

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI

THE ESTATE OF TAMMY L. STEWART )  
By and Through the Personal Representative )  
ANTHONY J. STEWART )  
and )  
ANTHONY J. STEWART, Individually )  
and as Natural Father and Next Friend of )  
HAYDEN STEWART )  
and )  
HAYDEN STEWART, a Minor, by and )  
through His Next Friend, )  
ANTHONY J. STEWART )

Plaintiffs, )

vs. )

Case No. 09CY-CV01813  
Division 2

FOUNDATION CARE, LLC )  
d/b/a FOUNDATION CARE, )  
SOURCECF, INC., )  
EURAND PHARMACEUTICALS, INC., )  
EURAND, NV, )  
APTALIS PHARMAS, INC., )  
X-GEN PHARMACEUTICALS, INC., )  
MICHAEL A. SCHULTZ, R.PH., )  
CHARLENE HEYDE, R.PH, )  
and )  
JOHN DOES and JANE DOES )

Defendants. )

**FILED**

JUN 19 2013

MAW

TIME:

Clay County Circuit Court

**DEFENDANT FOUNDATION CARE, LLC D/B/A FOUNDATION CARE'S  
SEPARATE ANSWER TO PLAINTIFFS' SECOND AMENDED PETITION  
FOR DAMAGES AND WRONGFUL DEATH**

COMES NOW Defendant Foundation Care, LLC d/b/a Foundation Care (hereinafter  
"Foundation Care"), by and through its counsel of record, and for its Separate Answer to Plaintiffs'  
Second Amended Petition for Damages and Wrongful Death, states as follows:

**ALLEGATIONS COMMON TO ALL COUNTS**  
**PLAINTIFFS**

1. Defendant Foundation Care admits the allegations contained in Paragraph 1 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

2. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 2 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

3. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 3 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

**DEFENDANTS**

4. In response to Paragraph 4 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that it is a Missouri Limited Liability Company, duly organized and existing under the laws of the State of Missouri. Further, Defendant Foundation Care admits that service may be had on it by serving its registered agent as follows: Daniel P. Blakeley, [REDACTED]. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

5. Defendant Foundation Care denies the allegations contained in Paragraph 5 of Plaintiff's Second Amended Petition for Damages and Wrongful Death.

6. In response to Paragraph 6 of Plaintiff's Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care admits that it had prescription medication delivered

by common carrier to [REDACTED] Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

7. Paragraph 7 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

8. Paragraph 8 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

9. Paragraph 9 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

10. Paragraph 10 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

11. Paragraph 11 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

12. Paragraph 12 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

13. Paragraph 13 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

14. Paragraph 14 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

15. Paragraph 15 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death is not directed at Defendant Foundation Care, therefore, it is not required to answer thereto. To the extent an answer to said Paragraph is required of Defendant Foundation Care, it denies any and all allegations contained therein.

#### **JURISDICTION AND VENUE**

16. Defendant Foundation Care is without sufficient information, knowledge, or belief as to the allegations contained in Paragraph 16 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

17. Defendant Foundation Care is without sufficient information, knowledge, or belief as to the allegations contained in Paragraph 17 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

#### **WRONGFUL DEATH**

18. In response to Paragraph 18 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care denies any act, conduct, occurrence, transaction or circumstance for which it is liable to Plaintiffs and further denies Plaintiffs sustained any damages. Defendant Foundation care further denies any and all remaining allegations contained in said Paragraph.

19. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 19 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

#### **FACTS OF THE OCCURRENCE**

20. In response to Paragraph 20 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that Tammy Stewart and her physician represented to it that she had Cystic Fibrosis. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

21. In response to Paragraph 21 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that Tammy Stewart's physician faxed to Foundation Care a prescription for Mrs. Stewart for Colistin to be inhaled twice daily for 28 days then off for 28 days. Mrs. Stewart's physician also authorized five (5) refills of this prescription. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

22. In response to Paragraph 22 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that Colistin, in a form suitable for nebulization, can be made by mixing sterile, preservative-free Colistimethate Sodium in a lyophilized cake, with a sterile liquid for use in inhalation. The Dbu is 2, 4-diaminiobutanoic acid; R is 5-methylheptyl in Colistin A and 5-methylhexyl in Colistin B. In fact, once reconstituted it is stable for 60 days. Colistin is stable in water at 4 and 37°C for up to 60 days and 120 h, respectively. (Clinical Pharmacology 8/6/2008). Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

23. Defendant Foundation Care denies the allegations contained in Paragraph 23 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

24. Defendant Foundation Care denies the allegations contained in Paragraph 24 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

25. In response to Paragraph 25 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that it has developed an expertise in the medication management and treatment of patients with Cystic Fibrosis. Further, Defendant Foundation Care states that its pharmacists will prepare a Colistimethate prescription in unit dose neb vials at the direction of a physician. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

26. In response to Paragraph 26 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that it delivered a package to an address represented to be that of Tammy Stewart. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

27. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 27 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

28. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 28 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

29. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 29 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

30. Defendant Foundation Care denies the allegations contained in Paragraph 30 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. Defendant Foundation Care further states that the June 28, 2007 FDA Alert speaks for itself and that it specifically denies any allegation inconsistent therewith.

31. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 31 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

32. Defendant Foundation Care denies the allegations contained in Paragraph 32 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

33. In response to Paragraph 33 of Plaintiffs' Second Amended Petition, Defendant Foundation Care states that the PARI eFlow Electronic Nebulizer, a handheld nebulizer used by patients for whom doctors have prescribed medication for nebulization, received 510(k) marketing clearance from the FDA. Defendant Foundation Care is without sufficient information, knowledge,

or belief as to any and all remaining allegations contained said Paragraph and, therefore, denies the same.

34. In response to Paragraph 34 of Plaintiffs' Second Amended Petition, Defendant Foundation Care states that the eFlow Nebulizer, is advertised to reduce administration time by up to fifty percent when the physician's goal is deliver an equivalent respirable dose. Defendant Foundation Care is without sufficient information, knowledge, or belief as to any and all remaining allegations contained said Paragraph and, therefore, denies the same.

35. In response to Paragraph 35 of Plaintiffs' Second Amended Petition, Defendant Foundation Care states that the PARI eFlow Electronic Nebulizer, a handheld nebulizer used by patients for whom doctors have prescribed medication for nebulization, received 510(k) marketing clearance from the FDA. Defendant Foundation Care further states that the FDA has not approved any combination of a medication with the eFlow device as a drug/device combination. Defendant Foundation Care is without sufficient information, knowledge, or belief as to any and all remaining allegations contained said Paragraph and, therefore, denies the same.

36. Defendant Foundation Care denies the allegations contained in Paragraph 36 of Plaintiffs' Second Amended Petition.

37. Defendant Foundation Care denies the allegations contained in Paragraph 37 of Plaintiffs' Second Amended Petition.

38. Defendant Foundation Care denies the allegations contained in Paragraph 38 of Plaintiffs' Second Amended Petition.

39. Defendant Foundation Care denies the allegations contained in Paragraph 39 of Plaintiffs' Second Amended Petition.



40. Defendant Foundation Care denies the allegations contained in Paragraph 40 of Plaintiffs' Second Amended Petition.

41. Defendant Foundation Care denies the allegations contained in Paragraph 41 of Plaintiffs' Second Amended Petition.

42. Defendant Foundation Care denies the allegations contained in Paragraph 42 of Plaintiffs' Second Amended Petition.

43. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 43 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

44. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 44 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

45. Defendant Foundation Care denies the allegations contained in Paragraph 45 of Plaintiffs' Second Amended Petition.

46. Defendant Foundation Care denies the allegations contained in Paragraph 46 of Plaintiffs' Second Amended Petition.

**COUNT I**  
**NEGLIGENCE AGAINST DEFENDANT FOUNDATION CARE**

47. In response to Paragraph 47 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to Paragraphs 1 through 46 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

48. In response to Paragraph 48 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care admits that it sold Tammy Stewart a 28-day supply of pre-mixed, individually packaged, ready-to-use unit dose neb vials of Colistin on two occasions that Defendant Foundation Care and/or its agents, servants and/or employees prepared, compounded, and/or mixed. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

49. In response to Paragraph 49 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care admits that it provided pharmaceutical services to Tammy Stewart as alleged in said Paragraph. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

50. Defendant Foundation Care denies the allegations contained in Paragraph 50 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

51. Defendant Foundation Care denies the allegations contained in Paragraph 51, including its Subparts a. through u., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

#### DAMAGES

52. Defendant Foundation Care denies the allegations contained in Paragraph 52, including its Subparts a. through o., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

53. Defendant Foundation Care denies the allegations contained in Paragraph 53 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

**COUNT II**  
**NEGLIGENCE AGAINST DEFENDANTS JOHN DOES AND JANE DOES**

54. As Count II of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, including Paragraphs 54, 55, 56, 57, 58 and its Subparts a. through u., 59 and its Subparts a. through o., and 60, asserts a claim for relief against Defendants John Does and Jane Does only and does not attempt to state a cause of action against Defendant Foundation Care, Defendant Foundation Care is not required to answer thereto. To the extent an answer is required of Defendant Foundation Care, it incorporates by reference its responses to Paragraphs 1 through 53 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein and denies all allegations contained in Count II.

**COUNT III**  
**STRICT LIABILITY AGAINST DEFENDANT FOUNDATION CARE**  
**PRODUCT DEFECT**

55. In response to Paragraph 61 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to Paragraphs 1 through 60 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

56. In response to Paragraph 62 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that it has developed an expertise in the medication management and treatment of patients with Cystic Fibrosis. Further, Defendant Foundation Care states that its pharmacists will prepare a Colistimethate prescription in unit dose neb vials at the direction of a physician. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

57. In response to Paragraph 63 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that Colistin, in a form suitable for nebulization, can be made by mixing sterile, preservative-free Colistimethate Sodium in a lyophilized cake, with a sterile liquid for use in inhalation. The Dbu is 2, 4-diaminobutanoic acid; R is 5-methylheptyl in Colistin A and 5-methylhexyl in Colistin B. In fact, once reconstituted it is stable for 60 days. Colistin is stable in water at 4 and 37°C for up to 60 days and 120 h, respectively. (Clinical Pharmacology 8/6/2008). Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

58. In response to Paragraph 64 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care admits that it sold Tammy Stewart a 28-day supply of pre-mixed, individually packaged, ready-to-use unit dose neb vials of Colistin on two occasions. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

59. In response to Paragraph 65 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care admits that it sold Tammy Stewart a 28-day supply of pre-mixed, individually packaged, ready-to-use unit dose neb vials of Colistin on two occasions in the course of its business. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

60. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 66 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

61. Defendant Foundation Care denies the allegations contained in Paragraph 67, including its Subparts a. through e., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

**DAMAGES**

62. Defendant Foundation Care denies the allegations contained in Paragraph 68, including its Subparts a. through o., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

**COUNT IV**  
**STRICT LIABILITY AGAINST DEFENDANT FOUNDATION CARE**  
**FAILURE TO WARN**

63. In response to Paragraph 69 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to Paragraphs 1 through 68 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

64. In response to Paragraph 70 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care admits that it sold Tammy Stewart a 28-day supply of pre-mixed, individually packaged, ready-to-use unit dose neb vials of Colistin on two occasions in the course of its business. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

65. Defendant Foundation Care denies the allegations contained in Paragraph 71 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

66. Defendant Foundation Care denies the allegations contained in Paragraph 72, including its Subparts a. through d., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

67. Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations contained in Paragraph 73 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death and, therefore, denies the same.

**DAMAGES**

68. Defendant Foundation Care denies the allegations contained in Paragraph 74, including its Subparts a. through o., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

**COUNT V**  
**COMMON LAW BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AGAINST DEFENDANT FOUNDATION CARE**

69. In response to Paragraph 75 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to Paragraphs 1 through 74 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

70. In response to Paragraph 76 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that Colistimethate sodium and/or Colistin is ordinarily administered intravenously or intramuscularly; however, it further recognizes that the Colistimethate sodium and/or Colistin may also be administered in alternative manners as prescribed by a physician. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

71. In response to Paragraph 77 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care admits that it sold Plaintiff a 28-day supply of pre-mixed, individually packaged, ready-to-use unit dose neb vials of Colistin on two occasions. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

72. In response to Paragraph 78 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that its pharmacists will prepare a Colistimethate prescription in unit dose neb vials at the direction of a physician and Tammy Stewart's physician

faxed to Foundation Care Tammy Stewart's prescription for Colistin to be inhaled twice daily for 28 days then off for 28 days. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

73. In response to Paragraph 79 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that it has developed an expertise in the medication management and treatment of patients with Cystic Fibrosis. Further, Defendant Foundation Care states that its pharmacists will prepare a Colistimethate prescription in unit dose neb vials at the direction of a physician. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

74. In response to Paragraph 80 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care states that it has developed an expertise in the medication management and treatment of patients with Cystic Fibrosis. Further, Defendant Foundation Care states that its pharmacists will prepare a Colistimethate prescription in unit dose neb vials at the direction of a physician and Tammy Stewart's physician faxed to Foundation Care Tammy Stewart's prescription for Colistin to be inhaled twice daily for 28 days then off for 28 days. Defendant Foundation Care denies any and all remaining allegations contained in said Paragraph.

75. Defendant Foundation Care denies the allegations contained in Paragraph 81 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

#### **DAMAGES**

76. Defendant Foundation Care denies the allegations contained in Paragraph 82, including its Subparts a. through o., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

**COUNT VI**  
**STRICT LIABILITY AGAINST DEFENDANT SOURCE CF AND FOUNDATION**  
**CARE FOR PRODUCT DEFECT**

77. In response to Paragraph 83 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to Paragraphs 1 through 82 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

78. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 84 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

79. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 85 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

80. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 86 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.



81. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 87 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

82. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 88 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

83. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 89 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

#### **DAMAGES**

84. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 90, including its Subparts a. through o., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such

an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

**COUNT VII**  
**STRICT LIABILITY AGAINST SOURCECF AND FOUNDATION CARE FOR**  
**FAILURE TO WARN**

85. In response to Paragraph 91 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to Paragraphs 1 through 90 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

86. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 92 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

87. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 93 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

88. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 94 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant

Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

89. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 95 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

90. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 96 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

91. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 97 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

**COUNT VIII**  
**STRICT LIABILITY OF SOURCECF AND FOUNDATION CARE FOR DEFECTIVE**  
**MANUFACTURE AND/OR CONSTRUCTION**

92. In response to Paragraph 98 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to Paragraphs

1 through 97 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

93. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 99 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

94. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 100 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

95. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 101 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

**COUNT IX**  
**NEGLIGENCE OF SOURCECF AND FOUNDATION CARE**

96. In response to Paragraph 102 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to

Paragraphs 1 through 101 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

97. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 103 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

98. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 104 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

99. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 105 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

**COUNT X**  
**NEGLIGENCE OF SOURCECF AND FOUNDATION CARE**

100. In response to Paragraph 106 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to

Paragraphs 1 through 105 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

101. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 107 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

102. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 108 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

103. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 109 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

104. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 110 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant

Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

105. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 111 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

106. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 112 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

107. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 113 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

108. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 114 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant

Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

109. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 115 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

110. As the allegations contained in Paragraph 116 of Plaintiffs' Second Amended Petition are directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations in said Paragraph and, therefore, denies the same.

111. As the allegations contained in Paragraph 117 of Plaintiffs' Second Amended Petition are directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to the allegations in said Paragraph and, therefore, denies the same.

112. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 118 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.



113. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 119 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

114. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 120 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

115. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 121 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at SourceCF, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at Source CF and, therefore, denies the same.

**COUNT XI**  
**LIABILITY OF EURAND AND APTALIS PHARMA US, INC.**

116. As Count XI of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, including Paragraphs 122, 123, 124, 125, 26, and 127, asserts a claim for relief against Defendants Eurand and Aptalis Pharma US, Inc. only and does not attempt to state a cause of action against Defendant Foundation Care, Defendant Foundation Care is not required to answer thereto.

To the extent an answer is required of Defendant Foundation Care, it incorporates by reference its responses to Paragraphs 1 through 121 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein and denies all allegations contained in Count XI.

**COUNT XII**  
**NEGLIGENCE AGAINST X-GEN PHARMACEUTICALS, INC.**

117. As Count XII of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, including Paragraphs 128, 129, 130, 131, 132, 133, 134, 135 and its Subparts a. through g., 136 and its Subparts a. through o., and 137, asserts a claim for relief against Defendant X-Gen Pharmaceuticals, Inc. only and does not attempt to state a cause of action against Defendant Foundation Care, Defendant Foundation Care is not required to answer thereto. To the extent an answer is required of Defendant Foundation Care, it incorporates by reference its responses to Paragraphs 1 through 127 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein and denies all allegations contained in Count XII.

**COUNT XIII**  
**NEGLIGENCE AGAINST MICHAEL A. SCHULTZ, R.PH.**

118. As Count XIII of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, including Paragraphs 138, 139, 140 and its Subparts a. through f., 141, 142, and 143, asserts a claim for relief against Defendant Michael A. Schultz, R.Ph. only and does not attempt to state a cause of action against Defendant Foundation Care, Defendant Foundation Care is not required to answer thereto. To the extent an answer is required of Defendant Foundation Care, it incorporates by reference its responses to Paragraphs 1 through 137 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein and denies all allegations contained in Count XIII.

**COUNT XIV**  
**NEGLIGENCE AGAINST CHARLENE HEYDE, R.PH.**

119. As Count XIV of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, including Paragraphs 144, 145, 146 and its Subparts a. through f., 147, 148, and 149, asserts a claim for relief against Defendant Charlene Heyde, R.Ph. only and does not attempt to state a cause of action against Defendant Foundation Care, Defendant Foundation Care is not required to answer thereto. To the extent an answer is required of Defendant Foundation Care, it incorporates by reference its responses to Paragraphs 1 through 143 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein and denies all allegations contained in Count XIV.

**COUNT XV**  
**LOSS OF CONSORTIUM CLAIM OF PLAINTIFF ANTHONY J. STEWART**

120. In response to Paragraph 150 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to Paragraphs 1 through 149 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

121. Defendant Foundation Care denies the allegations contained in Paragraph 151 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

122. Defendant Foundation Care denies the allegations contained in Paragraph 152 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death.

**COUNT XVI**  
**WRONGFUL DEATH CLAIM OF PLAINTIFFS ANTHONY STEWART,**  
**INDIVIDUALLY, AND HAYDEN STEWART, BY AND THROUGH HIS NEXT**  
**FRIEND, ANTHONY STEWART, AGAINST DEFENDANTS**

123. In response to Paragraph 153 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death, Defendant Foundation Care incorporates by reference its responses to

Paragraphs 1 through 62(sic) and Paragraphs 1 through 152 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein.

124. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 154 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. Further, Defendant Foundation Care incorporates by reference its responses to Counts I through Count XV of Plaintiffs' Second Amended Petition for Damages and Wrongful Death as though fully set forth herein. As to the allegations contained in said Paragraph directed at the other Defendants, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at the other Defendants and, therefore, denies the same.

#### DAMAGES

125. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 155 of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at the other Defendants, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at the other Defendants and, therefore, denies the same.

126. Defendant Foundation Care denies the allegations directed at it contained in Paragraph 156, including its Subparts a. through c., of Plaintiffs' Second Amended Petition for Damages and Wrongful Death. As to the allegations contained in said Paragraph directed at the other Defendants, Defendant Foundation Care is not required to answer thereto; however, to the extent such an answer is required of it, Defendant Foundation Care is without sufficient knowledge, information, or belief as to any allegations directed at the other Defendants and, therefore, denies the same.

### AFFIRMATIVE DEFENSES

127. Further answering, Defendant Foundation Care states that Plaintiffs' Second Amended Petition for Damages and Wrongful Death fails to state a claim upon which relief can be granted against it.

128. Further answering, Defendant Foundation Care states that Count I of Plaintiffs' Second Amended Petition for Damages fails to state a claim upon which relief can be granted against it. Specifically, Defendant Foundation Care states that Plaintiffs' negligence claims based upon a failure to warn fail because Missouri courts adhere to the learned intermediary doctrine; thus, when a prescription is dispensed according to the prescribing physician's instruction, the duty to warn falls on the prescribing physician. *Doe v. Alpha Therapeutic Corp.*, 3 S.W.3d 404, 419 (Mo. App. 1999) citing *Krug v. Sterling Drug, Inc.*, 416 S.W.2d 143, 146 (Mo. 1967). Further, Plaintiffs' Strict Liability Claims for Product Defect and Failure to Warn are barred under Missouri law, as strict liability claims are barred against health care providers. *Budding v. SSM Healthcare System*, 19 S.W.3d 678, 682 (Mo. banc. 2000).

129. Further answering, Defendant Foundation Care conducts its compounding activities in compliance with the Missouri Board of Pharmacy's Laws for Compounding Activities.

130. Further answering, Defendant Foundation Care affirmatively states that if Plaintiffs or Tammy Stewart sustained any injuries or damages alleged, which Defendant Foundation Care specifically denies, the same were caused or contributed to be caused in full or in part by the contributory or comparative negligence or fault or other culpable conduct of Tammy Stewart and not the result of any negligence or culpable conduct on the part of Defendant Foundation Care, including but not limited to, Mrs. Stewart's improper use and maintenance of a respiratory device. Accordingly, Plaintiffs should be barred from recovery against Defendant Foundation Care or, in the alternative, the recovery against Defendant Foundation Care should be reduced due to the

contributory or comparative negligence or fault or other culpable conduct of Tammy Stewart, and Defendant Foundation Care hereby requests a percentage allocation for the same.

131. Further answering, Defendant Foundation Care affirmatively states that if Plaintiffs or Tammy Stewart sustained any injuries or damages, which Defendant Foundation Care specifically denies, the same were caused or contributed to be caused by the acts or omissions of persons or entities over whom Defendant Foundation Care had neither control nor right to control.

132. Further answering, if Plaintiffs or Tammy Stewart sustained any injuries or damages, which Defendant Foundation Care specifically denies, it is because Tammy Stewart willingly, knowingly, and voluntarily assumed the risk that resulted in any or all of her injuries or damages so as to diminish and/or deny entirely the recovery by Plaintiffs against Defendant Foundation Care.

133. Further answering, Defendant Foundation Care affirmatively states that if Plaintiffs sustained damages as alleged and it is determined that Defendant Foundation Care was at fault in any way, which it specifically denies, Defendant Foundation Care is entitled to a reduction and/or setoff of any judgment against it in the amount of all good faith settlement(s) paid or to be paid by other tortfeasors or a party provided in §537.060 R.S.Mo. Defendant Foundation Care further reserves the right to challenge any settlement on the basis that it was not made in good faith, is not reasonable, and is not otherwise enforceable.

134. Further answering, Defendant Foundation Care states that its liability, which Defendant Foundation Care specifically denies, is limited to the amounts set forth in R.S.Mo. §§538.210 and 538.300.

135. Further answering, Defendant Foundation Care states that its liability, which Defendant Foundation Care specifically denies, is limited to the amounts set forth in R.S.Mo. §537.067.

136. Further answering, Defendant Foundation Care states that the value of any and all medical treatment rendered is limited to the dollar amounts identified in R.S.Mo. §490.715.

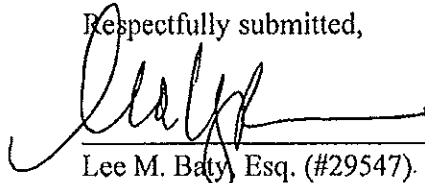
137. For other affirmative answer and defense, Defendant Foundation Care affirmatively states that any claim for punitive damages in this cause is unconstitutional and in violation of defendant's right to due process and equal protection of the Fifth and Fourteenth Amendments to the Constitution of the United States, and the same or similar guarantees of the Constitution of the State of Missouri, including, but not limited to, Article I, §2 and Article I, §10. The law of punitive damages in this state is unconstitutional for the further reasons that it permits the imposition of unlimited punitive damages in violation of the excessive fines provision of the Eighth Amendment to the United States Constitution and the Constitution of the State of Missouri; it permits the imposition of unlimited punitive damages without adequate prior notice of what conduct may render a defendant liable, and without notice of the punishment to be imposed; it permits the imposition of unlimited punitive damages to punish the defendant without constitutional protection, including, but not limited to, the requirement of proof beyond a reasonable doubt or other standard of proof exceeding a preponderance of the evidence, the prohibition against double jeopardy and ex post facto laws in violation of Article I, §9, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and like provisions of the Constitution of the State of Missouri; it permits punishment to be measured by the net or financial worth of a defendant and thereby permits imposition of a greater punishment on defendants with larger net worth and permits dissimilar treatment of similarly situated defendants, all in violation of the equal protection provision of the Fourteenth Amendment of the United States Constitution and like provision of the Constitution of the State of Missouri; and it chills and obstructs the fundamental right of access to the courts to defend claims against it in violation of the First, Ninth, and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Missouri.

138. Further answering, Defendant Foundation Care states that, in the event the trier of fact determines that punitive damages should be awarded, which Defendant Foundation Care expressly denies, Defendant Foundation Care states the amount of any punitive damages award is limited by R.S.Mo. §510.265 and denies joint liability for any such damages as set forth under R.S.Mo. §537.067.

139. Further answering, Defendant Foundation Care reserves the right to amend this Answer to Plaintiffs' Second Amended Petition for Damages and Wrongful Death and plead such affirmative defenses as are disclosed by further investigation and discovery.

WHEREFORE, having fully answered Plaintiffs' Second Amended Petition for Damages and Wrongful Death, including all Counts contained therein, Defendant Foundation Care prays that Plaintiffs' Second Amended Petition for Damages and Wrongful Death be dismissed, and for its costs incurred herein and for all and further relief as the Court deems just and proper.

Respectfully submitted,



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*Certificate of Service*

I do hereby certify that a copy of the  
above and foregoing was sent, via email and  
first class mail, this 19<sup>th</sup> day of JUNE, 2013 to:

Robert G. Norfleet, Esq. (#60000)

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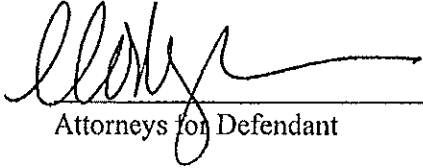
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