

D86272650 INI

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOSEPH & ANDREA COLEMAN
INDIVIDUALLY AND AS NATURAL
PARENTS OF MINOR CHILD
AND AS CLASS REPRESENTATIVE.
7874 Kirkland Drive
Cincinnati, OH 45224

Plaintiffs

v.

COVENANT APOSTOLIC CHURCH INC
7630 View Place Drive
Cincinnati, Ohio 45011

Agent for Service: Shelly Hendricks
4811 Imperial Drive
Hamilton, Ohio 45011

AND

INDIVIDUAL DAYCARE WORKERS
Currently Unknown

Defendants

: Case No. **A0911823**
: Judge _____
:
: **CLASS ACTION COMPLAINT WITH**
: **JURY DEMAND ENDORSED HEREON**

ORIG, COMP, PARTIES, SUMMONS
() CERT MAIL () SHERIFF () WAVE
() PROCESS SERVER () NONE
CLERKS FEES <u>S95111C</u>
SECURITY FOR COST _____
DEPOSITED BY <u>S9211</u>
FILING CODE <u>H775</u>

FILED

PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH
2009 DEC 15 P 3:16

Now come the Plaintiffs, pursuant to Ohio Rules of Civil Procedure, through counsel for the class action complaint, to file this Class Action Complaint with Jury Demand.

PARTIES

1. Plaintiffs, on behalf of themselves and the class described below, are the natural parents, guardians or caregivers of minor children who entrusted their children to Defendants for purposes of daycare. The Daycare was operated at Defendant Covenant Apostolic Church, Inc.

located in Hamilton County, Ohio.

2. At all times relevant herein, Defendants, Covenant Apostolic Church Inc., (hereinafter referred to as "Covenant") was and is a corporation in the business of providing daycare.

3. The individual daycare workers at Covenant, who are named as Defendants, will be substituted as defendants when their identities are discovered as allowed by the Ohio Rules of Civil Procedure.

NATURE OF THIS ACTION

4. Plaintiffs state that starting on or about August 2009 and continuing into the future, they entrusted their child into the care of Defendant, Covenant, their agent, servants and employees, for purpose of supervised daycare for their minor children.

5. On or about December 13, 2009, Plaintiffs were advised that the children, including but not limited to their minor child, were provided unprescribed medication to sedate the children while in the care, custody and control of the Defendant, Covenant.

JURISDICTION AND VENUE

6. Ohio has jurisdiction over all Defendants because, based on information and belief, each is a corporation and/or entity and/or person organized under the laws of the State of Ohio, is a foreign corporation or association authorized to do business in Ohio and registered with the Ohio Secretary of State, or has sufficient minimum contacts in Ohio, is a citizen of Ohio, does sufficient business in Ohio, or otherwise intentionally avails itself of the Ohio market so that the exercise of jurisdiction by Ohio courts is consistent with traditional notions of fair play and substantive law.

7. Plaintiffs are residents of Hamilton County, Ohio as of the date of this Class Action Complaint.

8. Venue is proper in Hamilton County as the events complained of occurred in

Hamilton County, Ohio.

FACTUAL ALLEGATIONS

9. Plaintiffs state that starting on or about August 2009 and continuing into the future, they entrusted their child into the care of Defendant, Covenant, their agent, servants and employees, for purpose of supervised daycare for their minor children.

10. On or about December 13, 2009, Plaintiffs were advised that the children, including but not limited to their minor child, were provided unprescribed medication to sedate the children while in the care, custody and control of the Defendant, Covenant or under employees, agent or servants under its control.

11. Upon information and belief, Plaintiffs believe that their minor child, and other children in the care, custody and control of Defendants were drugged and sedated with unauthorized medication and such information was concealed by the Defendants.

12. Upon information and belief, the alleged drug causes side effects including but not limited to dizziness, grogginess, headaches, abdominal discomfort, confusion, nightmares, and sedation. The long term implications are unknown at this time.

13. As a direct and proximate result of the intentional, reckless, grossly negligent, and criminal acts and/or commissions of the Defendants, the Plaintiffs and class members have been exposed to this hazardous drug.

CLASS ACTION ALLEGATIONS

14. This action is brought on behalf of certain Plaintiffs, pursuant to Ohio Rule of Civil Procedure 23, and on behalf of all similarly situated parents and guardians of minor children who were exposed to unprescribed medication by Defendants.

15. Plaintiffs are members of the class they seek to represent.

16. Upon information and belief, numerous minor children were given this unlawful medication as a direct result of the intentional, reckless, and/or grossly negligent conduct of the Defendants.

17. The number of the class members is so numerous, believed to be in the hundreds, that joinder of all class members is impracticable.

18. The Plaintiffs claims are typical of the claims of the putative class members inasmuch as the minor children were exposed and/or given this medication without a prescription and without parental consent during the time that were in the care, custody and control of the Defendants.

19. The proposed class representatives will fairly and adequately represent the putative class because they have the class members' interest in mind, their individual claims are co-extensive with and identical to those of the class, and because they are represented by qualified counsel experienced in complex, multi-defendant, personal injury litigation.

20. A class action is appropriate and superior to all other methods for the fair and efficient adjudication of these claims since individual joinder is impracticable. The damages suffered by individual class members are substantial, but their individual litigation cost and expense may be so great that it is impracticable for the members to pursue redress.

21. The putative class is appropriate because, pursuant to Rule 23(b)(1)(A), the prosecution of separate claims may result in varying adjudications with respect to individual class members which would establish incompatible standards of conducts for Defendants.

22. The class action certification is appropriate because the questions of law or fact common to members of the putative class predominate over any questions affecting only individual class members, and a class action is preferred to other methods available for the fair and efficient adjudication of the controversy.

23. A class may also be appropriate, pursuant to Rule 23(b)(2), because Defendants have acted or refused to act on grounds generally applicable to all members of the class, thereby making appropriate preliminary and/or final injunctive relief, declaratory relief.

COUNT ONE

NEGLIGENCE

24. Plaintiffs hereby incorporate by reference the foregoing allegations.

25. The Defendants knew or should have known that exposing and providing unauthorized medication to minor children created a hazard to the health and welfare of the children, including but not limited to short and long term health hazards.

26. Defendants owed the minor children and their parents a duty of reasonable care when providing day care to protect the Plaintiffs and class members from injuries, including exposure to drugs, and to comply with all applicable state and/or federal law.

27. The Defendants have breached the duties of care and the Plaintiffs have been damaged by their illegal and negligent conduct.

28. When said class members and Plaintiffs were exposed to the dangerous drugs, the Defendants breached the duties owed to Plaintiffs and concealed the drug exposure directly and proximately causing harm to class members and Plaintiffs by concealing the exposure and illegal exposure to the drug and thereby causing injury as described herein above.

29. As a direct and proximate result of the negligence of Defendant, the Plaintiffs and the class, suffered injury including but not limited to, dizziness, grogginess, headaches, abdominal discomfort, confusion, nightmares, and sedation causing great physical and mental pain and anguish and it is anticipated that children will in the future continue to suffer great physical and mental pain and anguish. In addition, Plaintiffs have incurred additional expenses for hospitals and physicians

and other related medical expenses and they will in the future be obligated to expend large sums of money for hospitals, physicians and other related medical expenses in treating said injuries in an amount in excess of the minimal jurisdictional limits of this Court. Plaintiffs further believe that these injuries are permanent in nature and Plaintiffs are likely to have future pain and suffering.

COUNT TWO

BATTERY

30. Plaintiffs hereby incorporate by reference the foregoing allegations.

31. At all times relevant hereto, said Defendants were involved in the business of supervision children and providing daycare.

32. The Defendants, without the consent of the Plaintiffs, drugged the minor children and concealed the drug exposure, directly and proximately causing harm to class members and Plaintiffs by concealing the exposure and illegal exposure to the drug and thereby causing injury as described, committing a battery.

33. As a direct and proximate result of the battery of Defendant, the Plaintiffs and the class, suffered injury including but not limited to, dizziness, grogginess, headaches, abdominal discomfort, confusion, nightmares, and sedation causing great physical and mental pain and anguish and it is anticipated that children will in the future continue to suffer great physical and mental pain and anguish. In addition, Plaintiffs have incurred additional expenses for hospitals and physicians and other related medical expenses and they will in the future be obligated to expend large sums of money for hospitals, physicians and other related medical expenses in treating said injuries in an amount in excess of the minimal jurisdictional limits of this Court. Plaintiffs further believe that these injuries are permanent in nature and they are likely to have future pain and suffering.

COUNT THREE

MALICE/GROSS NEGLIGENCE

34. Plaintiffs hereby incorporate by reference the foregoing allegations.

35. The acts and omissions of said Defendants, over the course of many months, constitute gross negligence, and malice in light of said Defendants' actual conscious indifference to the health, safety and welfare of Plaintiffs and their minor children affected.

36. As a result of the actual malice and conscious indifference of said Defendants, Plaintiffs are entitled to recover, and hereby request, punitive damages in an amount appropriate to punish and deter said Defendants from similar acts of misconduct in the future.

COUNT FOUR

NEGLIGENT SUPERVISION

37. Plaintiffs hereby incorporate by reference the foregoing allegations.

38. The Defendants knew or should have known that exposing and providing unauthorized medication to minor children created a hazard to the health and welfare of the children, including but not limited to short and long term health hazards.

39. Defendants owed a duty to the class, the minor children and their parents, to hire and supervise staff to provide day care to protect the Plaintiffs and class members from injuries, including exposure to drugs, and to comply with all applicable state and/or federal law. This includes supervising the staff in the administration of their duties.

40. The Defendants have failed to hire, supervise and control and administer the staff in the day care and thereby directly and proximately causing injury to the Plaintiffs and the class

41. As a direct and proximate result of the failure to supervise, hire and administer, the Plaintiffs and the class, suffered injury including but not limited to, dizziness, grogginess, headaches,

abdominal discomfort, confusion, nightmares, and sedation causing great physical and mental pain and anguish and it is anticipated that children will in the future continue to suffer great physical and mental pain and anguish. In addition, Plaintiffs have incurred additional expenses for hospitals and physicians and other related medical expenses and they will in the future be obligated to expend large sums of money for hospitals, physicians and other related medical expenses in treating said injuries in an amount in excess of the minimal jurisdictional limits of this Court. Plaintiffs further believe that these injuries are permanent in nature and that they are likely to have future pain and suffering.

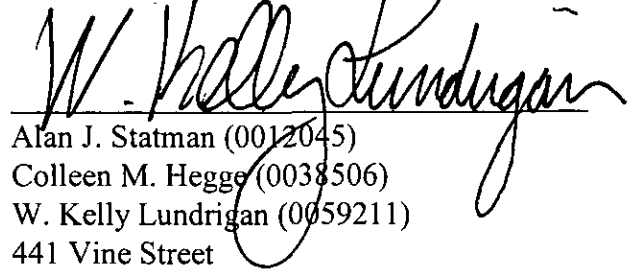
DEMAND FOR RELIEF

WHEREFORE, Plaintiffs demand for judgment against Defendants in a sum in excess of \$25,000.00, to include:

- a. As to all Plaintiffs, damages in a sum which will fully and completely compensate Plaintiffs;
- b. As to all Plaintiffs, punitive damages for Defendants for willful, wanton, malicious, and/or despicable conduct;
- c. As to all Plaintiffs, attorney's fees for Defendants for willful, wanton, malicious, and/or despicable conduct;
- d. As to all Plaintiffs, Court costs and appropriate expenses;
- e. As to all Plaintiffs, interest and such other and further relief as may be just and proper;
- f. Certification of a class action under Ohio Rule of Civil Procedure 23;

Respectfully submitted,

STATMAN, HARRIS & EYRICH, LLC



Alan J. Statman (0012045)

Colleen M. Hegge (0038506)

W. Kelly Lundrigan (0059211)

441 Vine Street

3700 Carew Tower

Cincinnati, OH 45202

Telephone: (513) 621-2666

Facsimile: (513) 621-4896

Email: ajs@statmanharris.com

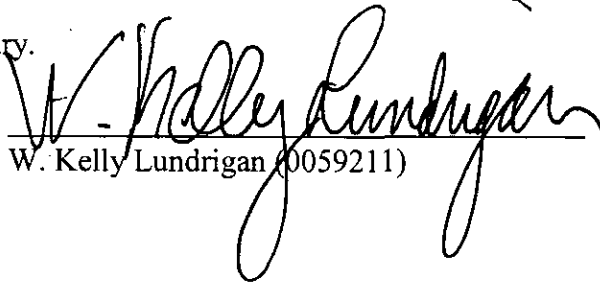
chegge@statmanharris.com

klundrigan@statmanharris.com

Trial Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.



W. Kelly Lundrigan (0059211)

To The Clerk:

Please serve all defendants at the addresses listed in the case caption by certified mail, return receipt requested.



COMMON PLEAS COURT
HAMILTON COUNTY, OHIO

Joseph & Andrea Coleman, et al.

A0911823

CASE NO. _____

VS

WRITTEN REQUEST FOR SERVICE
TYPE OF PAPERS TO BE SERVED ARE

Covenant Apostolic Church, Inc.

Summons & Complaint

PLEASE CHECK IF THIS IS A
DOMESTIC CASE

PLAINTIFF/DEFENDANT REQUESTS:

EXPRESS MAIL SERVICE _____

CERTIFIED MAIL SERVICE _____

REGULAR MAIL SERVICE _____

PERSONAL SERVICE _____

RESIDENCE SERVICE _____

PROCESS SERVICE _____

FOREIGN SHERIFF _____

ON Covenant Apostolic Church

7630 View Place Drive

Cincinnati, OH 45011

Statutory Agent: Shelly Hendricks

4811 Imperial Drive

Hamilton, OH 45011

W. Kelly Lundrigan

513-621-2666

ATTORNEY

PHONE NUMBER

441 Vine St., Ste. 3700, Cincinnati OH 45202

0059211

ADDRESS

ATTORNEY NUMBER