

**VIRGINIA: IN THE CIRCUIT COURT FOR PULASKI COUNTY**

**CONTESSA ANN GALLIMORE**  
**Administrator of the Estate of**  
**AUSTON SETH WINGO, JR., a minor**  
**Plaintiff,**

v.

CASE # CL 2300057000

**YOUNG MEN'S CHRISTIAN ASSOCIATION OF PULASKI COUNTY,**  
**INCORPORATED,**

**&**

**JESSICA WOODS,**

**&**

**JORDON PATRICK LYTTON,**

**&**

**JOI WAYNE STANLEY,**

**&**

**BRANHAM JAMES KELLAM,**

**&**

**BRANDON SMITH,**

**&**

**MAGGIE MANNING,**

**&**

**JOHN DOE, INC., a business entity,**

**&**

**JANE DOE, an individual,**

**Defendants.**

VALIDATE CASE PAPERS  
RCPT : 23000010658  
DATE : 12/04/2023 TIME: 14:13  
CASE : 155CL23000570-00  
ACCT : GALLIMORE, CONTESSA ANN  
AMT. : \$344.00

## COMPLAINT

COMES NOW the Plaintiff, **CONTESSA ANN GALLIMORE, Administrator of the Estate of AUSTON SETH WINGO, JR.**, a minor, by and through counsel and moves the Court for judgment against the Defendants, the **YOUNG MEN'S CHRISTIAN ASSOCIATION OF PULASKI COUNTY, INCORPORATED, aka, YMCA OF PULASKI COUNTY; JESSICA WOODS; JORDON PATRICK LYTTON, JOI WAYNE STANLEY, BRANHAM JAMES KELLAM, BRANDON SMITH, MAGGIE MANNING, JOHN DOE, INC., A BUSINESS ENTITY, and JANE DOE**, jointly and severally, in the amount of FIFTEEN MILLION DOLLARS (\$15,000,000.00) in compensatory damages and punitive damages in the amount of FIVE MILLION DOLLARS (\$5,000,000) plus costs and interest permitted by law from December 6, 2021, as provided in §8.01-382 of the Code of Virginia, which is due the Plaintiff from Defendants for damages as enumerated in Virginia Code §8.01-52 of the Code of Virginia, and as grounds for such and in the amount as hereinafter set forth as follows:

### PARTIES

1. The Plaintiff, Contessa Ann Gallimore, qualified as the Administrator under Va. Code §8.01-50 of the Estate of Auston Seth Wingo, Jr. on or about January 6, 2022, in the Circuit Court for the County of Pulaski, Virginia. A copy of the Certificate/Letter of Qualification is attached hereto as Exhibit A.

2. Auston Seth Wingo, Jr. ("Auston" or "Plaintiff's decedent"), a minor child (5 years old), was a resident of Pulaski County at the time of the incident sued upon. Auston Seth Wingo Jr. was survived in death by his biological mother and father, Stacey Nunn and Auston Seth Wingo, Sr., and his sister, a minor child "TW".

3. The Young Men's Christian Association of Pulaski County, Incorporated., ("YMCA") is a corporation duly authorized to transact business in the Commonwealth of Virginia and has its principal place of business at 615 Oakhurst Ave., Pulaski, Virginia 24301, in Pulaski County, Virginia.

4. As part of its operations, Defendant YMCA offered a childcare program through the corporation that was called the Y Excel program and Plaintiff's decedent was enrolled and participating in that childcare program at the time that he drowned.

5. Jessica Woods ("Woods"), an individual, was at all times relevant hereto, employed as the Director of Defendant YMCA and, in that position, she had supervisory responsibility for all employees and was directly responsible for overseeing the operations of Defendant YMCA on the date that Plaintiff's decedent drowned.

6. Brandon Smith ("Smith"), an individual, was at all times relevant hereto, employed as the Director of the YMCA Y Excel program and, in that position, he had supervisory responsibility for all employees working with the Y Excel program and was directly responsible for overseeing the operations of the YMCA Y Excel program on the date Plaintiff's decedent drowned.

7. Branham James Kellam ("Kellam"), formerly known as Branham Grace James, an individual, was at all times relevant hereto employed as a lifeguard at Defendant YMCA and was on duty at the time that Plaintiff's decedent drowned.

8. Jordan Patrick Lytton ("Lytton"), an individual, was at all times relevant hereto employed as a childcare worker with the YMCA Y Excel program and was working in that capacity at the time that Plaintiff's decedent drowned.

9. Joi Wayne Stanley (“Stanley”), an individual, was at all times relevant hereto employed as a childcare worker with the YMCA Y Excel program and was working in that capacity at the time that Plaintiff’s decedent drowned.

10. Maggie Manning (“Manning”), an individual, was at all times relevant hereto employed as a childcare worker with the YMCA Y Excel program and was working in that capacity at the time that Plaintiff’s decedent drowned.

11. Upon information and belief, John Doe, Inc., a business entity, was at all times relevant hereto a childcare provider and providing services to the Defendant YMCA and was engaged in that capacity at the time that Plaintiff’s decedent drowned.

12. Upon information and belief, Jane Doe, an individual, was at all times relevant hereto, a childcare provider with management responsibilities to Defendant YMCA and was engaged in that capacity at the time that Plaintiff’s decedent drowned.

#### **THE YMCA & THE Y EXCEL PROGRAM**

13. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph Twelve (12), as if set forth fully herein.

14. Defendant YMCA is an all-purpose recreational facility in Pulaski County that includes multiple recreational opportunities for members, including a large swimming pool.

15. Defendant YMCA, through the Y Excel program, was a licensed childcare provider on December 6, 2021.

16. Defendant YMCA hires, trains, manages and supervises the employees that work at Defendant YMCA, including those who work for the Y Excel program.



17. Each of the individual defendants in this matter were hired by Defendant YMCA to provide services on December 6, 2021, including but not limited to, childcare and lifeguarding services.

18. Upon information and belief, all the individual defendants were being compensated for their work by Defendant YMCA and none of them were providing services gratuitously.

19. All individual defendants were acting within the scope of their employment with Defendant YMCA at all times relevant hereto.

### **FACTS**

20. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph Nineteen (19), as if set forth fully herein.

21. On December 6, 2021, Plaintiff's decedent was a participant in the Y Excel program at Defendant YMCA and was an invitee on the premises of the Defendant YMCA.

22. At that date and time, the decedent was one of at least thirty-eight (38) children between the ages of five (5) and ten (10) years old that were under the care and custody of the Y Excel Program and Defendant YMCA and its employees.

23. The Y Excel Program staff regularly allowed children in the childcare program to go the swimming pool at Defendant YMCA in the afternoons when they were not in school.

24. At approximately 2:00 p.m. on that date, Defendants allowed all of the students in the childcare program, including those who could not swim, to go to the pool for swimming.

25. At that date and time, Defendant YMCA had one lifeguard, namely Defendant Kellam, on duty.

26. Earlier that day, another lifeguard was on duty but permitted to leave for the day despite Defendant YMCA, Defendant Woods, Defendant Smith and Defendant Kellam, knowing

that there would be nearly forty (40) young children coming to the pool and only one (1) lifeguard, Defendant Kellam.

27. At that date and time, Defendants knew, or should have known, that having only one lifeguard on duty at that time created an extremely dangerous risk to the health and safety of children.

28. At that date and time, Defendants could have offered a swimming test to the children, including Plaintiff's decedent, to determine who was able to swim in the deep end.

29. Despite being the only tool used by the Defendants to determine which children should be permitted in the deep end of the pool, Plaintiff's decedent was not given a swim test and never passed a swim test offered by any Defendant at any time ever.

30. At that date and time, Defendants failed to ask or inquire of the parents or custodian of Plaintiff's decedent, or any other child, as to whether their child was capable of swimming and/or whether their child should be permitted to be in the pool.

31. At that date and time, Defendant Woods, was unaware of how to give an effective swim test.

32. At that date and time, Defendant Woods was unaware of how the decision was made as to who was permitted to swim in the deep end of the pool and who was not so permitted.

33. At that date and time, despite not taking the swim test, Plaintiff's decedent was given swimming trucks by Defendants since he did not have any.

34. Soon thereafter, Plaintiff's decedent was allowed in the deep end of the pool without supervision and without a flotation device.

35. Once in the pool, Plaintiff's decedent lost his grip on the side of the pool and began struggling to keep afloat in the deep end of the pool.

36. While Plaintiff's decedent was in the pool, Defendant Kellam had an unobstructed view of the area of the pool where Plaintiff's decedent was struggling to stay above water and was demonstrating obvious signs of being unable to swim and being in distress.

37. While Plaintiff's decedent was in the pool, Defendant Kellam, began to look at what is thought to be her cellular phone while there were no fewer than thirty-four (34) program children in the pool.

38. While Plaintiff's decedent was in the pool, the three (3) childcare workers responsible for Plaintiff's decedent's safety, namely Defendants Lytton, Stanley and Manning, were not properly stationed on the pool deck so as to be able to supervise all children in the pool, including Plaintiff's decedent.

39. While Plaintiff's decedent was in the pool, Defendant Manning abandoned her post on the pool deck, leaving only two (2), improperly stationed, adult childcare workers on deck at the pool and thirty-eight (38) children, including Plaintiff's decedent, in and around the pool.

40. While Plaintiff's decedent was in the pool, Defendant Manning did not advise anyone that she would not be available to keep a lookout on the pool deck while managing children in the locker room, Defendant Lytton was not observing the children in the pool and was instead focused on a child who wasn't in the pool and who had asked for help with goggles, and Defendant Stanley was not observing the deep end of the pool where Plaintiff's decedent, who could not swim, and several other children were in the dangerous water without flotation devices.

41. While in the pool, Plaintiff's decedent, frantically fought for his life in eight (8) feet of water while trying to regain the side of the pool before he lost his life and went under the water, approximately thirty-six (36) feet in front of the lifeguard stand, without being noticed by any of the Defendants.



42. Plaintiff's decedent was eventually discovered floating face down underwater by two (2) children participating in Defendant YMCA's program who then alerted some of the Defendants.

43. After being alerted of Plaintiff's decedent's condition, Defendant Lytton frantically pulled Plaintiff's decedent from the water.

44. At the moment when Defendant Lytton pulled Plaintiff's decedent from the water, the lifeguard, Defendant Kellam, realized that a child had drowned.

45. Defendants Kellam, Defendant Smith, Defendant Woods, Defendant Manning, Defendant Stanley did not attempt to rescue Plaintiff's decedent.

46. Defendants failed to properly administer first aid/cardiopulmonary resuscitation ("CPR") to Plaintiff's decedent.

47. At that date and time, Defendant YMCA did not have an Automated External Defibrillator ("AED") readily available.

48. Defendant Kellam did not know where the AED was located, thereby causing a delay in providing emergency care to Plaintiff's decedent.

49. Emergency medical services eventually arrived, and Plaintiff's decedent was taken to Lewis-Gale Pulaski Hospital where imaging showed that at least one (1) of his lungs was completely full of water.

50. Lewis-Gale Pulaski Hospital transferred Plaintiff's decedent to Carilion Roanoke Memorial Hospital where he succumbed to his injuries and passed away at 10:18 p.m. on December 6, 2021.

51. Plaintiff's decedent did not know how to swim and was unable to swim competently.



52. The Defendants knew, or should have known, that Plaintiff's decedent was not able to swim independently in water that is above his head.

53. The Defendants knew, or should have known, that drowning is a known risk associated with having very young children in and around any large swimming pool, particularly one with such deep water.

54. Defendants knew, or should have known, that this drowning risk is magnified when there is a very large number of very young children, some of whom the Defendants knew could not swim, in and around any large swimming pool, particularly one with such deep water.

55. Upon information and belief, various employees, including Defendant Kellam, complained to Defendant Smith, Defendant Woods and Defendant YMCA about the dangerous conditions that ultimately caused Plaintiff's decedent to drown and subsequently die, including but not limited to, the lack of a proper number of lifeguards, the inadequate training of the childcare staff assisting with the children at the pool, the number of children allowed in the pool, and the nature and extent of the swimming test given to the children.

#### **COUNT I: CLAIMS AGAINST DEFENDANT YMCA**

56. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph Fifty-Five (55), as if set forth fully herein.

57. Defendant YMCA had a duty to supervise and care for children over whom they had assumed responsibility, and to use reasonable care to protect them from foreseeable harm.

58. Pursuant to §40.1-103 of the Code of Virginia, Defendant YMCA had a duty to Plaintiff's decedent, as a minor who came under their care and custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

59. Pursuant to §40.1-103 of the Code of Virginia, Defendant YMCA had a duty to Plaintiff's decedent, as a minor who came under their care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or morals may be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

60. Pursuant to §40.1-103 of the Code of Virginia, Defendant YMCA had a duty to Plaintiff's decedent, as a minor who came under their care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

61. Defendant YMCA's duties to protect children within their care and custody, including Plaintiff's decedent, required the following minimum actions:

- a. Establish proper policies and procedures related to children safety, particularly the safety of young children around the swimming pool;
- b. Hire, train and supervise qualified employees, including a competent and certified lifeguard and childcare workers;
- c. Inspect for defects, remove known defects, and warn of known defects.

62. Defendant YMCA breached its duty to Plaintiff's decedent by:

- a. Failing to have established proper policies or procedures for the safety of children with whom Defendant YMCA and its employees had a supervisory relationship;
- b. Failing to have established proper policies and procedures to protect the safety of children that Defendant YMCA knew would be around a dangerous swimming pool;
- c. Failing to have established proper policies and procedures to determine the swimming ability or inability of any child in their care and custody, including Plaintiff's decedent;

- d. Failing to have established proper policies and procedures to ensure that children who were unable to swim, including Plaintiff's decedent, were easily identifiable and properly supervised;
- e. Failing to have established proper policies and procedures to account for and supervise all children under their care and custody, including Plaintiff's decedent;
- f. Failing to have established proper policies and procedures to ensure that children who could not swim, including Plaintiff's decedent, would not be permitted in the deep end of the swimming pool;
- g. Failing to have established proper policies and procedures regarding the proper use of flotation devices by children, including Plaintiff's decedent;
- h. Failing to have established proper policies and procedures regarding the handling of crisis and life-threatening emergencies;
- i. Failing to have established proper policies and procedures regarding the use of personal cellular phones by employees while working;
- j. Failing to have established proper staffing and training policies and procedures;
- k. Failing to supervise Defendant Woods; an employee with significant management duties and responsibilities;
- l. Failing to train and supervise Defendant Smith, an employee with significant management duties and responsibilities;
- m. Failing to train and supervise childcare staff employees, including but not limited to, Defendant Stanley, Defendant Lytton and Defendant Manning.



- n. Failing to train and supervise lifeguard staff, including but not limited to, Defendant Kellam;
- o. Failing to prevent overcrowding of the swimming pool on December 6, 2021;
- p. Failing to hire qualified employees to perform childcare services in and around the pool and Y Excel program on December 6, 2021;
- q. Failing to provide a sufficient number of lifeguards with sufficient knowledge, training and experience for the job;
- r. Failing to provide sufficient number of childcare workers with sufficient knowledge, training and experience for the job;
- s. Failing to keep and maintain any records related to Plaintiff's decedent or any other child's ability to swim;
- t. Failing to provide some identifiable measure to determine whether a child, including Plaintiff's decedent, who was in or around the pool was supposed to be in the deep end;
- u. Failing to account for all children within their care and custody, including Plaintiff's decedent;
- v. Failing to provide age-appropriate supervision to children within their care and custody, including Plaintiff's decedent;
- w. Failing to prohibit children that were unable to swim from being in the deep end of a large swimming pool, including Plaintiff's decedent;
- x. Failing to provide flotation devices for children that were not competent swimmers or were unable to swim;

y. Allowing children as young as five (5) years old to decide for themselves whether they needed life-saving flotation devices, including Plaintiff's decedent;

z. Failing to have an AED clearly and visibly marked and accessible at the pool;

aa. Failing to properly ensure their staff working with children were qualified and trained to provide CPR and other first aid/life-saving services;

bb. Failing to heed complaints of the lifeguard and other employees regarding the dangers created by the large number of young children in the Y Excel program being allowed to use the pool as Defendant YMCA permitted them to do;

cc. Allowing a child within their care and custody, including Plaintiff's decedent, to be abused and neglected as defined in § 16.1-228, of the Code of Virginia;

dd. Allowing improper ratio of children to childcare workers as defined in § 8VAC20-790-670, of the Administrative Code of Virginia.

63. That as a result of the myriad concurrent breaches of duty committed by Defendant YMCA, as aforementioned and as stated throughout this Complaint, circumstances and conditions were created which placed young children who were unable to swim, such as Plaintiff's decedent, at grave risk of harm, including serious bodily injury or death.

64. That as a direct and proximate result of the myriad concurrent breaches of duty committed by Defendant YMCA, Plaintiff's decedent drowned and died.

65. That the acts and omissions by Defendant YMCA, through its agents and employees, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.

66. That the acts and omissions by Defendant YMCA, through its agents and employees, as set forth in detail herein, would shock fair-minded people.

67. That the acts and omissions by Defendant YMCA, through its agents and employees, as set forth in detail herein, have the cumulative effect of showing Defendant YMCA's reckless and total disregard for Plaintiff's decedent's safety and well-being.

68. That the acts and omissions by Defendant YMCA, through its agents and employees, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

69. That the acts of omissions by Defendant YMCA, through its agents and employees, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware based on Defendant YMCA's knowledge of existing circumstances and conditions, that its conduct would likely cause Plaintiff's decedent to drown.

70. That the acts of omissions by Defendant YMCA, through its agents and employees, as set forth in detail herein, alone and in total constitute gross negligence.

71. That the acts of omissions by Defendant YMCA, through its agents and employees, as set forth in detail herein, alone and in total constitute willful and wanton conduct.

72. As the employer of each of the individual Defendants in this case, Defendant YMCA is vicariously liable for the acts and omissions of its employees acting within the scope of its employment.

73. As set forth in Counts II through VII, each of the individual Defendants in this matter acted grossly negligent and in utter disregard of the rights of Plaintiff's decedent, who was within their care and custody, thereby causing the child to be abandoned and neglected, leading to his drowning and subsequent death.



74. As set forth in Counts II through VII, the Defendants knew or should have known that by physically abandoning and neglecting the child who could not swim and allowing him to play in the deep end of a pool was likely to cause serious bodily injury.

**COUNT II: CLAIMS AGAINST DEFENDANT JESSICA WOODS**

75. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph Seventy-Four (74), as if set forth fully herein.

76. Defendant Woods had a duty to supervise and care for children over whom she had assumed responsibility, and to use reasonable care to protect them from foreseeable harm.

77. Pursuant to §40.1-103 of the Code of Virginia, Defendant Woods had a duty to Plaintiff's decedent, as a minor who came under her custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

78. Pursuant to §40.1-103 of the Code of Virginia, Defendant Woods had a duty to Plaintiff's decedent, as a minor who came under her custody, to not willfully or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or morals may be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

79. Pursuant to §40.1-103 of the Code of Virginia, Defendant YMCA had a duty to Plaintiff's decedent, as a minor who came under her custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

80. Defendant Woods duties to protect children within her care and custody, including Plaintiff's decedent, required the following minimum actions:

- a. Ensure programs and swimming pool are properly staffed;

- b. Ensure properly trained staff, including but not limited to, childcare and lifeguarding staff;
- c. Ensure properly supervised staff, including but not limited to, childcare and lifeguarding staff;
- d. Ensure that children were not neglected and abused by employees working directly under her supervision;
- e. Ensure that children were not allowed to be unsupervised in very dangerous situations, such as when a child who cannot swim is in the deep end of the pool without any flotation device;
- f. Ensure that proper policies and procedures were in place to prevent the neglect and abuse of the children;
- g. Ensure that there were sufficient number of properly trained and qualified employees to manage the needs of the children;
- h. Establish proper safety policies and procedures for the care of young children in and around a swimming pool, including but not limited to, proper positioning of staff to ensure child safety;
- i. Ensure that life-saving equipment, including an AED, was available and that all staff were trained where to find the AED and how to use it;
- j. Ensure that flotation devices were made available, that children were trained on how to use them and that they were required for children who could not swim;
- k. Ensure that strict age-appropriate supervision was provided to non-swimmers;
- l. Ensure that a proper safety discussion was given to the children;

m. Ensure proper swim testing was done for the children.

81. Notwithstanding her duties as aforementioned and throughout this Complaint, Defendant Woods did breach her duties in that she:

a. Failed to ensure proper number of staff;

b. Failed to ensure proper qualifications of staff;

c. Failed to create and/or implement proper policies and procedures for the care of children with whom Defendant YMCA had a supervisory relationship;

d. Failed to create and/or implement proper policies and procedures for use of Defendant YMCA's swimming pool;

e. Failed to properly train management staff on the safety of children with whom Defendant YMCA had a supervisory relationship;

f. Failed to properly train management staff on safe policies and procedures for Defendant YMCA swimming pool;

g. Failed to properly train childcare staff on the safety of children with whom Defendant YMCA had a supervisory relationship;

h. Failed to properly train childcare staff on safe policies and procedures for Defendant YMCA swimming pool;

i. Failed to properly train Defendant Kellam on the safety of children with whom Defendant YMCA had a supervisory relationship;

j. Failed to supervise YMCA staff in the performance of their duties;

k. Allowed Plaintiff's decedent to be in the deep end of Defendant YMCA's pool unsupervised and without a flotation device, even after she knew, or should have known, that Plaintiff's decedent could not swim;



1. Allowed Plaintiff's decedent to be abused and neglected.

82. That, as a direct and proximate result of Defendant Woods' actions, circumstances and conditions were created which placed young children who were unable to swim, including Plaintiff's decedent, at grave risk of harm, including serious bodily injury or death by these aforementioned failures.

83. That the acts and omissions by Defendant Woods, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.

84. That the acts and omissions by Defendant Woods, as set forth in detail herein, would shock fair-minded people.

85. That the acts and omissions by Defendant Woods, as set forth in detail herein, have the cumulative effect of showing Defendant Woods' reckless and total disregard for Plaintiff's decedent's safety and well-being.

86. That the acts and omissions by Defendant Woods, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

87. That the acts of omissions by Defendant Woods, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware based on Defendant Woods' knowledge of existing circumstances and conditions, that her conduct would likely cause Plaintiff's decedent to drown.

88. That the acts of omissions by Defendant Woods, as set forth in detail herein, alone and in total constitute gross negligence.

89. That the acts of omissions by Defendant Woods, as set forth in detail herein, alone and in total constitute willful and wanton conduct.

90. That, as a direct and proximate cause of each of these breaches individually, Plaintiff's decedent drowned and died.

91. That, as a direct and proximate cause of these collective breaches, Plaintiff's decedent drowned and died.

**COUNT III: CLAIMS AGAINST DEFENDANT BRANDON SMITH**

92. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph Ninety-One (91), as if set forth fully herein.

93. Defendant Smith had a duty to supervise and care for children over whom he had assumed responsibility, and to use reasonable care to protect them from foreseeable harm.

94. Pursuant to §40.1-103 of the Code of Virginia, Defendant Smith had a duty to Plaintiff's decedent, as a minor who came under his care and custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

95. Pursuant to §40.1-103 of the Code of Virginia, Defendant Smith had a duty to Plaintiff's decedent, as a minor who came under his care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or morals may be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

96. Pursuant to §40.1-103 of the Code of Virginia, Defendant Smith had a duty to Plaintiff's decedent, as a minor who came under her custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

97. Defendant Smith's duties to protect children within his care and custody, including Plaintiff's decedent, required the following minimum actions:
- a. Ensure programs and swimming pool are properly staffed;
  - b. Ensure properly trained staff, including but not limited to, childcare and lifeguarding staff;
  - c. Ensure properly supervised staff, including but not limited to, childcare and lifeguarding staff;
  - d. Ensure that children were not neglected and abused by employees working directly under his supervision;
  - e. Ensure that children were not allowed to be unsupervised in very dangerous situations, such as when a child who cannot swim is in the deep end of the pool without any flotation device;
  - f. Ensure that proper policies and procedures were in place to prevent the neglect and abuse of the children;
  - g. Ensure that there were sufficient number of properly trained and qualified employees to manage the needs of the children;
  - h. Establish proper safety policies and procedures for the care of young children in and around a swimming pool, including but not limited to, proper positioning of staff to ensure child safety;
  - i. Ensure that life-saving equipment, including an AED, was available and that all staff were trained where to find the AED and how to use it;
  - j. Ensure that flotation devices were made available, that children were trained on how to use them and that they were required for children who could not swim;



- k. Ensure that strict age-appropriate supervision was provided to non-swimmers;
- l. Ensure that a proper safety discussion was given to the children and that proper swim testing was done for the children;
- m. Ensure that the Y Excel Program employees were properly trained on safety of the children within their care and custody;
- n. Ensure that the Y Excel Program employees were properly supervised to ensure the safety of the children within their care and custody;
- o. Ensure that no child who came within the care and custody of the Y Excel Program was neglected by YMCA employees;
- p. Ensure that no child who came within the care and custody of the Y Excel Program was abused by YMCA employees;
- q. Ensure that all children who were in the swimming pool were properly qualified to engaging in the swimming activity;
- r. Ensure that all children were properly supervised by staff;
- s. Establish proper policies and procedures were in place to prevent the neglect and abuse of the children;
- t. Establish proper policies and procedures to ensure that there were sufficient number of properly trained and qualified employees to manage the needs of the children;
- u. Establish proper safety policies and procedures for the care of young children in and around a swimming pool;
- v. Ensure that life-saving equipment, including an AED, was available and that all staff were trained on where to find the AED and how to use it;

w. Advise Defendant Woods and Defendant YMCA if he felt that children's safety was at risk.

98. Notwithstanding his duties as aforementioned and throughout this Complaint, Defendant Smith did breach his duties in that he:

- a. Failed to keep Plaintiff's decedent out of the deep end of Defendant YMCA's pool;
- b. Failed to ensure proper number of staff;
- c. Failed to ensure proper qualifications of staff;
- d. Failed to create proper policies and procedures to prevent the neglect and abuse of the children within his care and custody, including Plaintiff's decedent;
- e. Failed to create proper policies and procedures for to ensure that there were sufficient number of properly trained and qualified employees to manage the needs of the children within his care and custody, including Plaintiff's decedent;
- f. Failed to create proper policies and procedures to establish proper safety policies and procedures for the care of young children within his care and custody, including Plaintiff's decedent, in and around a swimming pool;
- g. Failed to properly train Defendant Stanley on safe policies and procedures for use of Defendant YMCA's swimming pool;
- h. Failed to properly train Defendant Stanley on the safety of children with whom Defendant YMCA had a supervisory relationship;
- i. Failed to properly train Defendant Lytton on safe policies and procedures for use of Defendant YMCA's swimming pool;

- j. Failed to properly train Defendant Lytton on the safety of children with whom Defendant YMCA had a supervisory relationship;
- k. Failed to properly train Defendant Manning on safe policies and procedures for use of Defendant YMCA's swimming pool;
- l. Failed to properly train Defendant Manning on the safety of children with whom Defendant YMCA had a supervisory relationship;
- m. Failed to properly train Defendant Kellam on safe policies and procedures for use of Defendant YMCA's swimming pool;
- n. Failed to properly train Defendant Kellam on the safety of children with whom Defendant YMCA had a supervisory relationship;
- o. Failed to properly supervise Defendant Stanley, Defendant Lytton, Defendant Manning and Defendant Kellam in the performance of their duties;
- p. Failed to ensure that life-saving equipment, including an AED, was available and that all staff were trained on proper safety and first-aid;
- q. Failed to advise Defendant Woods and Defendant YMCA that children's safety was at risk;
- r. Failed to ensure that all children were properly supervised by staff;
- s. Allowed Plaintiff's decedent to be in the deep end of Defendant YMCA's pool unsupervised and without a flotation device, even after he knew, or should have known, that Plaintiff's decedent could not swim;
- t. Allowed Plaintiff's decedent to be abused and neglected.



99. That the acts and omissions by Defendant Smith, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.

100. That the acts and omissions by Defendant Smith, as set forth in detail herein, would shock fair-minded people.

101. That the acts and omissions by Defendant Smith, as set forth in detail herein, have the cumulative effect of showing Defendant Smith's reckless and total disregard for Plaintiff's decedent's safety and well-being.

102. That the acts and omissions by Defendant Smith, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

103. That the acts of omissions by Defendant Smith, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware based on Defendant Smith's knowledge of existing circumstances and conditions, that its conduct would likely cause Plaintiff's decedent to drown.

104. That the acts of omissions by Defendant Smith, as set forth in detail herein, alone and in total constitute gross negligence.

105. That the acts of omissions by Defendant Smith, as set forth in detail herein, alone and in total constitute willful and wanton conduct.

106. That, as a direct and proximate cause of each of these breaches individually, Plaintiff's decedent drowned and subsequently died.

107. That, as a direct and proximate cause of these collective breaches, Plaintiff's decedent drowned and subsequently died.

**COUNT IV: CLAIMS AGAINST DEFENDANT BRANHAM JAMES KELLAM**

108. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph One Hundred Seven (107), as if set forth fully herein.

109. As a certified lifeguard employed and on duty for that purpose, Defendant Kellam had the following duties: (i) observe swimmers for signs of distress, (ii) rescue, or attempt to rescue, those in distress, (iii) use ordinary care while attempting a rescue.

110. Defendant Kellam has a duty to supervise and care for children over whom she has assumed responsibility, and to use reasonable care to protect them from foreseeable harm.

111. Pursuant to §40.1-103 of the Code of Virginia, Defendant Kellam had a duty to Plaintiff's decedent, as a minor who came under her custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

112. Pursuant to §40.1-103 of the Code of Virginia, Defendant Kellam had a duty to Plaintiff's decedent, as a minor who came under her custody, to not willfully or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or morals may be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

113. Pursuant to §40.1-103 of the Code of Virginia, Defendant Kellam had a duty to Plaintiff's decedent, as a minor who came under her custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

114. Defendant Kellam's duties to protect children within her care and custody, including Plaintiff's decedent, required the following minimum actions:

- a. Supervise and care for children;

- b. Inspect for dangerous conditions;
- c. Warn of dangerous conditions;
- d. Remove dangerous conditions.

115. Notwithstanding her duties, Defendant Kellam did breach her duties in that she:

- a. Abandoned her lifeguard post to obtain her cell phone and then used her cell phone while being responsible for thirty-eight (38) children in and around the pool;
- b. Failed to keep a proper lookout at all times for signs of distress;
- c. Failed to see Plaintiff's decedent's obvious signs of distress and failed to properly interpret Plaintiff's decedent's obvious signs of distress as requiring action;
- d. Failed to maintain proper control of the swimming pool and pool deck;
- e. Failed to prevent Plaintiff's decedent, who could not swim, from being in the deep end of the pool even after she knew, or should have known, that Plaintiff's decedent could not swim;
- f. Failed to require Plaintiff's decedent, who could not swim, to wear a life jacket or to use other flotation devices in the deep end, even though she knew or should have known that Plaintiff's decedent could not swim;
- g. Failed to rescue Plaintiff's decedent;
- h. Failed to warn of known dangerous conditions, including but not limited to, failing to report to Defendant YMCA or any other Defendant.

116. That the acts and omissions by Defendant Kellam, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.



117. That the acts and omissions by Defendant Kellam, as set forth in detail herein, would shock fair-minded people.

118. That the acts and omissions by Defendant Kellam, as set forth in detail herein, have the cumulative effect of showing Defendant Kellam's reckless and total disregard for Plaintiff's decedent's safety and well-being.

119. That the acts and omissions by Defendant Kellam, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

120. That the acts of omissions by Defendant Kellam, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware based on Defendant Kellam's knowledge of existing circumstances and conditions, that its conduct would likely cause Plaintiff's decedent to drown.

121. That the acts of omissions by Defendant Kellam, as set forth in detail herein, alone and in total constitute gross negligence.

122. That the acts of omissions by Defendant Kellam, as set forth in detail herein, alone and in total constitute willful and wanton conduct.

123. That, as a direct and proximate cause of each of these breaches individually, the plaintiff decedent drowned and subsequently died.

124. That, as a direct and proximate cause of these collective breaches, Plaintiff's decedent drowned and subsequently died.

**COUNT V: CLAIMS AGAINST DEFENDANT JORDAN PATRICK LYTTON**

125. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph One Hundred Twenty-Four (124), as if set forth fully herein.

126. Defendant Lytton, as a childcare worker who had assumed responsibility for Plaintiff's decedent, had various duties related to supervision and care, including but not limited to, a duty to use reasonable care to protect Plaintiff's decedent from foreseeable harm.

127. Pursuant to §40.1-103 of the Code of Virginia, Defendant Lytton had a duty to Plaintiff's decedent, as a minor who came under his care and custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

128. Pursuant to §40.1-103 of the Code of Virginia, Defendant Lytton had a duty to Plaintiff's decedent, as a minor who came under his care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or morals may be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

129. Pursuant to §40.1-103 of the Code of Virginia, Defendant Lytton had a duty to Plaintiff's decedent, as a minor who came under his care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

130. Notwithstanding his duties, Defendant Lytton did breach his duties to Plaintiff's decedent in that he:

- a. Failed to properly supervise Plaintiff's decedent;
- b. Neglected Plaintiff's decedent;
- c. Abused Plaintiff's decedent;
- d. Abandoned Plaintiff's decedent;

e. Permitted Plaintiff's decedent to be placed in a situation that his life, health and morals were endangered, as set forth in §40.1-103 of the Code of Virginia;

f. Permitted Plaintiff's decedent, a five (5) year old who could not swim, to be in the deep end of the pool unsupervised without a flotation device, even though he knew or should have known that Plaintiff's decedent could not swim.

131. That the acts and omissions by Defendant Lytton, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.

132. That the acts and omissions by Defendant Lytton, as set forth in detail herein, would shock fair-minded people.

133. That the acts and omissions by Defendant Lytton, as set forth in detail herein, have the cumulative effect of showing Defendant Lytton's reckless and total disregard for Plaintiff's decedent's safety and well-being.

134. That the acts and omissions by Defendant Lytton, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

135. That the acts of omissions by Defendant Lytton, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware based on Defendant Lytton's knowledge of existing circumstances and conditions, that his conduct would likely cause Plaintiff's decedent to drown.

136. That the acts of omissions by Defendant Lytton, as set forth in detail herein, alone and in total constitute gross negligence.

137. That the acts of omissions by Defendant Lytton, as set forth in detail herein, alone and in total constitute willful and wanton conduct.



138. That, as a direct and proximate cause of each of these breaches individually, the plaintiff decedent drowned and subsequently died.

139. That, as a direct and proximate cause of these collective breaches, Plaintiff's decedent drowned and subsequently died.

**COUNT VI: CLAIMS AGAINST DEFENDANT JOI WAYNE STANLEY**

140. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph One Hundred Thirty-Nine (139), as if set forth fully herein.

141. Defendant Stanley, as a childcare worker who had assumed responsibility for Plaintiff's decedent, had various duties related to supervision and care, including but not limited to, a duty to use reasonable care to protect Plaintiff's decedent from foreseeable harm.

142. Pursuant to §40.1-103 of the Code of Virginia, Defendant Stanley had a duty to Plaintiff's decedent, as a minor who came under her care and custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

143. Pursuant to §40.1-103 of the Code of Virginia, Defendant Stanley had a duty to Plaintiff's decedent, as a minor who came under her care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or morals may be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

144. Pursuant to §40.1-103 of the Code of Virginia, Defendant Stanley had a duty to Plaintiff's decedent, as a minor who came under her care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

145. Notwithstanding her duties, Defendant Stanley did breach her duties to Plaintiff's decedent in that she:

- a. Failed to properly supervise Plaintiff's decedent;
- b. Neglected Plaintiff's decedent;
- c. Abused Plaintiff's decedent;
- d. Abandoned Plaintiff's decedent;
- e. Permitted Plaintiff's decedent to be placed in a situation that his life, health and morals were endangered, as set forth in §40.1-103 of the Code of Virginia;
- f. Permitted Plaintiff's decedent, a five (5) year old who could not swim, to be in the deep end of the pool unsupervised without a flotation device, even though she knew or should have known that Plaintiff's decedent could not swim.

146. That the acts and omissions by Defendant Stanley, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.

147. That the acts and omissions by Defendant Stanley, as set forth in detail herein, would shock fair-minded people.

148. That the acts and omissions by Defendant Stanley, as set forth in detail herein, have the cumulative effect of showing Defendant Stanley's reckless and total disregard for Plaintiff's decedent's safety and well-being.

149. That the acts and omissions by Defendant Stanley, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

150. That the acts of omissions by Defendant Stanley, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware

based on Defendant Stanley's knowledge of existing circumstances and conditions, that her conduct would likely cause Plaintiff's decedent to drown.

151. That the acts of omissions by Defendant Stanley, as set forth in detail herein, alone and in total constitute gross negligence.

152. That the acts of omissions by Defendant Stanley, as set forth in detail herein, alone and in total constitute willful and wanton conduct.

153. That, as a direct and proximate cause of each of these breaches individually, Plaintiff's decedent drowned and subsequently died.

154. That, as a direct and proximate cause of these collective breaches, Plaintiff's decedent drowned and subsequently died.

#### **COUNT VII: CLAIMS AGAINST DEFENDANT MAGGIE MANNING**

155. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph One Hundred Fifty-Four (154), as if set forth fully herein.

156. Defendant Maggie Manning as a childcare worker who had assumed responsibility for Plaintiff's decedent, had various duties related to supervision and care, including but not limited to, a duty to use reasonable care to protect Plaintiff's decedent, from foreseeable harm.

157. Pursuant to §40.1-103 of the Code of Virginia, Defendant Manning had a duty to Plaintiff's decedent, as a minor who came under her care and custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

158. Pursuant to §40.1-103 of the Code of Virginia, Defendant Manning had a duty to Plaintiff's decedent, as a minor who came under her care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or



morals may endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

159. Pursuant to §40.1-103 of the Code of Virginia, Defendant Manning had a duty to Plaintiff's decedent, as a minor who came under her care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

160. Notwithstanding her duties, Defendant Manning did breach her duties to Plaintiff's decedent in that she:

- a. Failed to properly supervise Plaintiff's decedent;
- b. Neglected Plaintiff's decedent;
- c. Abused Plaintiff's decedent;
- d. Abandoned Plaintiff's decedent;
- e. Permitted Plaintiff's decedent to be placed in a situation that his life, health and morals were endangered, as set forth in §40.1-103 of the Code of Virginia;
- f. Permitted Plaintiff's decedent, a five (5) year old who could not swim, to be in the deep end of the pool unsupervised without a flotation device, even though she knew or should have known that Plaintiff's decedent could not swim.

161. That the acts and omissions by Defendant Manning, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.

162. That the acts and omissions by Defendant Manning, as set forth in detail herein, would shock fair-minded people.

163. That the acts and omissions by Defendant Manning, as set forth in detail herein, have the cumulative effect of showing Defendant Manning's reckless and total disregard for Plaintiff's decedent's safety and well-being.

164. That the acts and omissions by Defendant Manning, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

165. That the acts of omissions by Defendant Manning, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware based on Defendant Manning's knowledge of existing circumstances and conditions, that her conduct would likely cause Plaintiff's decedent to drown.

166. That the acts of omissions by Defendant Manning, as set forth in detail herein, alone and in total constitute gross negligence.

167. That the acts of omissions by Defendant Manning, as set forth in detail herein, alone and in total constitute willful and wanton conduct.

168. That, as a direct and proximate cause of each of these breaches individually, the plaintiff decedent drowned and subsequently died.

169. That, as a direct and proximate cause of these collective breaches, Plaintiff's decedent drowned and subsequently died.

**COUNT VIII: CLAIMS AGAINST DEFENDANT JOHN DOE, INC., A  
BUSINESS ENTITY**

170. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph One Hundred Sixty-Nine (169), as if set forth fully herein.

171. Defendant John Doe, Inc., a business entity, had a duty to supervise and care for children over whom they assumed responsibility, and to use reasonable care to protect them from foreseeable harm.

172. Pursuant to §40.1-103 of the Code of Virginia, Defendant John Doe, Inc., a business entity, had a duty to Plaintiff's decedent, as a minor who came under their care and custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

173. Pursuant to §40.1-103 of the Code of Virginia, Defendant John Doe, Inc., a business entity, had a duty to Plaintiff's decedent, as a minor who came under their care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or morals may be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

174. Pursuant to §40.1-103 of the Code of Virginia, Defendant John Doe, Inc., a business entity had a duty to Plaintiff's decedent, as a minor who came under their care and custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

175. Defendant John Doe, Inc.'s duties to protect children within their care and custody, including Plaintiff's decedent, required the following minimum actions:

- a. Establish proper policies and procedures related to children safety, particularly the safety of young children around the swimming pool;
- b. Hire, train and supervise qualified employees, including a competent and certified lifeguard;
- c. Inspect for defects, remove known defects and warn of known defects.

176. Defendant John Doe, Inc., a business entity, breached its duty to Plaintiff's decedent by:



- a. Failing to have established proper policies or procedures for the safety of children with whom Defendant John Doe Inc. and its employees had a supervisory relationship;
- b. Failing to have established proper policies and procedures to protect the safety of children that Defendant John Doe Inc. knew would be around a dangerous swimming pool;
- c. Failing to have established proper policies and procedures to determine the swimming ability or inability of any child in their care and custody, including Plaintiff's decedent;
- d. Failing to have established proper policies and procedures to ensure that children who were unable to swim, including Plaintiff's decedent, were easily identifiable and properly supervised:
- e. Failing to have established proper policies and procedures to account for and supervise all children under their care and custody, including Plaintiff's decedent;
- f. Failing to have established proper policies and procedures to ensure that children who could not swim, including Plaintiff's decedent, would not be permitted in the deep end of the swimming pool;
- g. Failing to have established proper policies and procedures regarding the proper use of flotation devices by children, including Plaintiff's decedent;
- h. Failing to have established proper policies and procedures regarding the handling of crisis and life-threatening emergencies;
- i. Failing to have established proper policies and procedures regarding the use of personal cellular phones by employees while working;
- j. Failing to have established proper staffing and training policies and procedures;

k. Failing to supervise Defendant Woods; an employee with significant management duties and responsibilities;

l. Failing to train and supervise Defendant Smith, an employee with significant management duties and responsibilities;

m. Failing to train and supervise childcare staff employees, including but not limited to, Defendant Stanley, Defendant Lytton and Defendant Manning.

n. Failing to train and supervise lifeguard staff, including but not limited to, Defendant Kellam;

o. Failing to prevent overcrowding of the swimming pool on December 6, 2021;

p. Failing to hire qualified employees to perform childcare services in and around the pool and Y Excel program on December 6, 2021;

q. Failing to provide a sufficient number of lifeguards with sufficient knowledge, training and experience for the job;

r. Failing to provide sufficient number of childcare workers with sufficient knowledge, training and experience for the job;

s. Failing to keep and maintain any records related to Plaintiff's decedent or any other child's ability to swim;

t. Failing to provide some identifiable measure to determine whether a child, including Plaintiff's decedent, who was in or around the pool was supposed to be in the deep end;

u. Failing to account for all children within their care and custody, including Plaintiff's decedent;

v. Failing to provide age-appropriate supervision to children within their care and custody, including Plaintiff's decedent;

w. Failing to prohibit children that were unable to swim from being in the deep end of a large swimming pool, including Plaintiff's decedent;

x. Failing to provide flotation devices for children that were not competent swimmers or were unable to swim;

y. Allowing children as young as five (5) years old to decide for themselves whether they needed life-saving flotation devices, including Plaintiff's decedent;

z. Failing to have an AED clearly and visibly marked and accessible at the pool;

aa. Failing to properly ensure their staff working with children were qualified and trained to provide CPR and other first aid/life-saving services;

bb. Failing to heed complaints of the lifeguard and other employees regarding the dangers created by the large number of young children in the Y Excel program being allowed to use the pool as Defendant John Doe Inc. permitted them to do;

cc. Allowing a child within their care and custody, including Plaintiff's decedent, to be abused and neglected as defined in § 16.1-228, of the Code of Virginia;

dd. Allowing improper ratio of children to childcare workers as defined in § 8VAC20-790-670, of the Administrative Code of Virginia.

177. That as a result of the myriad concurrent breaches of duty committed by Defendant John Doe, Inc., a business entity, as aforementioned and as stated throughout this Complaint, circumstances and conditions were created which placed young children who were unable to swim, such as Plaintiff's decedent, at grave risk of harm, including serious bodily injury or death.



178. That as a direct and proximate result of the myriad concurrent breaches of duty committed by Defendant John Doe, Inc., a business entity, Plaintiff's decedent drowned and died.

179. That the acts and omissions by Defendant John Doe, Inc., a business entity, through its agents and employees, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.

180. That the acts and omissions by Defendant John Doe, Inc., through its agents and employees, as set forth in detail herein, would shock fair-minded people.

181. That the acts and omissions by Defendant John Doe, Inc., through its agents and employees, as set forth in detail herein, have the cumulative effect of showing Defendant John Doe Inc.'s reckless and total disregard for Plaintiff's decedent's safety and well-being.

182. That the acts and omissions by Defendant John Doe, Inc., through its agents and employees, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

183. That the acts of omissions by Defendant John Doe Inc., through its agents and employees, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware based on Defendant John Doe Inc.'s knowledge of existing circumstances and conditions, that its conduct would likely cause Plaintiff's decedent to drown.

184. That the acts of omissions by Defendant John Doe, Inc., through its agents and employees, as set forth in detail herein, alone and in total constitute gross negligence.

185. That the acts of omissions by Defendant John Doe, Inc., through its agents and employees, as set forth in detail herein, alone and in total constitute willful and wanton conduct.

186. As the employer of each of the individual Defendants in this case, Defendant John Doe, Inc., is vicariously liable for the acts and omissions of its employees acting within the scope of its employment.

187. As set forth in Counts II through VII, each of the individual Defendants in this matter acted grossly negligent and in utter disregard of the rights of Plaintiff's decedent, who was within their care and custody, thereby causing the child to be abandoned and neglected, leading to his drowning and subsequent death.

188. As set forth in Counts II through VII, the Defendants knew or should have known that by physically abandoning and neglecting the child who could not swim and allowing him to play in the deep end of a pool was likely to cause serious bodily injury.

**COUNT IX: CLAIMS AGAINST DEFENDANT JANE DOE, AN INDIVIDUAL**

189. The Plaintiff incorporates by reference each and every allegation set forth in Paragraph One (1) through Paragraph One Hundred Eighty-Eight (188), as if set forth fully herein.

190. Defendant Jane Doe, an individual, as a childcare worker who had assumed responsibility for Plaintiff's decedent, had various duties related to supervision and care, including but not limited to, a duty to use reasonable care to protect Plaintiff's decedent from foreseeable harm.

191. Pursuant to §40.1-103 of the Code of Virginia, Defendant Jane Doe, an individual had a duty to Plaintiff's decedent, as a minor who came under her care and custody, to not willfully or negligently cause or permit his life to be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

192. Pursuant to §40.1-103 of the Code of Virginia, Defendant Jane Doe, an individual had a duty to Plaintiff's decedent, as a minor who came under her care and custody, to not willfully

or negligently cause or permit Plaintiff's decedent to be placed in a situation that his life, health or morals may be endangered. The violations of this Act, as set forth herein, constitute gross negligence per se.

193. Pursuant to §40.1-103 of the Code of Virginia, Defendant Jane Doe, an individual had a duty to Plaintiff's decedent, as a minor who came under her custody, to not willfully or negligently cause or permit Plaintiff's decedent to be cruelly treated. The violations of this Act, as set forth herein, constitute gross negligence per se.

194. Defendant Jane Doe's duties to protect children within her care and custody, including Plaintiff's decedent, required the following minimum actions:

- a. Ensure programs and swimming pool are properly staffed;
- b. Ensure properly trained staff, including but not limited to, childcare and lifeguarding staff;
- c. Ensure properly supervised staff, including but not limited to, childcare and lifeguarding staff;
- d. Ensure that children were not neglected and abused by employees working directly under his supervision;
- e. Ensure that children were not allowed to be unsupervised in very dangerous situations, such as when the child who cannot swim is in the deep end of the pool without a flotation device;
- f. Ensure that proper policies and procedures were in place to prevent the neglect and abuse of the children;
- g. Ensure that there were sufficient number of properly trained and qualified employees to manage the needs of the children;



- h. Establish proper safety policies and procedures for the care of young children in and around a swimming pool, including but not limited to, proper positioning of staff to ensure child safety;
- i. Ensure that life-saving equipment, including an AED, was available and that all staff were trained where to find the AED and how to use it;
- j. Ensure that flotation devices were made available, that children were trained on how to use them and that they were required for children who could not swim;
- k. Ensure that strict age-appropriate supervision was provided to non-swimmers;
- l. Ensure that a proper safety discussion was given to the children and that proper swim testing was done for the children;
- m. Ensure that the Y Excel Program employees were properly trained on safety of the children within their care and custody;
- n. Ensure that the Y Excel Program employees were properly supervised to ensure the safety of the children within their care and custody;
- o. Ensure that no child who came within the care and custody of the Y Excel Program was neglected by YMCA employees;
- p. Ensure that no child who came within the care and custody of the Y Excel Program was abused by YMCA employees;
- q. Ensure that all children who were in the swimming pool were properly qualified to engaging in the swimming activity;
- r. Ensure that all children were properly supervised by staff;

s. Establish proper policies and procedures were in place to prevent the neglect and abuse of the children;

t. Establish proper policies and procedures to ensure that there were sufficient number of properly trained and qualified employees to manage the needs of the children;

u. Establish proper safety policies and procedures for the care of young children in and around a swimming pool;

v. Ensure that life-saving equipment, including an AED, was available and that all staff were trained on where to find the AED and how to use it;

w. Advise Defendant Woods and Defendant YMCA if he felt that children's safety was at risk.

195. Notwithstanding his duties as aforementioned and throughout this Complaint, Defendant Jane Doe did breach her duties in that she:

a. Failed to keep Plaintiff's decedent out of the deep end of Defendant YMCA's pool;

b. Failed to ensure proper number of staff;

c. Failed to ensure proper qualifications of staff;

d. Failed to create proper policies and procedures to prevent the neglect and abuse of the children within his care and custody, including Plaintiff's decedent;

e. Failed to create proper policies and procedures for to ensure that there were sufficient number of properly trained and qualified employees to manage the needs of the children within his care and custody, including Plaintiff's decedent;

f. Failed to create proper policies and procedures to establish proper safety policies and procedures for the care of young children within his care and custody, including Plaintiff's decedent, in and around a swimming pool;

g. Failed to properly train Defendant Stanley on safe policies and procedures for use of Defendant YMCA's swimming pool;

h. Failed to properly train Defendant Stanley on the safety of children with whom Defendant YMCA had a supervisory relationship;

i. Failed to properly train Defendant Lytton on safe policies and procedures for use of Defendant YMCA's swimming pool;

j. Failed to properly train Defendant Lytton on the safety of children with whom Defendant YMCA had a supervisory relationship;

k. Failed to properly train Defendant Manning on safe policies and procedures for use of Defendant YMCA's swimming pool;

l. Failed to properly train Defendant Manning on the safety of children with whom Defendant YMCA had a supervisory relationship;

m. Failed to properly train Defendant Kellam on safe policies and procedures for use of Defendant YMCA's swimming pool;

n. Failed to properly train Defendant Kellam on the safety of children with whom Defendant YMCA had a supervisory relationship;

o. Failed to properly supervise Defendant Stanley, Defendant Lytton, Defendant Manning and Defendant Kellam in the performance of their duties;

p. Failed to ensure that life-saving equipment, including an AED, was available and that all staff were trained on proper safety and first-aid;



q. Failed to advise Defendant Woods and Defendant YMCA that children's safety was at risk;

r. Failed to ensure that all children were properly supervised by staff;

s. Allowed Plaintiff's decedent to be in the deep end of Defendant YMCA's pool unsupervised and without a flotation device, even after she knew, or should have known, that Plaintiff's decedent could not swim;

t. Allowed Plaintiff's decedent to be abused and neglected.

196. That the acts and omissions by Defendant Jane Doe, an individual, as set forth in detail herein, demonstrate the utter disregard of prudence amounting to complete neglect of the safety of Plaintiff's decedent.

197. That the acts and omissions by Defendant Jane Doe, an individual, as set forth in detail herein, would shock fair-minded people.

198. That the acts and omissions by Defendant Jane Doe, an individual, as set forth in detail herein, have the cumulative effect of showing Defendant Jane Doe's reckless and total disregard for Plaintiff's decedent's safety and well-being.

199. That the acts and omissions by Defendant Jane Doe, an individual, as set forth in detail herein, demonstrate a conscious disregard of the rights of Plaintiff's decedent.

200. That the acts of omissions by Defendant Jane Doe, an individual, as set forth in detail herein, demonstrate a reckless indifference to Plaintiff's decedent's risk of drowning, despite being aware based on Defendant Jane Doe's knowledge of existing circumstances and conditions, that its conduct would likely cause Plaintiff's decedent to drown.

201. That the acts of omissions by Defendant Jane Doe, as set forth in detail herein, alone and in total constitute gross negligence.

202. That the acts of omissions by Defendant Jane Doe, as set forth in detail herein, alone and in total constitute willful and wanton conduct.

203. That, as a direct and proximate cause of each of these breaches individually, Plaintiff's decedent drowned and subsequently died.

204. That, as a direct and proximate cause of these collective breaches, Plaintiff's decedent drowned and subsequently died.

**TRIAL BY JURY IS DEMANDED**

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, in the sum FIFTEEN MILLION DOLLARS (\$15,000,000.00) in compensatory damages and FIVE MILLION DOLLARS (\$5,000,000) in punitive damages plus pre-judgment and post-judgment interest as allowed by the statute.

**CONTESSA ANN GALLIMORE, Administrator of the  
Estate of AUSTON SETH WINGO, JR., a minor**



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# EXHIBIT A



**CERTIFICATE/LETTER OF QUALIFICATION**  
COMMONWEALTH OF VIRGINIA

VA. CODE §§ 6.2-893, 6.2-1171, 6.2-1365, 6.2-1367, 6.2-2011, 6.2-506, 6.2-607

Court File No. 202200004

Pulaski County Circuit Court

I, the duly qualified clerk/deputy clerk of this Court, **CERTIFY** that on January 6, 2022  
DATE

Contessa Ann Gallimore  
NAME(S) OF PERSON(S) QUALIFYING

duly qualified in this court, under applicable provisions of law, as **Administrator** under Va. Code § 8.01-50  
of the estate of

Auston Seth Wingo Jr.  
 DECEASED  MINOR  INCAPACITATED

The powers of the fiduciary(ies) named above continue in full force and effect.

\$500.00 bond has been posted.

Given under my hand and the seal of this Court on

January 6, 2022  
DATE

Maetta H. Crewe, Clerk  
by Maetta H. Crewe, Deputy Clerk

