
PLAINTIFF’S SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

This case is fundamentally about the Texas statutory guardianship scheme and its administration by Harris County and its agents and appointees in failing to protect Willie Jo Mills from harm in the context of its policies, practices or customs applicable to those persons involuntarily made guardianship “wards” of the State of Texas, and in the process violating the ward’s constitutional rights, federal law protections and committing violations of state law.

The constitutional violations constitute conduct under color of law that shocks the conscience.¹

Abbreviations and Definitions used in this Complaint:

Sherry Lynn Johnston is referred to as “Johnston”

Willie Jo Mills is referred to as “Mills”

David Dexel is referred to as “Dexel”

Guardian ad Litem is referred to as “GAL”

Attorney ad Litem is referred to as “AAL”

¹ All exhibits referenced herein are attached and incorporated for all purposes as if fully set forth herein verbatim.

Ginger Lott and GSL Care Management LLC, are jointly referred to as “Lott”

Clarinda Comstock is referred to as “Comstock”

Judge Christine Butts is referred to as “Judge Butts”

Harris County, Texas is referred to as “Harris County”

Former Texas Probate Code, Repealed Jan. 1, 2014, is referred to as “Tex. Prob. Code”

Texas Estates Code effective Jan 1, 2014, is referred to as “Tex. Est. Code”

“Incapacitated person” as related to Mills, is defined pursuant to Tex. Prob. Code §601.015 (B) as: an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual’s own physical health, or to manage the individual’s own financial affairs.

“Incapacitated person” as related to Mills, is defined pursuant to Tex. Est. Code §1002.017 as “. . . (2) an adult who, because of a physical or mental condition, is substantially unable to: (A) food, clothing, or shelter for himself or herself; (B) care for the person’s own physical health; or (C) manage the person’s own financial affairs . . . “

I. INTRODUCTION

1. Sherry Johnston, at all times prior to the death of her mother, Willie Jo Mills, was a “person interested” in the welfare of her mother, who was an incapacitated person. Tex. Prob. Code §601(15) / Tex. Est. Code

1002.018 (2) - “person interested;” Tex. Prob. Code §601 (54) /Tex. Est. Code 1002.014 “incapacitated person.”

2. Mills was a "qualified individual with a disability" as defined by the Americans With Disabilities Act 1990 (as amended) (the “Act”) at 42 U.S.C. § 12131(2); 3 see also, 28 C.F.R. §§ 35.104 and 35.108(b)(1-2) and (c)(1)(I-ii), Definitions.

3. During her mother’s lifetime Johnston attempted, without success, to require Dixel to perform his statutorily-mandated duties as Guardian of the Person of Mills pursuant to Tex. Prob. Code 767(a)(2-3):

- a. (a). . . (2) the duty to provide care, supervision, and protection of [Mills from abuse and neglect at the nursing home from which Dixel refused to remove her]; and
- b. (3) the duty to provide [Mills] with . . . medical care.

4. Dixel’s breaches of fiduciary duty to Mills and his fraud on Johnston, put into action an unbroken course of events beginning with his *ex parte* meeting with Judge Butts and his “slipping” Lott into his guardian position, that did lead to Mills’ death and Johnston’s loss and damage.

5. During her mother’s lifetime Johnston attempted, without success, to require Lott to perform her statutorily-mandated duties as Guardian of the Person of Mills pursuant to Tex. Prob. Code 767(a)(2-3) and after January

1, 2014, pursuant to Tex. Est. Code §1151.051. Both Codes have essentially the same mandate:

- a. (a). . . (2) the duty to provide care, supervision, and protection of [Mills from abuse and neglect at the nursing home from which Dixel refused to remove her]; and
- b. (3) the duty to provide [Mills] with . . . food and medical care;

6. During her mother's lifetime Johnston attempted, without success, to require Comstock to perform her statutorily-required duties as Guardian ad Litem of Mills. Comstock's GAL duties under the former Tex. Prob. Code §645(c) and the Tex. Est. Code 1§1054.054 are essentially the same:

. . . The Guardian ad litem shall protect the incapacitated person in a manner that will enable the court to determine what action will be in the best interests of the incapacitated person . . .
..

7. During her mother's lifetime at times when simple, reasonable diligence on Judge Butts' part could have prevented Mills' tortured suffering, starvation, and death, Johnston attempted, without success, to bring to Judge Butts' attention Lott's failure to do her mandated statutory duties and breaches of fiduciary duty which Johnston feared would lead to Mills' death – and which finally did lead to Mills' death.

8. Even when Judge Butts was presented with undeniable proof of Mills' rapidly deteriorating health and medical condition and that Lott's failures

as guardian caused the rapid deterioration of Mills' health, Judge Butts "turned a blind eye" to the danger to Mills.

9. Judge Butts' illegal, *ex parte* accommodations to probate court insiders Dixel, Comstock, and Lott – to appoint Lott (a former probate court coordinator for many years) as Mills guardian – led to higher and higher levels of Judge Butts' negligence. Each time Judge Butts was presented with information demonstrating that Mills' medical condition was leading to death, she negligently ignored Lott's failures.

10. What began as illegal, *ex parte* accommodations to probate court insiders Dixel , Comstock, and Lott culminated in Judge Butts' gross negligence of serious problems cause by Lott's failures to protect Mills; provide food; and provide medical care, leading to the tortured, suffering death of Mills from deprivation ordered by Lott of life-sustaining nutrition.

11. Lott's actions were made possible by Dixel's and Comstock's breach of fiduciary duty and fraud on Mills and Johnston, and led in an unbroken series of events to Mills' death and Johnston's loss and damage.

12. After Lott's appointment Judge Butts' lack of diligence escalated and her oncreasing negligence to Mills' deteriorating condition rose to the level of gross negligence when Judge Butts refused to hold a hearing on an

emergency temporary restraining order which contained information upon which a reasonably diligent judge would have held a hearing.

13. During her mother's lifetime Johnston attempted, without success, to demonstrate to Judge Butts that Lott was failing to perform all of her duties related to Mills that were required of her as guardian was causing damage and loss to Mills that could lead to her further injury and to death.

14. As an person interested in the welfare of Mills, Johnston had certain rights of citation and notice to guardianship events involving Mills, particularly regarding the resignation of Dixel and the appointment of a successor guardian. Tex. Prob. Code §760, *et seq.* (resignation) Tex. Prob. Code §760, *et seq.* (appointment of successor).

15. Mills was qualified for in-home care and was able and preferred to reside in a private residential setting. Against her will, and against the continued complaints of abuse by defendants, jointly and severally, Mills was unnecessarily denied this accommodation and institutionalized and segregated in a nursing facility which abused her because of defendants' decision to refuse to accommodate her and instead to exclude her from any meaningful access to Texas' system of community-based services and supports which Mills needed to be able to reside in the community.

16. The defendants, by all of their actions and inactions in violation of federal law caused Willie Jo Mills to live in institutional nursing facilities isolated from her family and friends, even going so far as to refuse plaintiff Sherry Johnston's access to Mills.

17. Mills was not accommodated in any fashion that would permit her to leave the nursing facility to attend day habilitation programs, to visit with her daughters or grandchildren, and consequently the lack of accommodation deprived Mills of the right to attend social, recreational or religious activities outside of the nursing home.

18. Despite her ability to have benefitted before her death from Texas's system of community-based supports that were available to other individuals with disabilities, Mills' experienced unnecessary and prolonged institutionalization in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132 et seq.

19. Pursuant to the Court's Memorandum Opinion and Order of August 18, 2017, Plaintiff Johnston hereby files her Second Amended Complaint and brings the following claims as permitted to have been amended:

- a. Claim against Judge Christine Butts on her bond only, and only up to the amount of her bond, under section 1201.003 of the Texas Estate Code; See Exhibit 1

- b. claims against Harris County, Texas, Dexel, Lott, and Comstock for disability discrimination and retaliation under the Americans with Disabilities Act and the Rehabilitation Act;
- c. all of the Texas-law claims against Harris County and Clarinda Comstock;
- d. the claim for civil conspiracy to breach fiduciary duties;
- e. the claim for intentional infliction of emotional distress;
- f. fraud and the claim for wrongful death against David Dexel; and
- g. violation of statutory duties by Dexel, Lott, and Comstock;

20. Plaintiff's continues to assert breach of fiduciary duty as previously pleaded against Dexel and Lott and continues to assert claim for wrongful death against Lott, this Court having deemed to have been adequately pleaded in her First Amended Complaint.

- a. The claim for breach of fiduciary duty is adequately pleaded as to Dexel and Lott, and may proceed. The claim for wrongful death is adequately pleaded as to Lott, and may also proceed.

21. This case argues for the Court to apply the reasoning of *Estelle v. Gamble*, 429 U.S. 97 (1976); *Youngberg v. Romeo*, 457 U.S. 307 (1982); *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) and *M.D. v. Perry*, 675 F.3d 832 (5th Cir. 2012) and the Memorandum Opinion and verdict of the Court in *M.D. v. Abbott*, 152 F. Supp.3d 684 (S.D. TX 2015)

in recognition that disabled, guardianship wards of the State of Texas are placed into involuntary court-ordered guardianships. Those wards are then disallowed to provide for their own needs and safety; disallowed to associate with their chosen kin or friends; effectively lose the right to complain of maltreatment or abuse because of the closed system created by the Texas guardianship scheme as set out in the Texas Estates Code which took effect on January 1, 2014, which while supplanting the former Texas Probate Code, continues the same abusive system of the former Code.

22. Further, even when family members or kin, or friends of a ward see abuses or maltreatment of a ward, or recognize that a court appointee is failing in his/her statutory duty, this closed system permits **only** the court appointees to take action on behalf of a “ward” even when those court appointees may be acting against their ward’s best interest and/or in their own interest.

23. In addition, this closed system has a “pay to play” requirement which requires a challenger to a guardianship to deposit funds with the clerk of the court in order to enter the case and make challenges regarding the ward.

24. Plaintiff intends to prove that wards – persons situated as was her

mother, Mills – having been declared by the State to be disabled in order to put them into guardianship, are entitled to be afforded the same or similar protections afforded prisoners; pre-trial detainees; involuntarily-committed mentally ill and mentally retarded persons; and most recently, foster children involuntarily placed into foster care.

25. This case also argues that the several federal statutes demand protections for disabled wards – persons – in the public entity context, such as state-ordered guardianships, and that Texas and its statutory guardianship scheme are failing to apply the proper protections which arise under the United States Constitution; the Americans with Disabilities Act, Titles II and III; and the rights of disabled wards in guardianship proceedings.

26. Finally this case seeks declaratory relief, injunctive relief and damages under both federal and state causes of action as more fully set out herein.

II. Rights of Guardianship Wards

27. Because of the abuses that Johnston experienced regarding her mother, Mills, leading to her death, and the abuses Johnston saw of other residents at Silverado, Johnston testified as a witness at the hearing at the

Texas Legislature on May 19, 2015, advocating for the passage of the Bill of Rights for Wards. See Exhibit 2

28. Effective June 19, 2015, the Texas Estates Code § 1151.351 merely codified existing constitutionally-protected rights and existing public policies as to persons placed under guardianship. It did not create new rights not previously recognized, but it did clarify that impaired persons retained these rights in spite of disability and impairment.

29. A ward under a guardianship of the person pursuant to the laws of the State of Texas is, by definition, disabled and impaired to some degree, whether physical, mental, or both. A ward who is subject to a guardianship of their person has been deemed sufficiently disabled and impaired with regard to one or more of their major life activities as to require the appointment of a guardian.

30. The ward

- a. has a constitutional right to be free from an unreasonable risk of harm, including protection from psychological as well as physical abuse;
- b. has a substantive due process right to be free from unreasonable and unnecessary intrusions into privacy and emotional well-being;
- c. may be subjected to harm that includes, but is not limited to: neglect, physical abuse, and psychological mistreatment.

31. Johnston, individually, in her capacity as “an interested person” and as a daughter and heir of her now-deceased mother, Mills, alleges claims for the acts and failures to act ultimately leading to Mills’ death, against Defendants/Co-Conspirators jointly and severally; as well as a multitude of other indignities and wrongs as more fully set out herein against the following Defendants: Dixel, Lott and GSL Care Management LLC, Comstock, and Harris County. Additionally, Johnston makes a claim against the bond, up to the amount of the bond, of Judge Butts for gross negligence pursuant to Tex. Est. Code 1201.003.

III. Jurisdiction

32. This court has jurisdiction pursuant to 28 U.S.C.A. §§ 1331 and 1343, because the matters in controversy arise under the laws of the United States. In Addition, jurisdiction is conferred upon this Court, pursuant to the Rehabilitation Act and the ADA and the federal regulations of both, issued thereunder.

33. This case, involving civil rights claims, was properly removed from state court in Liberty County, Texas to this Court pursuant to 28 U.S.C. § 1443.

34. Further this Court has jurisdiction to award attorney’s fees and costs

under the ADA.

35. This Court also has jurisdiction over the pendent state claims pursuant to 28 U.S.C. § 1367.

IV. Venue

36. Venue is proper before this Court pursuant to 28 U.S.C. § 1391.

V. Parties

37. Plaintiff:

Sherry Lynn Johnston, a citizen of Texas and a resident of Harris County, Texas is the daughter and heir of Willie Jo Mills. She brings this suit for her individual losses and damages related to the death of her mother, Willie Jo Mills. She also brings a wrongful death action in her capacity as a statutory heir of her mother, Mills. At all times from the inception of the guardianship in 2008, Sherry Mills was an “Interested Person” as defined by both Tex. Prob. Code and Tex. Est. Code

- a. “Interested Persons” or “persons interested” means . . . a person interested in the welfare of an incapacitated person . . .” Texas Probate Code §601(15) in effect until December 31, 2013;
- b. . . a person interested in the welfare of an incapacitated person.” and as defined by the Texas Estates Code §1002.018(2), effective January 1, 2014.

38. Defendants:

- a. David Dexel - as Guardian of the Person of Mills from July 22, 2009, until he was secretly allowed to resign in violation of the applicable statutes on September 17, 2013 - is sued in his individual capacity and in his capacity as Guardian of the person of Willie Jo Mills, now-deceased. David Dexel has been served and his counsel has responded with a 12(b) 6 and a 12(c) Motion, but has not yet filed an answer.
- b. Christine Butts - as Judge of Harris County Probate Court No. 4, is a citizen of Texas, who was, on the 2nd day of November, 2010, duly elected to the office of Judge, Harris County Probate Court #4 for a term of four (4) years, beginning the 1st day of January, 2011, and ending the 31st day of December, 2014, in and for Harris County in the state of Texas (Her re-election on November 4, 2014, occurred after the death of Mills). Pursuant to the liabilities of Judge Butts and the duties of Judge Butts' office set out in [former] Tex. Prob. Code §671(d), now Tex. Est. Code 1201.003, Plaintiff seeks to recover only against Judge Butts's statutory bond under the parameters set forth in the statute, and up to and including the amount of her bond, which

at the time of Mills' death, was Five Hundred Thousand Dollars (\$500,000). See Exhibit 1, Judge Butts' bond.

- c. Ginger Lott is sued as successor guardian of the person of Mills, and is sued in her official capacity as successor guardian of the person of Willie Jo Mills and in her individual capacity. GSL is a single-member Limited Liability Company, owned and managed by Ginger Lott. GSL is sued as Lott's alter ego.² Attached as Exhibit 3, is the Public Information Report filed July 5, 2016, which demonstrates that GSL is Lott's single-member LLC. Therefore, Plaintiff makes claims against Lott and GSL jointly and severally as "Lott."
- d. Clarinda Comstock, as Guardian ad Litem of Mills is a citizen of Texas, and was the court appointed Guardian ad Litem for Willie Jo Mills. She is sued individually and in her official capacity.
- e. Harris County is a duly formed unit of local government existing under the laws of the State of Texas.

VI. STATEMENT OF FACTS

² As the Court noted in footnote 1, all parties treated Lott and GSL Care Management ("GSL") as interchangeable.

39. Mills was the subject of an initial guardianship application filed by her son on May 29, 2008, while he was in the midst of state district court lawsuit filed by Johnston and Pierce. Johnston and Pierce were seeking the return to Willie Jo Mills of her assets taken by Larry Mills and put into his and his family members' names.

40. During the state district court proceeding, Larry Mills filed a guardianship application and Mills became a "proposed ward" of the State of Texas.

41. Dixel's fiduciary duty to Mills began when Dixel was appointed Guardian ad Litem of Mills on October 7, 2008, with the duty to advise the probate court as to whether she needed a guardian.

42. Upon Dixel – as Guardian ad Litem – advising the court on October 8, 2008, that Mills needed a guardian, Dixel was then appointed *Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills* on October 9, 2008 and Mills was a "Ward."

43. On or about July 22, 2009, as part of the settlement, Dixel was appointed Guardian of the Person [only] of Mills

44. Mills remained a ward of the State of Texas until her death on September 27, 2014.

VII. Breach of Fiduciary Duty Against Dixel

45. The elements of Breach of Fiduciary Duty under Texas law are:

a. The plaintiff and defendant had a fiduciary relationship.

Dixel was appointed Guardian of the Person of Willie Jo Mills.

b. The defendant breached his fiduciary duty to the plaintiff.

See Paragraphs *** to ***, below incorporated here for all purposes.

c. The defendant's breach(s) resulted in

i. injury to the plaintiff, or

ii. benefit to the defendant

See Paragraphs *** to ***, below incorporated here for all purposes.

46. On or about July 22, 2009, the litigation filed by Johnston and Pierce

to recover Mills' assets for Mills' benefit was settled with an agreement:

a. to place all of Mills' assets (then in the control of Dixel as Temporary Guardian Pending Contest) into a Tex. Prob. Code § 867 Management Trust taking the assets (or so Johnston thought) out of Dixel's control, and

b. appoint Dixel as Guardian of the Person of Willie Jo Mills, with no control over Mills' assets.

47. Unknown to Johnston, not only was Dixel the Guardian of the Person of Mills, with the fiduciary duties attendant thereto, he was also the

attorney for the Trustee, Wachovia Bank, N.A. See Exhibit 4, Trustee's Application for Compensation prepared on the Trustee's behalf by Dixel for the years 2009, 2010, 2011, and 2012.

48. As shown on Exhibit 5, Dixel's applications for compensation, not only did Dixel apply for – and receive – compensation from Mills for doing attorney's work for the Trustee, he was also billing and receiving attorney's fees at \$300 per hour in many instances instead of billing at a guardian's rate of \$100.00 per hour.

49. Dixel had used Ginger S. Lott to serve as care manager for Dixel (at least for Mills) after Lott's retirement/resignation as the 20-plus year coordinator for Probate Court No. 4. Lott was familiar with Mills through Dixel's appointment as guardian of the person of Mills.

50. As guardian of the person of Mills Mills, Dixel's duties were defined by the Texas Probate Code § 767:

Prob Code § 767 - Power & Duties of Guardians of the Person

- (a) the guardian of the person is entitled to take charge of the person of the ward, and the duties of the guardian correspond with the rights of the guardian. A guardian of the person has:
- (1) the right to have physical possession of the ward and to establish the ward's legal domicile;
 - (2) the duty to provide care, supervision, and protection for the ward;
 - (3) the duty to provide the ward with clothing, food, medical

care, and shelter;

(4) The power to consent to medical, psychiatric, and surgical treatment other than the in-patient psychiatric commitment of the ward;

(5) [This section not applicable to this case.]

(b) [This section not applicable to this case.]

51. As set forth below, Dixel's breach(s) of his fiduciary duties to Mills, in the conspiracy with Lott, Comstock, Judge Butts, and Harris County, caused the death of Mills and the damages to Johnston.

52. After the settlement of the lawsuit against Larry Mills, Johnston (and Pierce) worked closely with Dixel throughout 2009 up through 2012, taking care of Mills on almost a daily basis at Silverado, the nursing home in which she was placed by Dixel.

53. Johnston began to be concerned at serious deterioration in care for her mother in the late fall of 2012, when the resident administrator left and management changed at Silverado.

54. Johnston expressed her concerns to Dixel about the short-staffing conditions at Silverado adversely affecting Mills, which continued throughout 2012 and up through the spring of 2013.

55. Johnston's [and her sister, Pierce's] concern at Silverado's lack of care for Mills, leading to Mills's hospitalizations for multiple UTIs (urinary

tract infections) was communicated to Dexel in April, 2013. Because Dexel refused to relocate Mills as Johnston demanded due to Silverado's lack of care and poor care, Johnston's and Pierce's relationship with Dexel as guardian of Mills's person had seriously deteriorated as of April, 2013.

56. On May 16, 2013, with no notice to Sherry, Mills was moved to a separate section of Silverado in which the residents were more cognitively declined and more hostile, with behavior problems which made them more aggressive and dangerous to Mills. See Exhibit 6, photographs of Mills taken by Johnston on the day Dexel moved her to a different section of Silverado.

57. Mills's physical condition made her unable to protect herself from aggressive behavior of the residents in the new "neighborhood" of Silverado to which Dexel moved her on or about May 16, 2013.

58. Johnston's continuing complaints at the lack of care and poor care for Mills and the deterioration of Silverado's services to Mills led to Johnston being banned from Silverado on May 17, 2013, and told she could not return without a court order. Dexel worked with Silverado to prevent Johnston from returning, even though Johnston was a person interested in Mills' welfare.

59. Because of Mills' multiple injuries, including both of her eyes being blacked, both of her leg bones above the ankle of one foot being broken, and multiple UTI infections and bed sores due to Silverado's negligence, gross negligence, lack of care and poor care, Johnston again demanded that Dixel move Mills from Silverado for Mills safety and Mills and Johnston's peace of mind.

60. Johnston advised Dixel that she intended to ask Judge Butts to remove Dixel as Mills' guardian.

61. Johnston, through counsel (not the undersigned), had multiple communications with Dixel that she and her sister, Cindy Pierce, were preparing to file an application for appointment as guardian of the person of Mills.

62. Johnston was a statutorily acknowledged "interested person" but was not a party to the guardianship at the time Dixel resigned and "slipped" Lott into his position.

63. On or about June 15, 2013, after Silverado's short-staffing left Mills alone in her wheelchair, Mills fell out of her wheelchair, caught her leg in the wheel, and broke both bones in her right leg above the ankle. See Exhibit 7, page 7.

64. On June 17, 2013, Dixel made an illegal, *ex parte*, oral motion to Judge Butts to appoint a guardian ad litem (later reduced to writing and filed June 20, 2013). “. . . to represent the best interests of Mills regarding visitation, healthcare, and other matters relating to the Ward.”

65. Dixel obtained the appointment of Comstock as guardian ad litem on June 17, 2013, with no notice to “interested parties” Johnston and Pierce.

66. Dixel’s written motion to appoint a guardian ad litem filed on June 20, 2013, after his June 17 *ex parte* meeting with Judge Butts did not mention Mills’s broken leg or the manner in which she received it – neglect by Silverado – which was confirmation of Johnston’s multiple emails and requests to Dixel of Silverado’s neglect and lack of care about which Johnston had vociferously complained to Dixel.

67. Dixel conspired with Comstock to protect Dixel for his acts and failures to act to protect Mills from neglect and abuse at Silverado.

68. Dixel’s acts, together with other defendants, by means of illegal, *ex parte* meetings and/or hearings violated Mills’ and Johnston’s rights of due process.

69. Dixel discontinued Mills’s physical therapy after Silverado allowed her to fall and break both bones in her leg.

70. Dexel's stopping Mills's physical therapy caused her muscle contractures to worsen with her arms freezing up, to the point she could not hold a cup or fork.

71. With no ability to use her arms or hands, Mills became totally dependent on others to eat or drink, and with Silverado's staffing problems, she frequently went without food and water, as evidenced by her 30-40 pound weight loss, twice.

72. Johnston's threat to seek his replacement as guardian contributed to Dexel's filing his *Application to Resign and Appoint a Successor Guardian*. Dexel's certificate of service on his application demonstrates that he served only Clarinda Comstock, the guardian ad litem and no one else with his application. See Exhibit 8

73. On September 13, 2013, Dexel set his notice of hearing for September 24, 2013, on his application to resign and appoint a successor guardian for Mills and served Comstock along with "Interested Parties" including Johnston (along with serving her brother and sister and the administrator at Silverado who had banned Johnston). See Exhibit 9

74. Four (4) days later, on September 17, 2013, Dexel, along with his "care manager" Lott; Comstock; and Judge Christine Butts, participated in

a illegal, *ex parte* meeting/hearing – for which no court reporter’s record was made – in which Judge Butts appointed Lott as successor guardian to Dixel of the person of Mills.

75. No hearing in the Mills guardianship case was held on September 24, 2013, as noticed. See Exhibit 10 email from Dixel stating no hearing would be held on September 24.

76. Dixel’s actions regarding his resignation and appointment of Lott as successor guardian constitute fraud as set forth below and constitute the triggering event which put Lott in control and ended in Mills’ death.

VIII. Fraud and Wrongful Death Claim - Dixel

77. Plaintiff asserts that Dixel’s fraudulent concealment of his resignation and his illegal, *ex parte* meeting with Judge Butts and Comstock and Lott to appoint Lott as successor guardian of the person of Mills, set in motion the subsequent events of Lott’s breaches of fiduciary duty and her actions which culminated in the tortured death of Mills.

78. On August 30, 2013, Dixel filed his *Application for Leave to Resign and Appoint Successor Guardian* (“Application”). The certificate of service demonstrates that Dixel served only Comstock – and did not serve Johnston or Pierce (or Larry Mills) as “interested persons.” See Exhibit 9

79. Dexel's Application did not comply with Tex. Prob. Code §760 (a). An application to resign pursuant to Tex. Prob. Code §760 (a) required that Dexel file a written application accompanied by a verified report setting forth the information required in the annual report pursuant to Tex. Prob. Code § 743.

80. The elements of a cause of action for common-law fraud are set forth below along with Dexel's acts constituting commission of each element:

a. **The defendant made a representation to the plaintiff**

On September 13, 2013, Dexel made a representation to Johnston (and Pierce) among others, as "interested persons" by his notification letter that there would be a hearing set for September 24, 2013, on his Application for Leave to Resign, although he only served Comstock. See Exhibit 9.

b. **The representation was material.**

Under Tex. Prob. Code § 760 (c),(d), (e), and (f) Johnston (and Pierce) as "interested persons" had the right to appear and contest Dexel's resignation and be part of the hearing on the appointment of a successor. Dexel knew that Johnston intended to be present at the hearing with Judge Butts for

Dexel's resignation. See Exhibit 11.

c. **The representation was false.**

Dexel's failure to serve Johnston with his Application, demonstrates that Dexel intended that Johnston not be aware that his "Application to Resign" failed to meet the statutory requirements of Tex. Prob. Code §760.

d. **When the defendant made the representation, the defendant knew the representation was false . . .**

Dexel knew that his, Comstock's, and Lott's "insider status" with the probate courts would enable him to pursue Judge Butts' *ex parte* appointment of Lott, thereby shielding himself from Johnston's claims of his failures to perform his statutory duties, all to Mills' detriment.

e. **The defendant made the representation with the intent that the plaintiff act on it.**

Dexel intended that his setting a September 24, 2013, hearing date would cause Johnston to believe there would be a hearing on that date and not before.

f. **The plaintiff relied on the representation.**

Johnston knew she had a right to be present at the noticed

hearing and made known to Dexel, Comstock, Lott, and Judge Butts of her plans to be there. See Exhibit 11

g. The representation caused the plaintiff injury.

By Dexel's illegal, *ex parte* contact with Judge Butts, with Comstock and Lott on September 17, 2013, Dexel was able to "slip" Lott into his position as Guardian of the Person of Mills – with no opposition from Johnston. Dexel knew Johnston and her sister intended to apply as Mills' Guardian(s) and that they would oppose Lott. Dexel knew that under Tex. Prob. Code § 761, Johnston would have virtually no chance to remove Lott once she was appointed, when, if there were a hearing on September 24, 2013, as noticed, Johnston could:

1. Oppose Dexel's discharge for failure to follow the statute;
2. Oppose Lott's appointment before a court order was signed appointing her, which was a lower burden than to attempt Lott's removal pursuant to Tex. Prob. Code § 761 after an order was signed appointing her.

81. Although Dexel was released as guardian of the person of Mills on September 26, 2013, his fraudulent acts regarding his resignation set in motion an unbroken series of events which put Lott in control Mills' life;

allowed Lott to deprive Mills and Johnston of the comfort each could give the other; allowed Lott to deprive Mills of food based on an out-of-hospital-do-not-resuscitate order intended only to waive heroic measures, not deprive Mills of food and sustenance; and allowed Lott, thorough Dexel's fraud, to cause Mills' tortured death after many months of pain.

82. Butts signed an Order releasing Dexel as guardian of the person of Mills on September 26, 2013.

83. Dexel's participation and agreement with Comstock, Lott, and Christine Butts to secretly have Lott, his care manager (at least for Mills), appointed as the successor guardian of Mills put Lott in control Mills' life.

84. Lott's exercise of control of Mills, put into place by Dexel's fraud, ultimately culminated in the death of Mills.

IX. Wrongful Death Against Dexel and Lott

85. The elements of a wrongful death cause of action in Texas are:

a. **The plaintiff is a statutory beneficiary of the decedent.**

Johnston is Mills' daughter and heir under Texas law

b. **The defendant is a person or corporation.**

Dexel is a natural person; Lott is a natural person; and GSL Care Management, LLC, is Lott's single-member limited

liability company which she operates solely.

- c. **The defendant's wrongful act caused the death of the decedent.**

Johnston incorporates for all purposes as if fully set forth verbatim all paragraphs hereinabove and hereinafter setting out Dexel's and Lott's wrongful acts of fraud, conspiracy, and breach of fiduciary duty in their actions as guardian of the person of Mills.

- d. **The decedent would have been entitled to bring an action for the injury if she had lived.**

Mills' had the right to recover from Dexel and Lott for their wrongful acts toward her.

- e. **The plaintiff suffered actual injury.**

Mills died from starvation due to Lott's depriving her of nutrition based on an out-of-hospital-do-not-resuscitate order; and Lott was able to be in control of Mills due to Dexel's wrongful, fraudulent acts.

X. Claim for Conspiracy Against Dexel, Lott, Comstock, and Judge Butts

86. The elements of a conspiracy claim in Texas are:

a. **The defendant was a member of a combination of two or more persons**

Johnston incorporates for all purposes paragraphs 77 to 85 regarding “combination of two or more persons” to be Dixel, Lott, Comstock, and Judge Butts as satisfying this element of conspiracy.

b. **The object of the combination was to accomplish**

i. **an unlawful purpose, or**

ii. **a lawful purpose by unlawful means.**

Johnston asserts that both parts of this element were fulfilled by Dixel’s (i) unlawfully preventing prevent Johnston, an interested person, from participating in the hearing he set for September 24, 2013, using an illegal, *ex parte* meeting among himself, Lott, Comstock, and Judge Butts to obtain Lott’s appointment and his resignation on September 13, 2013; and (ii) by using unlawful means – the illegal *ex parte* meeting – to obtain his resignation.

c. **The members had a meeting of the minds on the object or course of action**

The members – Dixel, Lott, Comstock, and Judge Butts – came

to a meeting of the minds on the course of action as can be seen by the email from Dixel on September 18, 2013, confirming the course of action: Lott's appointment as Successor Guardian signed by Judge Butts; the Order of September 18, 2013, actually signed on September 17, 2013, appointing Lott as Successor Guardian. See Exhibits 12 and 13.

d. **One of the members committed an unlawful, overt act to further the object or course of action.**

All members – Dixel, Lott, Comstock, and Judge Butts – participated in the illegal, *ex parte* meeting that resulted in the order appointing Lott as Successor Guardian so that Dixel could resign.

e. **The plaintiff suffered injury as a proximate result of the wrongful act.**

Both Johnston and Mills suffered injury as hereinabove and hereinafter set out, culminating in Mills' tortured death after months of abuse and neglect that, had Lott not been a court-appointed guardian, would have caused her to be subject to criminal charges for her treatment of Mills.

87. Dixel, Lott, and Comstock failed to report or take appropriate legal

action when each became aware of the various injuries, neglect, abuse - physical and emotional - and mistreatment of Mills. The injuries and mistreatment of Mills constituted a criminal case for “Injury to the Elderly.”

88. Dexel did not report or take action to investigate the truth of the allegations as to how Mills’ injuries to her leg were incurred nor any action to protect her after he learned of the negligence of the Silverado care home with which he maintained a “business relationship.”

89. The fall of Mills from her wheelchair was attributed to understaffing at Silverado and inattention of the staff, however, this common injury in nursing homes, frequently results from the patients being wheeled around with too much force and speed, knocking into walls and doorways that then cause this type of injury.

90. Lott, Mills’ care manager paid by her Trust, and successor to Dexel, learned of the broken leg incident and likewise did not conduct any investigation of how the injury occurred and did not make a report of this neglect to any responsible body or agency tasked with investigating and taking action with regard to “Injury to the Elderly.”

91. As Lott took over from Dexel as Guardian of the Person of Mills, she

began a deliberate course of conduct that ignored the advice and opinions of medical professionals.

92. Lott ordered the nursing home to intentionally deprive Mills of food and nutrition.

93. Lott worked to further isolate Mills from friends and family and thereby engaged in a course of conduct of emotional isolation of Mills, ultimately contributing to the death of Mills, in part because of the emotional starvation of Mills, but also including the inability of persons such as Johnston to come to the aid of Mills.

94. Lott continued to order medication withheld that Mills needed to alleviate suffering from muscle cramping

95. Lott engaged in the unauthorized practice of medicine, for which she is not licensed.

96. Lott engaged in the unauthorized practice of pharmacy, for which she is not licensed.

97. Comstock either knew or should have known of the bizarre orders of Lott regarding the feeding of only prunes, water and thickened water to Mills, had she read Mills' medical file from Methodist Hospital or made any reasonable inquiry of the medical conditions, real or imagined by Lott. She

would have seen in the medical records Mills' dramatic losing and gaining of weight - while in Methodist Hospital, gaining weight, and when prematurely removed from the rehabilitation facility that Mills had been discharged to by Methodist Hospital, and placed back in the nursing home, that the dramatic and life-threatening weight loss that only being fed prunes, water and thickened water brought about began again.

98. Comstock was criminally negligent and reckless as well as deliberately indifferent to the food, nutrition and medical needs of Mills, whom she was required, by law and by her appointment to protect.

XI. Claims Against Ginger Lott and GSL

99. As Successor Guardian of the Person of Mills, Lott acted and billed Mills through Lott's limited liability company, GSL Care Management, LLC. See Exhibit 14.

100. Lott's company GSL Care Management had assisted Dexel in the Mills' guardianship following Lott's retirement/resignation as 20-plus year guardianship coordinator for Probate Court No. 4.

101. Lott was familiar with the Mills' guardianship through Dexel's appointment as guardian of the person of Mills coupled with Lott's assisting Dexel on the Mills' guardianship.

102. Lott had been copied on emails between Dexel and Johnston and was aware of Johnston's multiple, continuing complaints of neglect by Silverado and her intent to seek Dexel's removal/replacement as Mills' guardian.

103. Lott was appointed as successor guardian to Dexel of the person of Mills in conjunction with the illegal, *ex parte*, unnoticed, unscheduled, meeting of Defendants Dexel, Lott, Comstock, and Judge Butts.

104. Lott breached her fiduciary duties to Mills, in the conspiracy with Comstock, Judge Butts, and Harris County, which culminated in the painful and tortured death of Mills and of damages to Johnston.

105. Johnston incorporates for all purposes as if fully set forth herein all paragraphs hereinabove regarding conspiracy, breach of fiduciary duty, and wrongful death setting out the claims regarding Dexel, Lott, Comstock, and Judge Butts regarding Lott's appointment as Successor Guardian.

106. On or about October, 2013, Lott moved Mills from Silverado to the Hampton nursing home.

107. Lott was provided with and had access to Mills medical records and as a result Lott knew that Mills was a stroke patient.

108. On or about March 18, 2014, Mills' doctor advised Lott that Mills needed to see a cardiologist and an endocrinologist. See Exhibit 14.

109. Lott never followed up on Mills' physician's directive for Mills to see a cardiologist.

110. Lott never followed up on Mills' physician's directive for Mills to see an endocrinologist.

111. On or about April 20, 2014, Johnston texted Lott that Mills was delirious and unresponsive with pus in her catheter, and needed immediately to be taken to the emergency room. Lott never answered Johnston's text.

112. When Lott failed or refused to answer Johnston's text, Johnston called 911 for help for Mills.

113. Instead of responding to Johnston's text, Lott instructed the Hampton personnel to turn away the paramedics Johnston had called.

114. Lott later called her own ambulance to send Mills to Methodist Hospital.

115. Lott intentionally and knowingly sent Mills to Methodist Hospital alone.

116. Mills was sent in the ambulance with a note on her stomach, stating only that she had pus in her urine, failing to provide a quick statement or reference to other critical information of Mills' condition.

117. Although Lott was the only person with legal authority to sign Mills into the hospital, Lott never signed Mills into the Hospital.

118. Mills signed herself into the Hospital.

119. For the entire duration of Mills' hospitalization Lott failed to appear at the hospital.

120. Mills was very ill while in the hospital and almost died from the long list of health problems from which she was suffering at the time she self-admitted herself to the hospital after Johnston had called emergency paramedics to come to the nursing home, been intercepted and countermanded by Lott and then sent alone with only a brief note pinned to Mills robe where Mill managed to be admitted without any assistance from Lott.

121. When Johnston continued to uncover evidence of Lott's neglect of Mills' necessary needs and challenged Lott's actions and failures to act to protect Mills in her role as Mills' guardian, Lott retaliated against Johnston by banning her from all contact with the institution providing care and with Mills' herself.

122. After Johnston notified Lott that Mills' care givers were continuing to double-diaper Mills, an illegal nursing practice, Lott failed and refused to

take any action to protect Mills from this unsafe practice that was known to contribute to urinary tract infections.

123. While under Lott's guardianship, Mills continued to experience multiple urinary track infections, many of which resulted in the hospitalization of Mills and caused serious threats and harm to Mills' health and life.

124. On November 15, 2013 Methodist Hospital conducted a visual swallowing test of Mills, which she passed.

125. Lott refused to acknowledge the test results from Methodist Hospital that Mills could eat carefully chosen solid food. Lott continued to order the care home to withhold solid food from Mills and to only provide prunes, and thickened water.

126. Lott used an out-of-hospital DNR (Do Not Resuscitate) order that had actually been signed by Dixel and not by Mills, to justify withholding nutrition from Mills at a time when Methodist Hospital's testing found that Mills could tolerate carefully chosen solid food.

127. Lott did not order the use of a feeding tube or other substitute means of providing nutrition.

128. Lott's refusal to provide anything other than prunes, water and

thickened water to Mills was a contributing factor in causing Mills' painful and tortured death by starvation and malnutrition.

XI. Claims against Clarinda Comstock

129. Johnston incorporates for all purposes as if fully set forth verbatim here all factual allegations in preceding and successive paragraphs involving Comstock.

130. On June 17, 2013, two days after Silverado allowed Mills to fall out of her wheelchair while unattended and break both bones in her leg, Judge Butts appointed Comstock as Mills' guardian ad litem, on Dixel's oral, *ex parte* motion., made with no notice to Johnston and Pierce, "Interested Persons" as defined by former Probate Code §601(15) and Tex. Estates Code §1002.018(2).

131. Dixel's written motion filed three days later, on June 20, 2013, carefully did not mention Mills' broken leg in which both bones were broken above the ankle.

132. Comstock never took action to protect Mills from Dixel's failure to act to protect Mills from neglect and abuse at Silverado.

133. Comstock assisted in preventing Mills' daughters, particularly Johnston, from protecting Mills from the neglect and abuse at Silverado.

134. Johnston made multiple outcries of abuse and neglect of Mills to Dexel; to Lott and Comstock; to Judge Butts, all to no avail.

135. Although Comstock conducted what she termed an “investigation” after her appointment, she refused to call key witnesses, such as Mills’ primary caretaker, who would have confirmed the neglect and dangerous conditions at Silverado that Johnston had been reporting to Dexel.

136. Johnston’s threats to seek Dexel’s replacement/removal immediately preceded Dexel’s filing his statutorily-defective Application to Resign and Appoint a Successor Guardian. Dexel’s certificate of service on his application demonstrates that he served only Comstock, the guardian ad litem, and no one else, with his application. See Exhibit 8.

137. Johnston incorporates for all purposes as if fully set forth herein all paragraphs herein above regarding Dexel’s fraud, breach of fiduciary duty, conspiracy, and wrongful death in which Comstock was involved.

138. Comstock facilitated Dexel’s fraud and breach of fiduciary duty, and participated as a member of the conspiracy which resulted in the appointment of Lott as successor guardian to Dexel by preparing a report to the court – replete with misrepresentations about Johnston.

139. Comstock’s report to the court failed to address the abuse and neglect

of Mills by Dexel and Silverado, as well as the conflict of interest that Dexel had with a business relationship with Silverado.

140. Comstock demanded that Johnston not photograph her mother's wounds, her bandaged leg and other injuries caused by Silverado's neglect and Dexel's acquiescence in the conduct of Silverado.

141. Comstock deliberately mischaracterized Johnston's statements regarding Mills' health problems and treatment needs by gross exaggerations that did not reflect Johnston's concerns.

142. Comstock falsely stated that Johnston denied her mother was incapacitated and that Johnston was opposed to medical treatment in favor of natural alternatives.

143. The false representations by Comstock were intentional and done with malice towards Johnston.

144. The false representations of Comstock to the Court constituted retaliatory acts taken against Johnston by maligning and disparaging Johnston, who merely insisted upon good nutrition to supplement fluids and vitamins that Mills was not receiving from Silverado.

145. One of the glaring misrepresentations in Comstock's report was the allegation that Mills was evicted from Silverado due to Johnston's conduct,

when Johnson had been begging Dixel for months to move Mills due to abuse and neglect at Silverado.

146. The conduct of Comstock was intended to de-legitimatize Johnston's legitimate complaints. When Johnston attempted to force Dixel to perform his duties – particularly: “(2) the duty to provide **care, supervision, and protection** for the ward.” Comstock assisted in shielding Dixel from liability for his acts and omissions and failure in his statutory “duty” to protect Mills.

147. On September 16, 2013, Comstock filed her “report,” of her “investigation” of Mills with the Court just in time for the unnoticed, unscheduled secret, *ex parte*, un-recorded meeting held the next day, as set out hereinabove.

148. Johnston was never afforded any meaningful hearing to dispute or disprove Comstock's defamatory statements against Johnston.

149. Comstock served Dixel with a copy of her report (and presumably also served Lott through Dixel).

150. Comstock did not serve Johnston, although Comstock had received Dixel's letter and notice of hearing in which Johnston was addressed as an “interested party.” See Exhibit 9.

151. Comstock participated in the unnoticed, unscheduled, secret, *ex parte*, unrecorded meeting to appoint Lott, as successor guardian notwithstanding the fact that Comstock would have seen that “Interested Parties” including (Johnston and Pierce) were notified of the hearing set for September 24 to appoint a successor guardian.

152. Comstock’s protection of Dixel as guardian was subsequently extended to protection of Lott as [successor] guardian, to the detriment of Mills, contributing to her death, and to the detriment of Johnston.

153. When questioned by investigators of the Judicial Branch Certification Commission (JBCC), Comstock covered up Lott’s abuse and neglect by a distorted interpretation of an out-of-hospital DNR executed by Dixel on behalf of Mills.

154. Comstock contributed to Mills’ emotional isolation by assisting Silverado through her report in keeping Mills away from her daughter, Johnston.

155. Comstock interfered with and blocked the appointment of Johnston’s sister, Cindy Pierce, as guardian of Mills, solely based on the fact that Larry Mills had conflict with his sisters, when his conflict should never have trumped Mills’ advanced directives and desires to have Johnston or Pierce

be her guardian.

156. Comstock attempted to block the appointment of Cindy Pierce, Johnston's sister, by filing a motion for security for costs of \$75,000 pursuant to Texas Est. Code § 1053.052, the "Pay to Play," provision — for which Johnston also includes hereinafter a challenge to the constitutionality of the Texas Estates Code.

**XI. Claims Against Judge Butts' Official Bond for
Gross Negligence of Judge Butts' Failure
to Use Reasonable Diligence in
the Performance of Her Duties**

157. Judge Christine Riddle Butts, in her capacity as an elected Harris County Probate Court Judge is liable pursuant to Tex. Est. Code §1201.003:

Judge's Liability:

A judge is liable on the Judge's bond to those damaged if damage or loss results to a guardianship or ward because of the gross neglect of the judge to use reasonable diligence in the performance of the Judge's duty under this subchapter.

158. The judge's duty as of January 1, 2014, is found in Tex. Est. Code §1201.001, which provides:

Determining Guardian's performance of Duties

The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that relate to the guardian's ward.

159. Plaintiff will show that Judge Christine Riddle Butts, as principal, and

Texas Bonding Company, as insurer, provided a surety bond to Harris County for the benefit of Harris County in the amount of \$500,000.00.

See Exhibit 1.

160. Pursuant to her bond Judge Christine Riddle Butts affirmed that she had been elected to the office of the Harris County Probate Judge Court No. 4 for a period of four (4) years beginning January 1, 2011 and ending December 31, 2014. Christine Riddle Butts affirmed that she was obligated to “well and faithfully perform and discharge all the duties required of him by law as the aforesaid officer and shall Abide by All Duties of This Office.”

161. Plaintiff hereby asserts that Christine Riddle Butts has violated the duties required of her elected office pursuant to Tex. Ext. Code §1201.003 and that Defendant Texas Bonding Company as the surety on her official bond is liable to the Plaintiff for all damages pursuant to Tex. Ext. Code §1201.003.

162. Plaintiff asserts that Judge Christine Riddle Butts is liable in an amount not to exceed the amount of the bond, or \$500,000.00 for all actual and consequential damages, damages for pain and suffering, damages for mental anguish, reasonable attorney’s fees, and costs and expenses of court resulting from her gross neglect of her duty.

163. Plaintiff expects to show that Judge Christine Riddle Butts failed to use reasonable diligence in the performance of her duties with regard to the guardianship of Willie Jo Mills, to whom Judge Butts owed a statutory duty of reasonable diligence and as a proximate cause of the breach of her duty of reasonable diligence that rose to a level of gross neglect on the part of Judge Christine Riddle Butts, Willie Jo Mills and Sherry Johnston were damaged in an amount that exceeds the limits of the official bond posted by Judge Butts.

164. Plaintiff will show that on or about April 28, 2014, a *First Amended Emergency Application for Temporary Restraining Order (“TRO”) vs. Ginger Lott* was filed of record and brought to the attention of the court coordinator for Judge Butts in order to obtain a hearing. See Exhibit 15. The application for the emergency TRO contained graphic and disturbing pictures of the body and person of Mills, who was in extreme distress. See Exhibit 7.

165. However, rather than setting a hearing on the TRO, Judge Butts conveyed via an email from her guardianship coordinator that:

“The court will not be scheduling a hearing on the amended second TRO. The court does not see an emergency and the case [challenging the appointment of Lott and seeking the appointment of Pierce as guardian of the ward] will be tried

within two weeks.”

166. Thereafter, Judge Butts held no trial on the issue of the jeopardy to the ward’s continued living because of the acts and omissions of court appointed guardian Lott. Mills was callously left to die a painful and tortured death as a result of the gross negligence of Judge Butts to exercise due diligence in reviewing whether guardian Lott was performing Lott’s duties as guardian.

167. Judge Butts acted with gross negligence in failing to review and remedy Lott’s *ultra vires* criminal conduct when Lott ordered that the Mills be denied nutrition necessary to sustain life based on an out-of-hospital-do-not-resuscitate order which was intended only for “no heroic measures,” not denial of life-saving nutrition.

168. On June 17, 2013, Judge Butts allowed Dixel to have illegal, *ex parte* contact with her to request appointment of a guardian ad litem for Mills and appointed Comstock in response to Dixel’s oral request, with no notice to Interested Parties Johnston or Cindy Pierce, Mills’ daughters.

169. Judge Butts violated Mills’ and Johnston’s rights of due process by her *ex parte* communications with Dixel and other parties, using her guardianship coordinator, Sherrie Fox to communicate *ex parte* to only

certain parties, to the exclusion of Johnston and her sister, Cindy Pierce, and Betty Jo Luckey, Mills' granddaughter-applicant.

170. On or about December 6, 2013, (on information and belief according to Fox's statement), Fox presented Judge Butts with an Emergency Application for Temporary Restraining Order for the protection of Mills. See Exhibit 15.

171. Judge Butts refused to hold an emergency hearing on the emergency TRO, even though she was presented with evidence of Lott's failing in her duties as guardian of the person of Mills. Instead, according to Fox, a "hearing would be set" and a hearing was set only as a "status conference" ten days later on December 16, 2016. Judge Butts held no hearing on the emergency TRO, in spite of evidence that Mills' life was in danger from the neglect and abuse she was experiencing. See Exhibit 16.

172. On April 28, 2014, Johnston filed her *First Amended Second Emergency Application for Temporary Restraining Order (TRO) vs. Ginger Lott for Mills' protection*. See Exhibit 15.

173. Citing "no emergency" Judge Butts refused to set a hearing and directed Fox to so inform Johnston's counsel. See Exhibit 16.

174. Judge Butts conspired with all defendants to violate Mills' and

Johnston's rights of due process.

175. Judge Butts failed and refused to set a trial date and attendant scheduling order, and refused to hold hearings on emergency motions to remove Lott for abuse and neglect of Mills; and refused to hear three motions for jury trial.

176. Judge Butts was deliberately and consciously indifferent to Mills' rights of due process; to her rights to be protected by her guardian; and to her rapidly-deteriorating and life-threatening medical condition, .

177. Judge Butts failed to use reasonable diligence to determine whether Lott as Mills' guardian was performing all of the duties required of her.

178. Judge Butts ignored Johnston's repeated alarms that Mills was on the brink of death multiple times and begging the court to intervene, to no avail.

179. Judge Butts ignored every warning in favor of discrediting the messenger, Johnston, who was clearly the scapegoat of Dixel and Lott to cover up their neglect and abuse of Mills.

180. Even with Johnston's verified motions warning of Mills' impending death, Judge Butts failed to confirm that Lott was performing all her duties as required.

181. Judge Butts refused to hear evidence in the multiple emergency motions filed by Cindy Pierce and Betty Jo Luckey, applicants, over the course of a year—the last of which was filed two days before Mills died.

182. Judge Butts refused to respond to three motions for jury trial of applicant Betty Jo Luckey, who was in all ways qualified and had a prior right of appointment when compared with Lott. Luckey never signed a waiver or right to serve and her affidavit of inability to pay was never challenged, rendering it effective as a matter of law.

XII. Violations of Federal Disability Laws - Harris County

183. Plaintiff brings disability discrimination claims under the Americans With Disabilities Act 1990 (as amended) (the “Act”); 42 U.S.C. § 12101 *et seq.* (“ADA”); and in particular under Title II of the Act; 42 U.S.C. §12131 *et seq.*

184. Plaintiff also brings claims under ADA Title III 42 U.S.C. § 12203 (ADAAA) involving retaliation.

185. For purposes of all of Plaintiff’s disability related claims, the Plaintiff incorporates by reference all related paragraphs with the same force and effect as if set forth verbatim herein.

186. Willie Jo Mills was a "qualified individual with a disability" as defined

by the Act at 42 U.S.C. § 12131:

§ 12131. Definitions

...

(2) Qualified individual with a disability.

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”

187. Defendant, Harris County, is a "public entity" as defined in and under the Act, see 42 U.S.C. § 12131.

§ 12131. Definitions

As used in this title:

- (1) Public entity. The term “public entity” means –
- (A) any state or local government;
 - (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
 - (C) not relevant to this case.

188. Defendants, Dexel, Judge Butts, Lott & GSL Care Management, LLC, and Comstock, collectively, were responsible for developing, implementing, accommodating, and/or administering to Mills the services, programs, and activities of Harris County in and under their immediate control and

supervision, including the guardianship statutes.

189. Defendants' violations of the ADA, includes the following violations of federal law by Defendants' acting under color of state law in the guardianship of Mills:

- a. illegal disability discrimination under the ADA;
- b. violations of the integration mandate of Title II of the ADA;
- c. violation of the implementing regulations for these statutes.

190. The combined acts and omissions committed by the Defendants, as described herein, resulted in and proximately caused Mills to be deprived of the benefits of the federal law protecting the rights of disabled persons to be protected in her right of participation as more fully elaborated herein.

191. Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than prisoners whose conditions of confinement are designed to punish. Memorandum Opinion and verdict of the Court in *M.D. v. Abbott*, 152 F. Supp.3d 684 (S.D. TX 2015).

XII - A. ADA - Title II

192. In order to establish a prima facie case under Title II of the American with Disabilities Act 42 U.S.C. § 12101 *et seq.*, the Plaintiff must establish:

- a. Mills was a qualified individual with a disability;
- b. Mills was entitled to the services, programs or activities of Harris County and Harris County's guardianship courts; and
- c. Mills was denied the benefits of the services, programs or activities of the Harris County Guardianship Courts. Mills, and/or persons advocating on her behalf, were subjected to discrimination by Harris County and by the Harris County Guardianship Courts.

193. On July 22, 2009, the then-judge of Harris County Probate Court No. 4 found Mills to be a disabled adult person in need of a court-appointed guardianship because "Mills, an 81 year old adult female is mentally incapable to care for herself totally incapacitated and totally incapable to maintaining her person who does not have the capacity to operate a motor vehicle or to vote in a public election." See Exhibit H, Order Appointing David Dixel Guardian of the Person.

194. By virtue of the Order of Guardianship, Mills, "was a qualified individual with a disability" by law, as contemplated under the ADA.

195. By virtue of the Order of Guardianship, Mills became entitled to all of the services, programs or activities of Harris County and Harris County's Guardianship courts.

196. Harris County is a local governmental entity and is therefore a "public

entity” as contemplated under the ADA.

197. The remaining Defendants, in all capacities pled, David Dexel, Judge Butts, Ginger Lott; GSL Care Management, LLC, and Clarinda Comstock, collectively, were responsible for developing, implementing, accommodating, and/or administering to Mills the services, programs, and activities of Harris County and/or the Harris County Guardianship Courts compatible with the requirements of the ADA

198. The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law.

" We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U.S. 702, 719, 138 L. Ed. 2d 772, [**2060] 117 S. Ct. 2258 (1997). [****15] The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." 521 U.S. at 720; see also *Reno v. Flores*, 507 U.S. 292, 301-302, 123 L. Ed. 2d 1, 113 S. Ct. 1439 (1993).” *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

199. The ward retains her right to Constitutional due process under the ADA.

200. The Defendants, with discriminatory animus, acted and failed and refused to act to extend any ADA accommodations to disabled guardianship wards such as Mills in order that the ward may participate in

court determinations relating to themselves as mandated by Title II of the ADA.

201. Mills and Johnston's Rights to Due Process and a meaningful hearing were violated by the un-noticed, un-scheduled, un-recorded, *ex parte* meetings which resulted in Lott and Comstock's appointments by Butts without opportunity for Mills and for Interested Parties to Mills, namely: Johnston, Pierce or Luckey, to be heard in opposition and to be heard in support of her family member alternative choices for guardian of her person.

202. The "participation requirement" of Title II serves to protect Mills' due process rights to a meaningful hearing. *Popovich v. Cuyahoga County Court of Common Pleas*, 276 F.3d 808, 815 (2002), cert. denied 546 U.S. 1176 (2006).

203. Throughout the guardianship of Mills up to and including her death, the Defendants intentionally discriminated with discriminatory animus against Mills because of her disabilities by refusing to accommodate her "right of participation" under the ADA³ and her due process rights under

³ Title II of the American with Disabilities Act of 1990, 42 U.S.C. § 12132, provides that "no qualified individual with a disability, shall be excluded from participation in and or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

the Fourteenth Amendment to a meaningful hearing in the court guardianship proceedings involving Mills, particularly as the ADA “right to participation” related to Mills’ expressed desire to have either her daughter Johnston or her daughter Pierce or her granddaughter Luckey become guardian of her person.

204. The appointments of Comstock and Lott coming in conjunction with and upon the heels of Dexel’s resignation, which resignation occurred in derogation of the statutory requirements – conditions precedent to Dexel’s being properly permitted to withdraw – coupled with the conspiracy of the Defendants to protect each other from public exposure of their wrongdoing, provide focus and further serve to highlight the Defendants’ intentional discrimination and the discriminatory animus with which the Defendants operated behind closed doors and denied access to the courts and the right to participate in hearings to Mills and Johnston.

205. The right of family integrity and right to a permanent family derive from the First Amendment’s right of association, the Ninth Amendment’s reservation of rights to the people; and the Fourteenth Amendments substantive due process protections. Memorandum Opinion and verdict of the Court in *M.D. v. Abbott*, 152 F. Supp.3d 684 (S.D. TX 2015).

206. The First Amendment, Ninth Amendment and Fourteenth Amendment rights of Mills, a disabled adult, to freely and routinely associate with, and be provided with emotional support and informed perspective by Johnston (and Pierce and Luckey, *supra*, although not plaintiffs herein) were infringed by the Defendants' acts and failures to act, acting in concert, jointly and severally and conspiring to do so. Mills was prevented from exercising her constitutional rights under the First Amendment, Ninth Amendment and Fourteenth Amendment.

207. Mills, a disabled adult, retained her constitutional rights to freely and routinely associate with, and be provided with emotional support and informed perspective by Johnston (and Pierce and Luckey, *supra*, although not plaintiffs herein). By the Defendants' acts and failures to act, acting in concert, jointly and severally and conspiring to do so, Mills was prevented from exercising her constitutional rights under the First Amendment and Johnston was prevented from effectively advocating on behalf of Mills.

208. The actions and inactions of Defendant Judge Butts set out herein, assisted by her court appointed agents and appointees, in their official capacities constitute a habit, custom, pattern or practice that is such a

substantial departure from accepted professional judgment, practice, and standards as to demonstrate that Defendants did not base their conduct on professional judgment(s).

209. The acts and omissions of Defendants shock the conscience by constituting deliberate indifference to the constitutionally protected rights of Mills, or evidence substantial departure from accepted professional judgment.

210. Johnston seeks damages for what she complains was a habit, pattern, practice or custom of disability discrimination by the Defendants, directed at Mills, whether individually, collectively and/or collectively in concert, in violation of the ADA, Title II.

211. Johnston seeks damages for what she complains is a habit, pattern, custom or practice of disability discrimination by the Defendants, whether individually, collectively and/or collectively in concert, in violation of 42 U.S.C. § 12132;³ 28 C.F.R. § 35.130 wherein guardianship wards in Harris County, Texas are routinely excluded from participation in the hearings

³ ³ § 12132. Discrimination Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination. Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination.

involving their guardianships and by statutory scheme provided no redress for this practice to be discontinued.

XII - B. ADA - Title III - Retaliation Claims

212. In order to prove Title III - ADA - Retaliation Claims 42 U.S.C. § 12203 (ADAAA) a plaintiff must establish that:

- a. she engaged in a protected activity such as asking for reasonable accommodations or the filing of or making a complaint to an entity charged with the responsibility of oversight of disabled persons;
- b. she was subjected to an adverse action by the public entity; and
- c. a causal nexus subsisted between the adverse action and the protected activity.

213. For the last eight years of Mills' life, plaintiff Johnston, (as well as her sister, Pierce, and Johnston's daughter, Luckey) advocated for Mills' constitutionally-protected due process of law interests provided in and under the Fourteenth Amendment, including, but not limited to the following:

- a. the right to be heard on her desire as to whom is appointed her guardian, especially as expressed in a written instrument prior to her mental incapacity;
- b. the right to be heard on issues involving allegations of neglect, maltreatment, and wrongful conduct by persons acting under the Court's direction;

- c. the right to receive notice of all hearings involving her person;
- d. the right to a meaningful hearing;
- e. the right to be transported to the hearing and/or to be accommodated with a television hookup to the courtroom when the hearing is taking place and to be heard as a witness at the hearing; and
- f. the right to be free of retaliatory discrimination for exercise of her rights to due process, all guaranteed in, by, and under, the Fourteenth Amendment as made applicable to the states by the Fourteenth Amendment.

214. For the last eight years of Mills' life, plaintiff Johnston, (as well as her sister, Pierce, and Johnston's daughter, Luckey) advocated for Mills' constitutionally-protected liberty interests provided in and under the First Amendment including, but not limited to the following:

- a. the right of free speech;
- b. the right of free association with family and friends;
- c. the right of privacy together with other persons of her choice;
- d. the right of personal autonomy;
- e. the right of free choice and self-determination; and
- f. right to be free of retaliatory discrimination for exercise of freedom to speak out on matters of public concern, all guaranteed in, by, and under, the First Amendment as made applicable to the states by the Fourteenth Amendment.

215. Mills suffered the following retaliatory acts by the Defendants acting jointly and severally:

- a. retaliation against Johnston for exercising her First Amendment right to free speech - to speak out on matters of public concern; evidenced by Dexel's threats to Johnston to interfere with Mills' ability to freely associate with Johnston if Johnston caused problems; evidenced by Dexel's giving Johnston notice of a hearing on his resignation motion, which never occurred, and then participating in an earlier in time *ex parte* meeting-hearing without notice to Mills or to Johnston; evidenced by Comstock's biased report to the court following Dexel's resignation and designed to support Dexel and discredit Johnston by maligning Johnston with hearsay not further investigated or viewed with a critical eye by Comstock.
- b. vicious and painful mal-treatment of Mills in retaliation for Johnston's exercise of her First Amendment right - to speak out on behalf of and in protection of Mills; evidenced by the intentional starvation of Mills by Lott & GSL in order to end Mills' life as quickly as possible;
- c. violation of Johnston's First Amendment Right to freedom of association with Mills; evidenced by the banning of Johnston; evidenced by Comstock's biased report to the court following Dexel's resignation and designed to support Dexel and discredit Johnston by maligning Johnston with hearsay not further investigated or viewed with a critical eye by Comstock.
- d. violation of Mills' First Amendment right to freedom of association with Johnston and/or other relatives of Mills, evidenced by the banning of Johnston; evidenced by Comstock's biased report to the court following Dexel's resignation and designed to support Dexel and discredit

Johnston by maligning Johnston with hearsay not further investigated or viewed with a critical eye by Comstock.

- e. violation of Johnston's Fourteenth Amendment due process rights to meaningful hearings; evidenced by the failure of Dixel to advise Mills or Johnston of hearings; and evidenced by the refusal of Judge Butts to hold an emergency hearing and a trial on the merits;
- f. violation of Mills' Fourteen Amendment due process rights to meaningful hearings; evidenced by the failure of Dixel and later the failure of Lott to advise Mills and Johnston of hearings and the opportunity to attend and be heard; and evidenced by the failure of first Dixel and later the failure of Lott to accommodate Mills presence and input.

216. Johnston suffered the following retaliatory acts by the Defendants acting jointly and severally:

- a. retaliation against Johnston for exercising her First Amendment right to free speech - to speak out on matters of public concern; evidenced by Dixel's threats to Johnston to interfere with Mills' ability to freely associate with Johnston if Johnston caused problems; evidenced by Dixel's giving Johnston notice of a hearing on his resignation motion, which never occurred, and then participating in an earlier in time *ex parte* meeting-hearing without notice to Mills or to Johnston; evidenced by Comstock's biased report to the court following Dixel's resignation and designed to support Dixel and discredit Johnston by maligning Johnston with hearsay not further investigated or viewed with a critical eye by Comstock.
- b. vicious and painful mal-treatment of Mills in retaliation for Johnston's exercise of her First Amendment right - to speak out

on behalf of and in protection of Mills; evidenced by the intentional starvation of Mills by Lott and GSL in order to end Mills' life as quickly as possible;

- c. violation of Johnston's First Amendment Right to freedom of association with Mills; evidenced by the banning of Johnston; evidenced by Comstock's biased report to the court following Dixel's resignation and designed to support Dixel and discredit Johnston by maligning Johnston with hearsay not further investigated or viewed with a critical eye by Comstock.
- d. violation of Mills' First Amendment right to freedom of association with Johnston and/or other relatives of Mills; evidenced by the banning of Johnston; evidenced by Comstock's biased report to the court following Dixel's resignation and designed to support Dixel and discredit Johnston by maligning Johnston with hearsay not further investigated or viewed with a critical eye by Comstock.
- e. violation of Johnston's Fourteenth Amendment due process rights to meaningful hearings; evidenced by the failure to advise Mills or Johnston of hearings and Judge Butts refusal to hold an emergency hearing or a trial on the merits;
- f. violation of Mills' Fourteen Amendment due process rights to meaningful hearings; evidenced by the failure of Dixel and later the failure of Lott to advise Mills and Johnston of hearings and the opportunity to attend and be heard; and evidenced by the failure of first Dixel and later the failure of Lott to accommodate Mills presence and input.

217. Johnston seeks damages for what she complains is retaliatory discrimination suffered by Mills and by Johnston herself by the

Defendants, whether individually, collectively and/or collectively in concert, in violation of the Title III of the ADA referred to as the ADAAA wherein guardianship wards and their friends and families involving Harris County, Texas guardianships are routinely retaliated against for asserting or attempting to assert their rights under the ADA and the ADAAA.

U.S.C. § 12132; 28 C.F.R. § 35.130; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 790, *et seq.* wherein guardianship wards in Harris County, Texas are routinely excluded from participation in the hearings involving their guardianships and by statutory scheme provided no redress for this practice to be discontinued.

218. The Defendants, with discriminatory animus, acted and failed and refused to act to extend any ADA accommodations to disabled guardianship wards such as Mills in order that they could participate in court determinations relating to themselves as mandated by Title II of the ADA. .

XIII. Relief Requested

219. Plaintiff seeks compensatory damages, actual damages, resulting damages, pain and suffering damages and mental anguish damages, related to the harm done to Mills and the harm done to Plaintiff

individually

220. Plaintiff seeks exemplary damages under her claims for civil rights violations and pendent state tort claims

221. Plaintiff seeks recovery of her reasonable attorneys fees, costs and expenses of court.

XIV. Exemplary Damages

222. The wrongful conduct of the Defendants was committed intentionally and with malice or, alternatively, with reckless disregard for the rights and sensibilities of the Plaintiff, and Mills prior to her wrongful death.

XV. Attorney's Fees

223. Defendants' conduct as described in this petition, and the resulting damages and losses to Plaintiff have necessitated that Plaintiff retain an attorney to represent her in her claims against the Defendants. Plaintiff is statutorily entitled to recover from Defendants an additional sum to compensate Plaintiff for reasonable fees for such attorney's services and the preparation and prosecution of this action, as well as a reasonable fees for any and all appeals to other courts.

224. Plaintiff is entitled to an award of attorney's fees and costs and expenses pursuant to the ADA violations.

XVI. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and to answer herein and that upon final hearing, the Court enter judgment in favor of Plaintiff against Defendants, jointly and severally, in an amount in excess of the minimum jurisdictional limits of this Court, for:

1. Actual damages;
2. Compensatory damages;
3. Resulting damages;
4. Pain and suffering damages;
5. Mental anguish damages;
6. Exemplary damages;
8. Reasonable and necessary attorney's fees;
9. Costs of court and expenses;
10. Pre and post judgment interest at the highest rate allowed by law,
11. Such other and further relief, general or special, at law or in equity, to which Plaintiff may show herself to be justly entitled.

Respectfully submitted,

/S/ Susan C. Norman

Susan C. Norman
Texas Bar No. 15083020
Law Offices of Susan C. Norman
P.O. Box 52518
Houston, Texas 7052
(713) 882-2066 Voice
(281) 402-3682 Facsimile
SueNorman@SueNormanLaw.com

Attorney for Sherry Johnston

Certificate of Service

I hereby certify that a true copy of the foregoing Second Amended Complaint was served on the following attorneys of record via the Court's ECF system on October 25, 2017.

Julie Countiss
Assistant County Attorney
Office of the Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002
email: julie.countiss@cao.hctx.net
Counsel for Defendants Harris County, Texas; Judge Butts and Sherrie Fox

Zandra E. Foley
Cory S. Reed
Thompson, Coe, Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056
email: zfoley@thompsoncoe.com

email: creed@thompsoncoe.com
Counsel for Clarinda Comstock

Alan N. Magenheim & Associates
Mangenheim & Associates
3701 Kirby Dr., Suite 913
Houston, Texas 77098
email: Alan@manenheimlaw.com

Billy Shepherd
Stephen R. Bailey
Allison Standish Miller
Shepherd Prewitt Miller, PLLC
770 South Post Oak Lane, Suite 420
Houston, Texas 77056
email: bshepheard@spmlegal.com
email: sbailey@spmlegal.com
email: amiller@spmlegal.com
Counsel for David Dixel

/S/ Susan C. Norman

Susan C. Norman