

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

THE ESTATE OF STANISLAWA KOCHANOWSKA, by her
Administrator, JOHN COSTA,

Plaintiff(s),

-against-

FULTON COMMONS CARE, INC. d/b/a
FULTON COMMONS CARE CENTER, INC.;
MOSHE KALTER; FRADY KALTER; AARON FOGEL;
ESTHER FOGEL; ABC CORPORATION;
ABC PARTNERSHIP,

Defendant(s).

**VERIFIED
AMENDED COMPLAINT**

Index No. 500030/2023

Plaintiff demands
a Jury Trial

Plaintiff, by his attorneys, NAPOLI SHKOLNIK PLLC, complaining of the Defendants, respectfully alleges upon information and belief:

I. THE PARTIES

a. Plaintiff

1. That at all times hereinafter mentioned, plaintiff JOHN COSTA, is the son and next of kin of the decedent, STANISLAWA KOCHANOWSKA, and is a resident of the State of Florida.
2. That at all times hereinafter mentioned, plaintiff's decedent, STANISLAWA KOCHANOWSKA, was a resident of the County of Nassau, State of New York.
3. That on April 10, 2020, plaintiff's decedent, STANISLAWA KOCHANOWSKA, died while in the care of FULTON COMMONS CARE CENTER, INC. in the County of Nassau, State of New York.
4. That on April 5, 2024, the Nassau County Surrogate's Court issued a Decree Granting Administration appointing JOHN COSTA as Administrator of STANISLAWA KOCHANOWSKA's estate.
5. That at all times hereinafter mentioned, STANISLAWA KOCHANOWSKA is represented in this action by her son and next of kin, JOHN COSTA, as Administrator of her Estate.

6. This action falls within one or more exceptions as set forth in N.Y. Civil Practice Laws and Rules (“C.P.L.R.”) Article 16.

b. Defendant Fulton Commons Care, Inc. d/b/a Fulton Commons Care Center, Inc.

7. Defendant FULTON COMMONS CARE, INC. is located at 60 Merrick Ave, East Meadows, NY 11554, County of Nassau.

8. According to the New York Department of Health, defendant FULTON COMMONS CARE, INC. is the owner and operator of the nursing home facility known as FULTON COMMONS CARE CENTER, INC., which is located at 60 Merrick Ave, East Meadows, NY 11554.

9. Upon information and belief, defendants MOSHE KALTER, FRADY KALTER, AARON FOGEL and ESTHER FOGEL own the majority of FULTON COMMONS CARE, INC. (hereinafter referred to as “DEFENDANT OWNERS”).

10. Upon information and belief, DEFENDANT OWNERS were under investigation and now have pending litigation against them filed by the New York State Attorney General’s Office related to their ownership of another nursing home, FULTON COMMONS CARE, INC. (Index No. 617687/2022).

11. In sum, the findings of the New York State Attorney General’s Office are that each of the DEFENDANT OWNERS engaged in a scheme to convert millions of dollars of profits from Medicaid and Medicare while at the same time intentionally providing inadequate treatment and conditions in their nursing home. The New York State Attorney General’s Office has found that DEFENDANT OWNERS, in relation to their ownership of FULTON COMMONS CARE, INC., “Allegedly \$14,913,403 Million was diverted as up-front profit for Kalter, Fogel, Fulton Realty LO, and Fulton Realty Inc. and \$1,056,990.79 as salaries paid to the Kalter -1% Owners for no-show jobs”¹.

¹ “Up-front profit” refers to the practice of making payments from the nursing home to Respondents under the guise of pre-determined and self-negotiated “expenses” and other transfers of funds, as a priority over, and without regard to, ensuring that the nursing home has used the public funds it received to meet the nursing home’s duty to provide required care, with sufficient staffing to render such care, to its residents is referred to herein as “up-front profit.” See *infra*, ¶¶ 7-8.

12. The New York State Attorney General's Office also found that DEFENDANT OWNERS, allegedly in relation to their ownership of nursing homes: "Long before the Covid-19 pandemic, the owners repeatedly cut staffing at (Fulton Commons Care Inc.) which created poor working conditions, and endangered residents". *Id.* With regard to the DEFENDANT OWNERS, Attorney General Letisha James has stated that they have "put profits over patient care and left vulnerable New Yorkers to live in heartbreaking and inhumane conditions". *Id.*

13. Additionally, the Attorney General's lawsuit "alleges that the owners and operators of Fulton Commons engaged in fraudulent financial schemes that violated numerous laws designed to protect nursing home residents, resulting in preventable neglect and harm." *Id.*

14. Upon information and belief, DEFENDANT OWNERS, through their ownership and management of FULTON COMMONS CARE, INC., engaged in these same practices and conduct, including seeking and taking profits at the expense of providing appropriate treatment, care, and conditions to the residents of FULTON COMMONS CARE CENTER INC., including plaintiff's decedent, STANISLAWA KOCHANOWSKA.

15. That at all times relevant hereto, the term "nursing home" shall refer to and include defendants FULTON COMMONS CARE, INC. d/b/a FULTON COMMONS CARE CENTER, INC., ABC CORPORATION and/or ABC PARTNERSHIP, the owner(s) and operator(s) of same, as well as any agents, representatives, employees, care givers, nurses, directors, doctors, physician's assistants, or staff members of said facility or corporations.

16. That at all times hereinafter mentioned, upon information and belief, defendant FULTON COMMONS CARE, INC. was and still is a domestic limited liability company, duly organized under and existing by virtue of the laws of the State of New York.

17. That at all times hereinafter mentioned, upon information and belief, the defendant, FULTON COMMONS CARE, INC., was and still is a business entity doing business within the State of New York.

18. That at all times hereinafter mentioned, upon information and belief, defendant FULTON COMMONS CARE, INC. maintained its principal place of business in the County of Nassau, State of New York.

19. Prior to and at all times hereinafter mentioned, defendant FULTON COMMONS CARE, INC. was authorized to do business and to operate a nursing home facility located at 60 Merrick Ave, East Meadows, NY 11554.

20. Prior to and at all times hereinafter mentioned, defendant FULTON COMMONS CARE, INC. was and is the owner of a certain nursing home facility located at 60 Merrick Ave, East Meadows, NY 11554.

21. That at all times hereinafter mentioned, upon information and belief, defendant FULTON COMMONS CARE, INC. was the lessor of the aforesaid nursing home facility.

22. That at all times hereinafter mentioned, upon information and belief, defendant FULTON COMMONS CARE, INC. was the lessee of the aforesaid nursing home facility.

23. That at all times hereinafter mentioned, upon information and belief, defendant FULTON COMMONS CARE, INC. maintained, managed, operated, controlled, supervised, and inspected the aforesaid nursing home facility.

24. Prior to and at all times hereinafter mentioned, defendant FULTON COMMONS CARE, INC had possession and control of the building and facilities where the aforesaid nursing home facility is located.

25. That at all times relevant hereto, upon information and belief, defendant FULTON COMMONS CARE, INC owned the premises and appurtenances and fixtures thereto, located at 60 Merrick Ave, East Meadows, NY 11554.

26. Prior to and at all times hereinafter mentioned, the defendant, FULTON COMMONS CARE, INC. was and still remains engaged in conducting and operating a nursing home facility known as FULTON COMMONS CARE CENTER INC., located at 60 Merrick Ave, East Meadows, NY 11554, County of Nassau, State of New York, and holds itself out to the general public as a facility providing such

care and accommodations where patients can be treated by competent and skilled physicians and nursing staff to care for those who are ill.

27. Prior to and at all times hereinafter mentioned, the defendant, FULTON COMMONS CARE, INC., was and still remains engaged in conducting and operating a nursing home facility for nursing care known as FULTON COMMONS CARE CENTER INC., located at 60 Merrick Ave, East Meadows, NY 11554, County of Nassau, State of New York, and holds itself out to the general public as a facility providing such care and accommodations where patients can be treated by competent and skilled physicians and nursing staff to care for those who are ill.

28. Prior to and at all times hereinafter mentioned, the defendant, FULTON COMMONS CARE, INC., was and still remains engaged in conducting and operating a nursing home facility for the rehabilitation care of ill and injured persons known as FULTON COMMONS CARE CENTER INC., located at 60 Merrick Ave, East Meadows, NY 11554, County of Nassau, State of New York, and holds itself out to the general public as a facility providing such care and accommodations where patients can be treated by competent and skilled physicians and nursing staff.

29. That at all times relevant hereto, defendant FULTON COMMONS CARE, INC. claimed to provide for the proper care and safety of the residents at their nursing home facility, claimed to provide personnel, including doctors, nurses, attendants, assistance and others for the proper, safety and good treatment of its patients and residents, and held itself out to the general public as furnishing treatment facilities where patients and residents, including plaintiff's decedent, STANISLAWA KOCHANOWSKA, could be provided with proper care and safety.

30. That at all times hereinafter mentioned, defendant FULTON COMMONS CARE, INC. represented that its nursing home, located at 60 Merrick Ave, East Meadows, NY 11554, was competent to perform and render all the resident care, medical care, treatment, services and advice required by plaintiff's decedent, STANISLAWA KOCHANOWSKA.

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