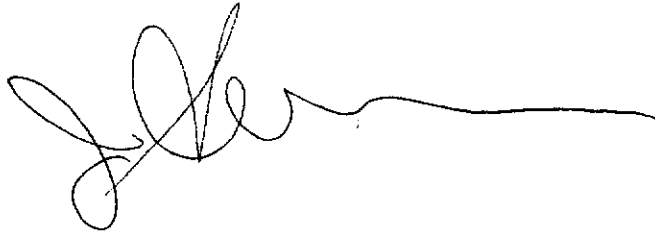
To Whom It May Concern:

I'm writing in regards to Victor Mondelli. He has been under my care for many years. He is permanently disabled. He is unable to work or go to school secondary to a major psychiatric condition.

Thank you for your consideration in this matter and feel free to contact my office with any questions.

Sincerely,

Joyce F Schneiderman MD

A handwritten signature in black ink, appearing to read 'J. Schneiderman', with a long horizontal line extending to the right.

Joyce Schneiderman, MD
NPI #1891805305

RUTGERS

Robert Wood Johnson
Medical School

Eric B. Chandler - George Street
277 George Street New Brunswick, NJ 08901
Tel: 732-235-6700 Fax: 732-235-6729

March 13, 2017

Re: Mondelli, Victor
DOB: 04/28/1958

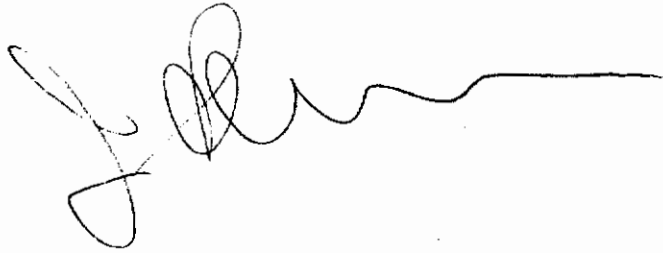
To Whom It May Concern:

I'm writing in regards to Victor Mondelli. He was seen in the office on March 9. He is unable to attend court due to his mental health condition.

Thank you for your consideration in this matter and feel free to contact my office with any questions.

Sincerely,

Joyce F Schneiderman MD

A handwritten signature in black ink, appearing to read 'Joyce F. Schneiderman', with a long horizontal flourish extending to the right.

Joyce F. Schneiderman, MD
732-235-6700

EXHIBIT B



Mailing Address:
655 East Jersey Street
Elizabeth, NJ 07206
908.994.5000

October 1, 2013

Re: Victor Mondelli
D.O.B.: 04/28/1958

To Whom It May Concern,

Victor Mondelli is receiving psychiatric treatment under my care at Trinitas Regional Medical Center Adult Outpatient Psychiatry Unit. He has a diagnosis of Schizophrenia Paranoid Type. He is taking medication to help control his psychotic symptoms. However, he has been under a tremendous amount of stress for a long time. It is very difficult for him to cope with all the stress, because of his mental illness. He has been experiencing increasing levels of anxiety. What is especially difficult for him now is the fact that he is not being allowed to have adequate time to spend with his mother. Also, he has lost numerous items of considerable emotional value to him, such as family photographs and other family memorabilia that were taken from him out of the garden center.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen Grelecki MD", is written over a horizontal line.

Stephen Grelecki, MD
Attending Psychiatrist
Trinitas Regional Medical Center
Telephone: (908) 994-7270

Williamson Street Campus
225 Williamson Street
Elizabeth, NJ 07207

New Point Campus
655 East Jersey Street
Elizabeth, NJ 07206

Caring for You in Every Way



Mailing Address:
225 Williamson Street
Elizabeth, NJ 07207
908.994.5000

January 20, 2016

Re: Victor Mondelli
D.O.B.: 04/28/1958

To Whom It May Concern,

Victor Mondelli is receiving psychiatric treatment under my care at Trinitas Regional Medical Center Adult Outpatient Psychiatric Unit. He has a diagnosis of Schizophrenia Paranoid Type. He is taking medication to help control his psychotic symptoms. He is not a danger to himself or to anybody else.

He has been under a tremendous amount of stress for a long time. The severe stress is detrimental to his health. It is very difficult for him to cope with recent events. He has been experiencing increasing anxiety and depression that are very difficult to bring under control because of the constant levels of stress.

Sincerely,

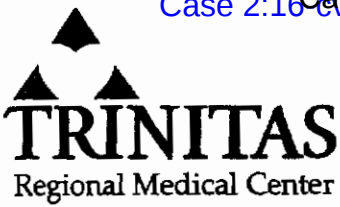
A handwritten signature in cursive script, appearing to read "Stephen Grelecki", is written above a horizontal line.

Stephen Grelecki, MD
Attending Psychiatrist
Trinitas Regional Medical Center
Telephone: (908) 994-7270

Williamson Street Campus
225 Williamson Street
Elizabeth, NJ 07207

New Point Campus
655 East Jersey Street
Elizabeth, NJ 07206

Caring for You in Every Way



Mailing Address:
225 Williamson Street
Elizabeth, NJ 07207
908.994.5000

July 11, 2016

Re: Victor Mondelli
D.O.B.: 04/28/1958

To Whom It May Concern,

Victor Mondelli is receiving psychiatric treatment under my care at Trinitas Regional Medical Center Adult Outpatient Psychiatric Unit. He has a diagnosis of Schizophrenia Paranoid Type. He is taking medication to help control his psychotic symptoms. He is not a danger to himself or to anybody else.

He has been under a tremendous amount of stress for a long time. The severe stress is detrimental to his health. It is very difficult for him to cope with recent events. He has been experiencing increasing anxiety and depression that are very difficult to bring under control because of the constant levels of stress. It is too difficult for him to appear in court and represent himself, it is too stressful for him.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen Grelecki", is written over a horizontal line.

Stephen Grelecki, MD
Attending Psychiatrist
Trinitas Regional Medical Center
Telephone: (908) 994-7270

Williamson Street Campus
225 Williamson Street
Elizabeth, NJ 07207

New Point Campus
655 East Jersey Street
Elizabeth, NJ 07206

Caring for You in Every Way



Mailing Address:
665 East Jersey Street
Elizabeth, NJ 07208
908.504.5000

August 14, 2013

Re: Victor Mondelli
D.O.B.: 04/28/1958

To Whom It May Concern,

Victor Mondelli is receiving psychiatric treatment under my care at Trinitas Regional Medical Center Adult Outpatient Psychiatry Unit. He has a diagnosis of Schizophrenia Paranoid Type. He is taking medication to help control his psychotic symptoms. However, he has been under a tremendous amount of stress for a long time. It is very difficult for him to cope with all the stress, because of his mental illness. He has been experiencing increasing levels of anxiety. What is especially difficult for him now is the fact that he is not being allowed to have adequate time to spend with his mother.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen Grolecki", is written over a horizontal line.

Stephen Grolecki, MD
Attending Psychiatrist
Trinitas Regional Medical Center
Telephone: (908) 994-7270

Williamson Street Campus
225 Williamson Street
Elizabeth, NJ 07207

New Point Campus
807 East Jersey Street
Elizabeth, NJ 07208





Mailing Address:
225 Williamson Street
Elizabeth, NJ 07207
908.994.5000

June 6, 2016

Re: Victor Mondelli
D.O.B.: 04/28/1958

To Whom It May Concern,

Victor Mondelli is receiving psychiatric treatment under my care at Trinitas Regional Medical Center Adult Outpatient Unit. He suffers from a severe lifelong psychiatric illness. He has a diagnosis of Schizophrenia and Major Depression. He is totally and permanently disabled due to his illness. He is not able to go to school or work. He has not been able to go to school since he was nine years old. His condition is permanent. He is not a danger to himself or to others at the present time.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen Grelecki", is written over a horizontal line.

Stephen Grelecki, MD
Attending Psychiatrist
Trinitas Regional Medical Center
Telephone: (908) 994-7270

STEPHEN GRELECKI, MD
LIC #: 25MA06034800
DEA #: B92148781
NPI #: 1508638805
TELEPHONE: (908) 994-7270
FAX: (908) 994-7054

Williamson Street Campus
225 Williamson Street
Elizabeth, NJ 07207

New Point Campus
655 East Jersey Street
Elizabeth, NJ 07206



Mailing Address:
655 East Jersey Street
Elizabeth, NJ 07206
908.994.5000

August 4, 2018

To whom it may concern,

Vito Montelli has been under my care since December 29, 2003. He is suffering from Schizophrenia Paranoia Type.

Due to his severe psychiatric illness he experiences chronic severe anxiety and is not able to comprehend fully his legal issues.

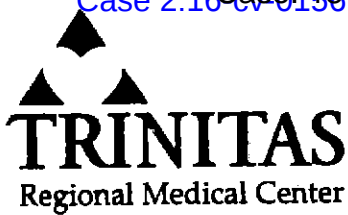
Thank you.

Stephen Grelecki
STEPHEN GRELECKI MD
908 994.7270

Williamson Street Campus
225 Williamson Street
Elizabeth, NJ 07207

New Point Campus
655 East Jersey Street
Elizabeth, NJ 07206

Caring for You in Every Way



Mailing Address:
655 East Jersey Street
Elizabeth, NJ 07206
908.994.5000

December 16, 2009

To whom it may concern,

Vilto Mondelli is continuing to receive
treatment for Paranoid Schizophrenia.

He is unable to tolerate any stress
due to his psychiatric condition.

He is unable to represent himself
in court due to his psychiatric condition.

Thank you.

Stephen Grelecki MD

STEPHEN GRELECKI MD

908 994 7270

Williamson Street Campus
225 Williamson Street
Elizabeth, NJ 07207

New Point Campus
655 East Jersey Street
Elizabeth, NJ 07206

Learning to be a Doctor in a Very Short Time

EXHIBIT C

BERKELEY HEIGHTS PUBLIC SCHOOLS

Berkeley Heights, Union County, New Jersey 07922

WILLIAM WOODRUFF SCHOOL
Bdarwood Drive W.
464-1723

—
JOSEPH A. IERARDI
Principal

June 12, 1967

Dear Mr. and Mrs. Mondelli:

Since it has become virtually impossible to contain Victor here at school without individual supervision and at times physical restraint is necessary to keep him from running away, I feel in the best interests of all concerned, Victor, his parents, and the school that it would be necessary to have Victor remain at home for the remainder of the school year.

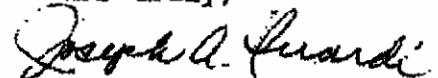
I had discussed this alternative with you when you brought Victor to school (under great physical and emotional protest) on June 7, 1967. As you are aware, Victor had to be watched closely all day after being physically placed in a classroom. The following day, June 8, he refused to come to school and hid in the woods. On June 9, I am also aware of the fact that it would have been necessary to physically force Victor to enter the school.

We regret this difficult situation exists. We are also aware of the fact that you, Victor's parents, are doing all you possibly can to remedy the situation, but the Child Study Team and I feel that this action is necessary.

While Victor is home he will receive home instruction. This instruction will commence as quickly as possible and last for the remainder of the school year.

If there is anything we can do to further assist you, please do not hesitate to call the school office.

Yours truly,



Joseph A. Ierardi

cc: Mr. McIntyre, Mr. Bothwell

JAI/jl

EXHIBIT D

PROPERTY LEASE FOR THE LIFE OF THE TENANTS**232 Springfield Avenue, Berkeley Heights, New Jersey 07922**

Witnesseth, that Heidi Santore, as Landlord/Owner, does hereby lease unto Anna Mondelli and Victor Mondelli, as Tenants, in consideration for One Dollar (\$1.00), acknowledged received simultaneously with the signing of this lease, the following described real estate in Berkeley Heights, Union County, New Jersey, to wit: all the land and the home located at the property commonly known as 232 Springfield Avenue, Berkeley Heights, New Jersey 07922, together with all appurtenances and rights-of-way incident thereto, for a term commencing on October 24, 2011 for the term of the natural life of the Tenants.

The Tenants have the right to the exclusive enjoyment, possession and use of the premises during the Tenants' lifetimes. The Tenants obligations shall include the payment of any and all utilities and costs of insurance premiums for insurance coverage for the subject property.

The Landlord/Owner has the right to full possession of the subject property upon the end of the natural life of the Tenants. The Landlord/Owner has the obligations to maintain the property, make all necessary and extraordinary repairs to the subject home and property, and to pay all property taxes associated with the subject property.

Dated: 10/24/11 Heidi Santore Kenneth Rosellini, Esq.
Heidi Santore (Landlord/Owner) (Witness)

Dated: 10/24/11 Anna Mondelli Kenneth Rosellini, Esq.
Anna Mondelli (Tenant) (Witness)

Dated: 10/24/11 Victor Mondelli Kenneth Rosellini, Esq.
Victor Mondelli (Tenant) (Witness)

NOTICE TO CEASE

VIA: Hand Delivery (Posting on the Property) And Certified Mail, RRR & Regular Mail

To: Victor Mondelli
232 Springfield Avenue
Berkeley Heights
New Jersey 07922

1. Present Lease. You now rent 232 Springfield Avenue, Berkeley Heights, New Jersey 07922(the "Property").


2. Warning. Please read this Notice to Cease carefully. If you do not immediately cease doing the acts complained of, you may be evicted and the landlord will take possession of the Property. This means you may be forced to leave the Property.

3. Acts complained of: According the New Jersey rules (N.J.S.A. 2A:18-61.1) you may be evicted for the following reasons:

- a. Failure to pay rent due and owing, which is in violation of N.J.S.A. 2A:18-61.1(a) and 2A: 18-53(a) by failing to pay property insurance premiums for the Property;
- b. For subleasing of the Property in violation of N.J.S.A. 2A:18-61.1(e);
- c. Disorderly behavior of tenant and damage to property in violation of N.J.S.A. 2A:53(b) and (c) by running a commercial business on the property, specifically the sale of fire wood;
- d. Violating local, housing and health ordinances and codes by running a commercial business on the Property, specifically the sale of firewood wherein the Township has issued citations against you and the condition is ongoing.

4. If the acts complained of do not cease by January 5, 2017 a Notice to Quit and demand for Possession will be served upon you.

Date: 12/1/16

By 
August N. Santore, Jr.
Landlord/Owner

Intake with Jessica Zucker LAC

M. Victor Mandelli

has an appointment on

☒ Mon ☐ Tues ☐ Wed ☐ Thurs ☐ Fri ☐ Sat

11/21/2016 at 1:00 AM/PM

WE RESERVE THE RIGHT TO CHARGE FOR APPOINTMENTS
CANCELLED OR BROKEN WITHOUT 24 HRS. ADVANCED NOTICE

1908-736-6870

2 COLD 4 ME
260 01/15/16

No live service

Not take any new intake

CPUs in 2 ME 2/2017

My call Book 2 put my name on list

DR. Dr. Dr. Dr.

not 26
only when
cold

OK
Hot

1/15/17

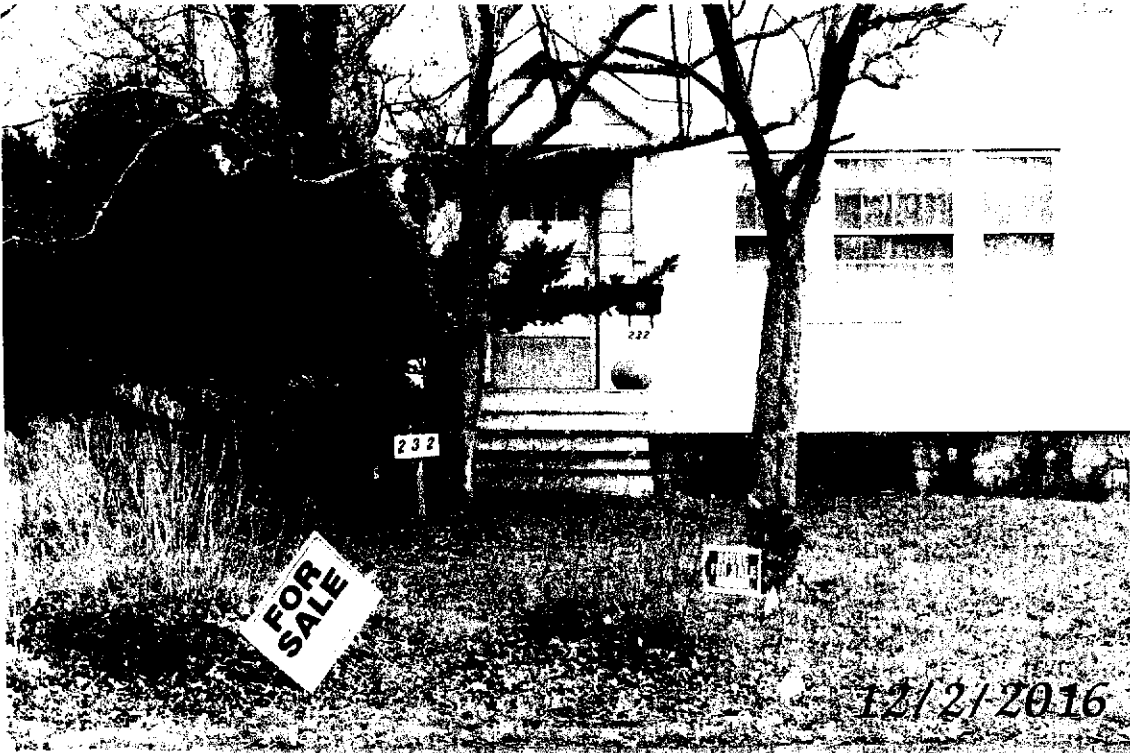


EXHIBIT E

Individual Care Plan For: VICTOR MONDELLI DOB: 04/28/1958



Your provider today was: Joyce F Schneiderman MD **Your usual provider is:** SCHNEIDERMAN, JOYCE F

To do list:

- 1) Continue taking your medications.
- 2) Follow up with cardiology.
- 3) Follow up in one month with Dr. Schneiderman.

Prevention:

Your next colonoscopy is due- please ask your provider.

A Flu vaccine is recommended every year in the fall. Your last Flu vaccine was given on 10/06/2016

Your current medications include:

- 1) VENTOLIN HFA 108 (90 BASE) MCG/ACT AERS (ALBUTEROL SULFATE) 2 puffs qid PRN
- 2) PEAK AIR PEAK FLOW METER DEVI (PEAK FLOW METER) Check twice daily
- 3) CHLORPROMAZINE HCL 25 MG TABS (CHLORPROMAZINE HCL) Take 1 tablet po at bedtime
- 4) LISINAPRIL-HYDROCHLOROTHIAZIDE 20-12.5 MG TABS (LISINAPRIL-HYDROCHLOROTHIAZIDE) take 1 tab PO daily

Scheduled Appointments:

07/18/2012, 1:15 PM, , ,

08/04/2015, 1:30 PM, RAD, Eric B. Chandler Health Center, Insiya S Rasiwala MD

The Robert Wood Johnson Medical Group
announces our new secure health connection patient website

RWJMediConnect

Website features include the ability to:

- View your current and past appointments
- Update your demographic and insurance information
- Review your bills and pay on-line
- Request a budget program to pay your bills
- View components of your medical record including the results of diagnostic tests.

To Sign Up:

Visit The Robert Wood Johnson Medical Group website at <http://umg.rwjms.rutgers.edu>.

Report MONDELLI, VICTOR XR CHEST 2V 12/18/2016 DX

***** FINAL REPORT *****

Org: MMHR - Radiology Report

Patient Name: MONDELLI, VICTOR
MRN: A00795085 Accession: 33893921
Exam Desc: XR CHEST 2V 71020 (XRCH2V)
Exam Date/Time: 12/18/2016 05:41 PM
Requesting Physician: Eskin, Barnet M.D.

Reason for Exam: ASTHMA W/O STATUS ASTHM - J45.909

CLINICAL HISTORY:
Asthma/shortness of breath

TECHNIQUE:
PA and lateral views of the chest

COMPARISON:
November 11, 2014

FINDINGS:
There are stable postoperative changes with discontinuity of the spinal hardware. There is severe scoliosis. There is no infiltrate or pleural effusion. The heart is mildly enlarged. There is no pneumothorax.


IMPRESSION:
Stable severe scoliosis. No new infiltrate.

Dictating MD 12/18/2016 8:08:17 PM: Milan Sheth, M.D.
Approving MD 12/18/2016 8:08:17 PM: Milan Sheth, M.D.

THIS REPORT WAS RECEIVED FROM AN EXTERNAL RIS SYSTEM

Richard
ANDRAWS

07080

 **CENTRAL NEW JERSEY CARDIOLOGY**
A DIVISION OF MEDICAL DIAGNOSTIC ASSOCIATES, P.A.
1511 PARK AVENUE • SUITE 2
SOUTH PLAINFIELD, NJ 07080-5516
TELEPHONE (908) 756-4438
FAX (908) 756-9160

☐ EDWIN BLUMBERG, M.D., FACC
☐ THOMAS LEOPOLD, M.D., FACC
☐ HENRY ALTSZULER, M.D., FACC
☒ RICHARD ANDRAWS, M.D., FACC

Victor M.
HAS AN APPOINTMENT ON
Thur 3.16.17
DAY MONTH DATE

AT _____ A.M. 12⁰⁰ P.M.

IF UNABLE TO KEEP APPOINTMENT,
KINDLY GIVE 24 HOURS NOTICE.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

VICTOR MONDELLI,

Plaintiff,

v.

BERKELEY HEIGHTS NURSING &
REHABILITATION CENTER, et al.,
Defendants.

Civil Action No.

2:16-CV-1569-ES-SCM

**ORDER ADMINISTRATIVELY
TERMINATING ACTION**

THIS Court issued an Order To Show Cause Why Sanctions Should Not Be Imposed against Plaintiff Victor Mondelli. (ECF Docket Entry No. “(D.E.)” 17). Plaintiff Mondelli responded with a request to administratively terminate this case. (D.E. 18).

IT IS on this May 22, 2017,

ORDERED that, this action and any pending motions are hereby administratively terminated; and it is further

ORDERED that, this shall not constitute a dismissal Order under Federal Rule of Civil Procedure 41; and it is further

ORDERED that, absent receipt from the parties of dismissal papers or a request to reopen the action within 180 days, the Court may dismiss this action, without further notice, with prejudice and without costs.



Honorable Steve Mannion, U.S.M.J.
United States District Court,
for the District of New Jersey
phone: 973-645-3827

5/22/2017 9:21:41 AM

Original: Clerk of the Court
Hon. Esther Salas, U.S.D.J.
cc: All parties
File

KENNETH ROSELLINI (6047)

ATTORNEY AT LAW

636A Van Houten Avenue

Clifton, New Jersey 07013

(973) 998-8375 Fax (973) 998-8376

Attorney for Plaintiff, Victor Mondelli

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

<p>VICTOR MONDELLI, Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BERKELEY HEIGHTS NURSING & REHABILITATION CENTER, MARINA FERRER, DIANE WILVERDING AND JOHN/JANE DOES 1 through 5, Defendants.</p>	<p>CIVIL ACTION</p> <p>Case No. : 2:16-cv-01569-ES-SCM</p> <p>NOTICE OF PLAINTIFF'S MOTION TO EXTEND TIME TO REOPEN CASE OR, IN THE ALTERNATIVE, TO REOPEN CASE</p> <p>Return Date Tuesday, January 2, 2018</p>
--	--

PLEASE TAKE NOTICE that on Tuesday, January 2, 2018, the undersigned, Kenneth Rosellini, Attorney at Law, appearing on behalf of the Plaintiff, Victor Mondelli, shall move before the United States District Court, Newark, New Jersey, for an Order to Extend Time to Reopen Case or, in the Alternative, to Reopen Case,

PLEASE TAKE FURTHER NOTICE that the undersigned shall rely upon the, Certification of Victor Mondelli and exhibits submitted herewith in support of the motion. It is respectfully submitted that no brief is necessary, as the motion does not involve complex issues of law or fact. A proposed form of Order is attached hereto.

/s/ Kenneth Rosellini

November 20, 2017

KENNETH ROSELLINI

KENNETH ROSELLINI (6047)

ATTORNEY AT LAW

636A Van Houten Avenue

Clifton, New Jersey 07013

(973) 998-8375 Fax (973) 998-8376

Attorney for Plaintiff, Victor Mondelli

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR MONDELLI,

Plaintiff,

CIVIL ACTION

v.

Case No. : 2:16-cv-01569-ES-SCM

BERKELEY HEIGHTS NURSING &
REHABILITATION CENTER, MARINA

FERRER, DIANE WILVERDING AND
JOHN/JANE DOES 1 through 5,

Defendants.

**AFFIDAVIT OF PREJUDICE OF THE
HONORABLE STEVE MANNION, U.S.M.J.
FOR RECUSAL AND ASSIGNMENT OF
NEW JUDGE PURSUANT TO 28 U.S.C.A.
§144**

Plaintiff Victor Mondelli in the above-captioned matter, being duly sworn,
deposes and says:

1. I am the Plaintiff in the above-entitled cause.
2. I believe that the Honorable Steve Mannion, Magistrate Judge of the United States District Court in which this action was commenced and is now pending, and before whom it is to be heard, has a personal bias and prejudice against me and in favor of the Defendants, and the reason for such belief is as set forth *infra*.
3. I have physical and mental health conditions which have prevented me from being able to prosecute the action in this matter.

4. I was a Defendant in a municipal zoning matter in the municipal court of Fanwood, New Jersey in which the Judge found me incompetent to stand trial on April 6, 2017 and dismissed the case on the motion of the prosecutor due to my incompetence to stand trial.

5. My current psychiatric care provider at Rutgers, Robert Wood Johnson Medical School, has issued several letters these past few months addressing my inability to appear in court and handle certain matters.

6. I was previously treated for several years at Trinitas Regional Medical Center, which recognized that I am a diagnosed Schizophrenic and suffer from Major Depression.

7. My mental health problems were recognized by my school when I was a child.

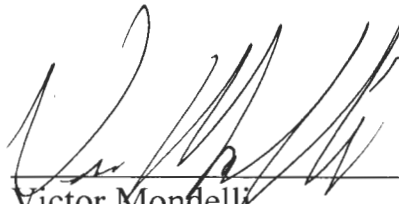
8. My mental and physical health have deteriorated since my mother, my last close family member (my father and sister having passed some time ago) passed away on May 29, 2015.

9. My mental and physical health have also deteriorated due to the fact my home, which I have lived in all my life, is in jeopardy of sale or eviction, which I have thus far been able to hold off.

10. I also suffer from physical ailments of asthma, anxiety, digestive problems, and high blood pressure, among others, for which I receive medication

and have been recently treated.

11. I am disabled, and believe that Judge Mannion has discriminated against me by requiring me to submit to an Order to Show Cause issued on May 3, 2017 stating the judge was considering sanctions against me without first inquiring into my health, when my complaint clearly states I have a disability.

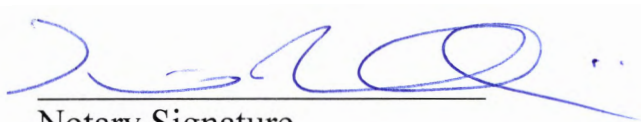


Victor Mondelli

On November 20, 2017, before me, the undersigned, personally appeared Victor Mondelli, personally known on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual executed the instrument.

Subscribed and Sworn to me this

20th day November 2017



Notary Signature

Kenneth Rosellini Attorney at Law
State of New Jersey in Good Standing

BY: Lynne N. Nahmani, Esquire

Woodland Falls Corporate Park

200 Lake Drive East ☐ Suite 300

Cherry Hill, NJ 08002

 856-414-6000 856-414-6077

 lnnahmani@mdwccg.com

Attorney for Defendant(s), BERKELEY HEIGHTS NURSING & REHABILITATION CENTER,
MARINA FERRER, DIANE WILVERDING

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

VICTOR MONDELLI

Plaintiff

CASE NO: 2:16-cv-01569-ES-SCM

**BERKELEY HEIGHTS NURSING &
REHABILITATION CENTER, MARINA
FERRER, DIANE WILVERDING, and
JOHN/JANE DOES 1 THROUGH 5,**

MOTION DATE: JANUARY 2, 2017

Defendants

**DEFENDANTS BERKELEY HEIGHTS NURSING & REHABILITATION CENTER, MARINA
FERRER, DIANE WILVERDING'S OPPOSITION BRIEF TO PLAINTIFF'S MOTION TO
EXTEND TIME TO REOPEN CASE OR IN THE ALTERNATIVE TO REOPEN CASE AND
PLAINTIFF'S MOTION TO RECUSE THE HONORABLE STEVE MANION, U.S.M.J.**

Of Counsel :

Lynne Nahmani, Esq.

On the Brief:

Monica Fillmore, Esq.

TABLE OF CONTENTS

Table of Authorities	ii
I. PRELIMINARY STATEMENT.....	1
II. PROCEDURAL BACKGROUND.....	1
III. LEGAL ARGUMENT.....	4
A. Plaintiff Offers No Evidence or Arguments To Show What This Matter Should Be Reopened.....	4
B. This Court Must Dismiss Plaintiff's Complaint with Prejudice For Lack of Prosecution.....	5
1. The Failure to Follow Discovery Orders is Due to Plaintiff's Own Conduct.....	5
2. Defendants Have Been Prejudiced By Plaintiff's Delays in Litigation.....	6
3. Plaintiff Has Shown a History of Dilatoriness In This Matter.....	6
4. Plaintiff Has Affirmatively Chosen to Not Participate in Litigation.....	7
5. A Dismissal of Plaintiff's Complaint Is The Only Appropriate Remedy.....	7
6. The Claims in Plaintiff's Complaint Are Without Legal or Factual Basis....	7
a. ADA Claims	7
b. Negligence Claims	8
c. Intentional Infliction of Emotional Distress	8
C. Plaintiff's Request To Recuse Judge Mannion is Without Basis And Should Be Denied.....	9
IV. CONCLUSION.....	10

TABLE OF AUTHORITIES

Federal Cases

Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863, 868 (3d Cir. 1984).....5

State Cases

Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 365-67, 544 A.2d 857 (1988).....8

Federal Regulations

28 C.F.R. § 35.101 (2016).....9

I. PRELIMINARY STATEMENT

Plaintiff, Victor Mondelli, has provided no proof or basis for his request to extend the time to reopen this matter, or in the alternative to reopen this matter. Plaintiff has been given numerous extensions and accommodations by the Court, and despite all of these allowances, Plaintiff claims he is still unable to participate in litigation at this time, while at the same time providing no evidence to support why he can not participate.

Plaintiff's efforts to further delay this matter by both having an extension to reopen this matter and requesting the recusal of the Honorable Steven Mannion, U.S.M.J. are without any valid evidentiary proofs or merits. Instead, these requests are another in the Plaintiff's series of attempts to manipulate the Court to continue his meritless claims in this matter. Therefore, Plaintiff's Complaint must be dismissed with prejudice.

II. PROCEDURAL BACKGROUND

Plaintiff filed his Complaint in this matter on March 22, 2016. (See Complaint, attached hereto as "Exhibit A"). Defendants Berkeley Heights Nursing and Rehabilitation Center, Marina Ferrer and Diane Wilverding thereafter filed their Answer to Plaintiff's Complaint on August 18, 2016. (See Answer of Defendants, attached hereto as "Exhibit B"). Plaintiff's Complaint contains claims for intentional infliction of emotional distress and for violations under the Title II of the Americans with Disabilities Act (hereinafter "ADA") during his mother's residency from January 2012 to March 2015 at Defendant Berkeley Heights Nursing and Rehabilitation Center. Additionally, though not specifically provided for in a separate count, Plaintiff's complaint suggests he is stating a professional negligence claim for his deceased mother.

A telephonic Rule 16 case management conference was held with the Honorable Steve Mannion, U.S.M.J. on November 17, 2016. At this conference, all parties agreed to case management deadlines, which were codified in the Court's Pre-trial Order of November 17, 2016. (See Pre-trial Order, attached hereto as "Exhibit C").

The Pre-trial Order states, all parties were to provide Rule 26 initial disclosures by December 10, 2016. Defendants provided their Rule 26 initial disclosures on December 9, 2016. All parties were also required to serve all interrogatories, notices to produce and requests to admit by December 30, 2016. Defendants served the attached discovery requests on December 5, 2016, which included a request to admit. (See Letter to Plaintiff with attached discovery requests, attached hereto as "Exhibit D"). A follow-up letter requesting the Plaintiff's Rule 26 disclosures was sent on January 3, 2017. (See Letter to Plaintiff's counsel of January 3, 2017, attached hereto as "Exhibit E") To date Plaintiff has not provided any Rule 26 disclosures or discovery responses.

A second telephonic case management conference was held on January 20, 2017. During this conference Plaintiff requested additional time to respond to all outstanding discovery, including the responses to the request to admit which had been due on January 4, 2017. Judge Mannion granted the Plaintiff additional time and the Plaintiff agreed to provide all outstanding discovery by February 3, 2017. This agreement was confirmed via letter to Plaintiff's counsel. (See Letter to Plaintiff dated January 23, 2017, attached hereto as "Exhibit F"). Plaintiff once again failed to provide discovery and meet the new deadline of February 3, 2017. Defendants informed Plaintiff of their intention to seek leave of Court to file a motion if discovery was not produced. (See Letter to Plaintiff dated March 27, 2017, attached hereto as "Exhibit G").

A third telephonic case management conference was held on March 29, 2017. At this time Plaintiff's counsel stated he had not been able to get in touch with his client and once again requested additional time. The Court gave the Plaintiff fourteen (14) days from the date of the conference to produce all outstanding discovery or consider an administrative termination of the proceeding. (See Text Order, attached hereto as "Exhibit H") The fourteen day deadline expired on April 12, 2017 without Plaintiff providing any of the outstanding discovery or seeking leave for an administrative termination of the proceedings.

On April 25, 2017, Defendants sought leave of the Court to file both a motion to dismiss for failure to provide discovery and a motion for summary judgment, as Plaintiff did not have any legal or evidentiary basis to sustain any one of his claims, including his professional negligence claims as to the care and treatment of his decedent Mother as he had not provided an Affidavit of Merit to support any claims of medical negligence within the statutorily required time. (See Defendants Request for Leave to File Motion Practice, attached hereto as "Exhibit I").

The Court entered an Order to Show Cause on May 3, 2017 and ordered Plaintiff "to show cause in writing by May 18, 2017 why sanctions should not be imposed against him pursuant to Federal Rules of Civil Procedure 16(f) and 37". The Court stated that the possible sanctions included costs, attorneys' fees and an order dismissing Plaintiff's Complaint. Plaintiff was directed to respond in writing by May 18, 2017. (See Order to Show Cause, attached hereto as "Exhibit J").

On May 19, 2017, Plaintiff responded to the Order to Show Cause and requested an administrative termination of the case for 180 days. (See Plaintiff's Request for Administrative Termination, attached hereto as "Exhibit K"). Plaintiff claimed in his certification that he had physical and mental problems that prevented him from being able to "prosecute this matter." He

also claimed that on April 6, 2017, a municipal court judge found him incompetent to stand trial. To date Mr. Mondelli has not provided any competent evidence to support that any Judge determined he was incompetent to stand trial. (Exhibit K).

This Court administratively terminated this matter on May 22, 2017 and gave the Plaintiff 180 days to move to reinstate the claim. The 180 day period expired on Saturday, November 18, 2017. (See Order dated May 22, 2017, attached hereto as "Exhibit L").

On November 21, 2017, Plaintiff filed the instant motions to extend the time to reopen this case, or in the alternative to reopen the case and motion to recuse Judge Mannion and request a new judge be assigned.

III. ARGUMENT

A. Plaintiff Offers No Evidence or Arguments To Show What This Matter Should Be Reopened.

Plaintiff once again claims without evidentiary proof that he should be allowed more time before reopening this matter, or in the alternative that the Court reopen this matter. His certification is silent as to the Plaintiff's ability to provide the required outstanding discovery and/or to participate in the litigation process. Rather, his certification merely includes his own self-serving statements without the necessary documents to support his assertions.

None of the documents attached to Plaintiff's present motion state that he is not mentally competent to proceed in this litigation. The Plaintiff also has not given any proof of the alleged Municipal Court Order, which if it existed would now be approximately 8 months old. Plaintiff has not provided any proofs as to why he has been unable to secure a power of attorney in the six months that this Court gave him in the administrative termination. All the while, Plaintiff has been represented by counsel.

Plaintiff's claims of medical ailments do not meet his burden of proof. The documents he provides with Plaintiff's certification do not demonstrate any proof of a medical diagnosis that would interfere with his ability to either answer discovery or obtain a power of attorney. Not one to the documents prove that Plaintiff is incompetent. There is no reason to believe that an insect bite prevents a party from participating the in the prosecution of his case. Further, the fact that he is given discharge instructions concerning rabies does not mean that he was suffering from rabies. Plaintiff offers no sworn medical evidence that in light of his various physical and mental ailments he is incompetent and/or unable to participate in the prosecution of his case.

B. This Court Must Dismiss Plaintiff's Complaint with Prejudice For Lack of Prosecution.

The Court has established a six part test for determining when a matter can be dismissed due to a party's failure to follow discovery orders. The Court must examine "1) the extent of the *party's personal responsibility*; (2) the *prejudice* to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a *history* of dilatoriness; (4) whether the conduct of the party or the attorney was *willful* or in *bad faith*; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of *alternative sanctions*; and (6) the *meritoriousness* of the claim or defense. " Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863, 868 (3d Cir. 1984)(emphasis in original). Applying these factors to this matter, it is apparent that Plaintiff's Complaint must be dismissed with prejudice.

1. The Failure to Follow Discovery Orders is Due to Plaintiff's Own Conduct.

Since the inception of this lawsuit, Plaintiff has failed to participate in this matter at all. In the Poulis case, the Court was reticent to dismiss Plaintiff' case because the failure to provide discovery was solely due to Plaintiff's counsel actions and not the Plaintiff's own conduct. Id. In

contrast, in this matter Plaintiff's Counsel has represented to the Court at every case management conference that he has been unable to answer discovery because he has been unable to get a hold of the Plaintiff to complete responses. As detailed above at length, Plaintiff has failed to provide any competent evidence or support as to why he has chosen to not participate in this litigation. Therefore, this Court must dismiss Plaintiff's Complaint with prejudice for lack of prosecution due to the Plaintiff's own inaction.

2. Defendants Have Been Prejudiced By Plaintiff's Delays in Litigation.

Defendants have been and will continue to be prejudiced by Plaintiff's numerous delays in litigation. The Plaintiff's mother was a resident at Defendant Berkeley Heights Nursing and Rehabilitation Center from 2012 to 2015. Plaintiff alleges violations stemming from the fall of 2012—nearly five years ago, in his Complaint. Should this matter be reinstated and continue in litigation, the Defendants will be at a severe disadvantage to find all necessary witnesses and documents to counter the Plaintiff's various and far reaching claims. Without the required Rule 26 disclosures and responses to discovery, Defendants have also been unable to fully investigate this matter.

In 2016 Berkeley Heights Nursing and Rehabilitation Center was sold. Undoubtedly this causes difficulties in the ability of Defendants to gather documents and witnesses in its defense as unrestricted access to documents and witnesses are no longer assured.

3. Plaintiff Has Shown a History of Dilatoriness In This Matter.

The Plaintiff's Rule 26 disclosures were due on December 10, 2016—over one year ago. The Plaintiff was also sent Defendant's Discovery Requests, including a request to admit, in December 2016. The fact that Plaintiff has been unable to respond to these preliminary documents in a years time shows that Plaintiff is not willing to participate in this litigation.

4. Plaintiff Has Affirmatively Chosen to Not Participate in Litigation.

As detailed above, Plaintiff's counsel has represented to the Court at several case management conferences that the failure to abide by the Court's Orders was due to Plaintiff's affirmative conduct. Specifically, Plaintiff refused over a period of several months to respond to his counsel's attempts at contact. Plaintiff has had over a year, including the Court's six month administrative termination, to resolve these issues. Despite this, Plaintiff has taken no actions to remedy any of the outstanding discovery or to participate in any other meaningful way.

5. A Dismissal of Plaintiff's Complaint Is The Only Appropriate Remedy.

Despite numerous extensions and opportunities, Plaintiff has failed to provide any of the outstanding discovery in this matter. Notably, Plaintiff's certification is silent on providing the outstanding items and on Plaintiff's willingness to participate in this litigation of matter should it be re-opened. Based upon this, it is clear that a re-opening of this case would only lead to further delays and dilatory behavior. It is imperative that this Court dismiss Plaintiff's Complaint with prejudice, as Plaintiff's repeated inactions have shown that he has no intention to participate in this litigation.

6. The Claims in Plaintiff's Complaint Are Without Legal or Factual Basis.

Plaintiff alleges a violation of the ADA, negligence claims as to his mother's care, and an intentional infliction of emotional distress claim in his Complaint. All of these claims are without legal and factual basis.

a. ADA Claims:

Plaintiff filed a claim under Title II of the ADA alleging that the Defendants did not accommodate his mental health disability, when he visited his mother at the Defendant Berkeley Heights home. Title II of the ADA allows for private causes of action only against public

entities and their employees. 28 C.F.R. § 35.101 (2016). Defendants in this matter are a private corporation and its employees.

Additionally, Title II of the ADA only allows for injunctive relief. Id. Plaintiff's mother left Defendant Berkley Heights in March 2015 and subsequently passed away in May 2015. Even if the Defendants were public entities and employees, there is no available injunctive relief. Therefore, Plaintiff cannot pursue an ADA claim against Defendants.

b. Negligence Claims:

Plaintiff does not have standing to bring negligence claims on behalf of his mother. Mr. Mondelli is the only party listed as the Plaintiff in this matter. Mr. Mondelli's mother passed away in May 2015. Plaintiff has provided no proof that he has been appointed the Executor, General Administrator or Administrator ad Prosequendum for his mother's estate. Accordingly, he has no standing to assert any cause of action on behalf of her Estate on negligence, wrongful death or survival.

Even if the Court were to find the standing issue a procedural defect easily remedied, Plaintiff has failed to file an appropriate affidavit of merit against the Defendants within the one-hundred twenty day time deadline from the filing of Defendants' Answer. The one-hundred twenty day period expired on December 16, 2016. As Plaintiff has not provided the necessary affidavit of merit to pursue a professional negligence claim in the prescribed time by statute, Plaintiff is now foreclosed from pursuing any intended such claims.

c. Intentional Infliction of Emotional Distress Claims:

Plaintiff states claims for intentional infliction of emotional distress based upon the alleged acts of the Defendants in limiting the visiting time with his mother, when she was a resident at the Defendant facility. Assuming Plaintiff's allegations are to be believed, they are

not "so extreme and outrageous in degree as to go beyond all bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community." Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 365-67, 544 A.2d 857 (1988). No reasonable trier of fact could conclude that Plaintiff had met his necessary burden and Plaintiff's Claims for Intentional Infliction of Emotional Distress is without merit.

C. Plaintiff's Request To Recuse Judge Mannion is Without Basis And Should Be Denied.

Plaintiff has given no evidence or credible argument as to why Judge Mannion should be recused from this action. To the contrary, it was Judge Mannion who suggested the administrative termination to give the Plaintiff a fourth bite at the apple. As no prejudice can be shown, it is respectfully requested that Plaintiff's request to recuse Judge Mannion also be denied.

IV. CONCLUSION

Based on the foregoing, it is respectfully requested that this Honorable Court DENY Plaintiff's motion to extend time to reopen this case, or in the alternative to reopen the case and DENY Plaintiff's motion to recuse Judge Mannion and request a new judge be assigned.

Respectfully submitted,

//Lynne N. Nahmani, Esquire//

LYNNE NAHMANI, ESQUIRE

MONICA C. FILLMORE, ESQUIRE

NJ Atty ID #016711989

Woodland Falls Corporate Park

200 Lake Drive East ■ Suite 300

Cherry Hill, NJ 08002

☎ 856-414-6000

☎ 856-414-6077

✉ lnnahmani@mdwgc.com

Attorney for Defendants, Berkeley Heights Nursing
and Rehabilitation Center, Marina Ferrer and Diane
Wilverding