

MILDENBERG AND STALBAUM, P.C.  
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**COPY**

*Counsel for Plaintiff*

-AND-

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*Counsel for Plaintiff*

2008 AUG - 1 PM 4:50  
PRO PROTHY

THE ESTATE OF DANIEAL KELLY  
BY AND THROUGH THE  
ADMINISTRATORS OF THE  
ESTATE, DANIEL KELLY AND  
ANDREA KELLY,  
123 S. BROAD STREET,  
PHILADELPHIA, PA 19109

IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT  
OF PENNSYLVANIA

v.

*Plaintiff,*

OCTOBER TERM, 2007  
No. 003981

THE CITY OF PHILADELPHIA  
ONE PARKWAY BUILDING  
1515 ARCH STREET, 15<sup>TH</sup> FLOOR  
PHILADELPHIA, PA 19102; and

THE DEPARTMENT OF HUMAN  
SERVICES ("DHS") OF THE CITY  
OF PHILA.  
c/o THE CITY OF PHILADELPHIA  
1515 ARCH STREET  
PHILADELPHIA, PA 19102; and

MULTI-ETHNIC BEHAVIORIAL

COMPLAINT AND  
NOTICE TO DEFEND

WRONGFUL DEATH ACTION  
42 PA.C.S.A. 8301

HEALTH INC. :  
5616 WOODLAND AVENUE :  
PHILADELPHIA, PA 19143; and :  
 :  
DEPARTMENT OF PUBLIC :  
WELFARE OF THE :  
COMMONWEALTH OF :  
PENNSYLVANIA, :  
c/o Attorney General Tom Corbett :  
Pennsylvania Office of Attorney General :  
Strawberry Square :  
Harrisburg, PA 17120; and :  
 :  
THE COMMONWEALTH :  
OF PENNSYLVANIA :  
c/o Attorney General Tom Corbett :  
Pennsylvania Office of Attorney General :  
Strawberry Square :  
Harrisburg, PA 17120; and :  
 :  
LAURA SOMMERER c/o :  
THE DEPARTMENT OF HUMAN :  
SERVICES ("DHS") OF PHILA. :  
C/O THE CITY OF PHILADELPHIA :  
15 15 Arch Street :  
Philadelphia, PA 19102; and :  
 :  
DANA M. POINDEXTER :  
321 5 Hamilton Street :  
Philadelphia, PA 1 9104; and :  
 :  
MICKAL K. KAMUVAKA :  
2237 Bryn Mawr Avenue :  
Philadelphia, PA 19131; and :  
 :  
JULIUS MURRAY c/o :  
MULTI-ETHNIC BEHAVORIAL :  
HEALTH INC. :  
56 16 Woodland Avenue :  
Philadelphia, PA 19143; and :  
 :  
*Defendants.* :  
 :  
\_\_\_\_\_ :

## NOTICE TO DEFEND

### NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**PHILADELPHIA BAR ASSOCIATION  
LAWYER REFERRAL AND  
INFORMATION SERVICE  
ONE READING CENTER  
PHILADELPHIA, PENNSYLVANIA 19107  
(215) 238-6333**

### AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

**LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.**

**ASOCIACION DE LICENCIADOS DE  
FILADELFIA  
SERVICIO E INFORMACION LEGAL  
ONE READING CENTER  
FILADELFIA, PENNSYLVANIA 19107  
TELEFONO: (215) 238-6333**

## COMPLAINT

### I. PARTIES

1. Plaintiff is the Estate of Danieal Kelly, by and through the Administrators of the Estate, Daniel Kelly and Andrea Kelly, the Natural Parents of the decedent Danieal Kelly, with an address for service herein of 123 S. Broad Street, Suite 1610, Philadelphia, PA 19109.

2. The Decedent, during her brief life, suffered from Cerebral Palsy, could not walk on her own, and was confined to a wheelchair ("Danieal" or "decedent minor").

3. The aforesaid Administrators of the Estate of Danieal Kelly bring this action as the personal representative of the Estate of the decedent pursuant to Pa.R.Civ.P. 2202(a), for the benefit of all persons entitled by law to share any damages resulting from the wrongful death of Danieal. A true and correct copy of Letters of Administration appointing the said Administrators is attached hereto, made a part hereof by reference, and marked "Exhibit A."

4. Danieal Kelly, a female child, was born on January 3, 1991, and, according to the official Report of Death Investigation of the City of Philadelphia Office of the Medical Examiner, passed from this life on August 4, 2006, at the age of 15 (fifteen).

5. Defendant, the City of Philadelphia (the "City"), is a municipal corporation of the Commonwealth of Pennsylvania with an address for service at 1515 Arch Street, Philadelphia, PA 19023.

6. Defendants, the Department of Human Services ("DHS") of the City of Philadelphia, is a Department of the City of Philadelphia, with an address for service c/o the City of Philadelphia, 1515 Arch Street, Philadelphia, PA 19023.

7. Defendant, Multi-Ethnic Behavior Health, Inc. ("MEBH"), is, upon information and belief, a Pennsylvania Corporation with a registered place for services at 5616 Woodland

Avenue, Philadelphia, PA 19143. Upon information and belief, in addition, the President of the said Corporation is registered with the Commonwealth of Pennsylvania as located at 4000 Gypsy Lane, Suite 235, Philadelphia, PA 19144.

8. Defendant, the Department of Public Welfare of the Commonwealth of Pennsylvania ("DPW"), is, upon information and belief, a Department of the Commonwealth of Pennsylvania with an address for service c/o Attorney General Tom Corbett, Pennsylvania Office of Attorney General, Strawberry Square, Harrisburg, PA 17120.

9. Defendant, the Commonwealth of Pennsylvania (the "Commonwealth"), has an address for service c/o Attorney General Tom Corbett, Pennsylvania Office of Attorney General, Strawberry Square, Harrisburg, PA 17120.

10. Defendant, Laura Sommerer, is an adult individual and citizen of the Commonwealth of Pennsylvania with an address for service, upon information and belief, at DHS, c/o the City of Philadelphia, 1515 Arch Street, Philadelphia, PA 19102.

11. Defendant, Dana M. Poindexter, is an adult individual and citizen of the Commonwealth Pennsylvania, with an address at 3215 Hamilton Street, Philadelphia, PA 19104.

12. Defendant Michael K. Kamuvaka, is an adult individual and citizen of the Commonwealth Pennsylvania, with an address at 2237 Bryn Mawr Avenue, Philadelphia, PA 19131.

13. Defendant Julius Murray is an adult individual and citizen of the Commonwealth of Pennsylvania with an address for service, upon information and belief, c/o Multi-Ethnic Behavior Health, Inc., 5616 Woodland Avenue, Philadelphia, PA 19143.

14. At all times relevant hereto, Defendants acted by and through their agents, officers, shareholders, employees, servants, directors, executives, and members, who were acting

within the course and scope of their employment or agency or duties on behalf of the respective Defendants.

15. Pursuant to Pa.R.Civ.P. 2204, at the present time, the persons that may be entitled to share in the damages resulting in the wrongful death are the natural parents of Danieal Kelly, to wit, Mr. and Mrs. Kelly.

## **II. Jurisdiction and Venue**

16. This court has jurisdiction over the instant wrongful death action for a death that occurred in Philadelphia County.

17. Venue is appropriate in this County as the death complained of occurred in Philadelphia County.

## **III. Cause of Action**

18. Danieal, a 15 year old who suffered from Cerebral Palsy and could not walk on her own, died on or about August 4, 2006.

19. Fire medics of the City of Philadelphia found Daniel dead on arrival in her home at approximately 9:16 a.m. on August 4, 2006.

20. According to the Philadelphia Medical Examiner's Report, Danieal, who could not walk on her own, was found in her bed. Her body was in a state of rigor mortis. Danieal had five (5) decubiti (bed sores), with one bed sore on her left buttock that went down to the bone. There were maggots and flies in the bed sores. The sores were at least two weeks old, and they were infected. Danieal had bruising to the shoulder area, with wound to her right clavicle from her chin resting on it. Daniel was chronically malnourished, had no food or fluid in her stomach at the time of death, and no subcutaneous fat in her body. She was 42 inches tall and had shrunk to a weight of only 42 pounds. There was fecal matter on her body.

21. The housing conditions in Danieal's home were as follows: There was fecal odor throughout the home. The temperature was oppressively hot. There two fans operating in the home but no lighting. There were piles of debris scattered throughout the home. The kitchen was cluttered and non-functional. The stove was inoperable. There was very little food in the home. A small table was overturned. There were two mattresses on the floor. Danieal's mattress was soiled. The remaining children in the home were dirty and disheveled. The skin of Danieal's body was disintegrating.

22. Previous to October, 2005, the City of Philadelphia, acting through DHS, was responsible for the in-home monitoring and medical care and treatment of Danieal, through the DHS program known as Services to Children in their Own Home ("SCOH").

23. DHS delegated this responsibility to MEBH, as private contractor engaged in provision of in-home services.

24. According to public reports, MEBH was responsible to visit with Danieal in her home at least twice per week to provide monitoring, medical care and treatment.

25. Upon information and belief, however, MEBH failed to provide the appropriate services for which it was responsible and is now under federal grand jury investigation into whether it defrauded the public by charging \$3.6 Million dollars since 2001 to monitor children and families for DHS.

26. MEBH was known or suspected to of falsifying records of home visits, creating records for home visits which were never actually conducted, and charging the City for same.

27. DHS had reason to know of this practice, and/or knew of this practice.

28. As all times relevant hereto, the Commonwealth, through the DPW, was responsible for regulating and monitoring DHS.

29. As result of the death of Daniel, the Commonwealth official in charge of oversight of Philadelphia DHS was removed from his post, and the State Welfare Secretary, Estelle Richman stated publically that she made the demotion after deciding that the DPW had not properly monitored DHS. "There hasn't been any oversight on the State's part," she said publically on or about October 26, 2006.

30. The Philadelphia Medical Examiner has ruled Danieal's death a homicide.

31. Defendants Laura Sommerer and Dana M. Poindexter were upon information and belief, DHS employees and caseworkers who were, at varying times, assigned to Danieal's case. Acting in accordance with regular, standard and accepted practices at DHS, they handled Danieal's file in a dangerous and reckless manner, and as a result, Danieal died. They have been criminally charged in connection with Danieal's death.

32. Defendants Michael K. Kamuvaka and Julius Murray, were upon information and belief, MEBH Employees who were, at varying times, assigned to Danieal's case or in charge of MEBH. Acting in accordance with regular, standard and accepted practices at MEBH, they handled Danieal's file in a dangerous and reckless manner, and as a result, Danieal died. They have been criminally charged in connection with Danieal's death.

### COUNT I

#### **WRONGFUL DEATH**

**(Plaintiff v. All Defendants)**

33. The foregoing paragraphs are incorporated herein by reference.

34. The Defendants were responsible for the wrongful death of Danieal.



35. This action is brought under Pennsylvania's Wrongful Death Act, on behalf of the survivors of the decedent who are entitled to share in the damages of the action, pursuant to 42 Pa.C.S.A. 8301.

36. Plaintiff, the personal representatives of the Estate, claims damages for pecuniary loss suffered by decedent's survivors by reason of the wrongful death of decedent, as well as reimbursement for medical bills, funeral and internment expenses, and administrative expenses incurred therewith.

37. As a result of the wrongful death of decedent, the survivors have been deprived of the guidance, love, tutelage, companionship, support, comfort and consortium which they would have received from decedent for the remainder of her life.

WHEREFORE, Plaintiff requests judgment against Defendants for compensatory and punitive damages to be determined at trial, plus interest and costs, and for such further or additional relief as the interests of justice may require, and will ever pray.

## COUNT II

### SURVIVAL

(Plaintiff v. All Defendants)

38. The foregoing paragraphs are incorporated herein by reference.

39. This survival action is brought pursuant to 42 Pa.C.S.A. 8302.

40. As a result of the death of decedent, her estate has been deprived of the economic value of her life expectancy, and pecuniary loss caused by her death.

41. As a result of the actions of Defendants, the decedent, prior to her death, suffered unbearable conscious pain and suffering, mental anguish, and physical and mental injuries.

42. As a result of the untimely death of decedent, Plaintiff claims of the defendants an additional sum for the psychic value of the expectancy and employment of the life of the decedent which was terminated by reason of her death.

43. As a result of the untimely death of decedent, Plaintiff claims of the defendants damages for the expenses incurred for medical attention, treatment, funeral, burial, and other expenses in connection therewith.

44. In addition, Plaintiff claims damages for the loss suffered by the decedent of the prospective happiness and the enjoyment and pleasures of life which decedent would have had during the remainder of her natural life and which was terminated by her death.

WHEREFORE, Plaintiff requests judgment against Defendants for compensatory and punitive damages to be determined at trial, plus interest and costs, and for such further or additional relief as the interests of justice may require, and will ever pray.

### COUNT III

#### **CIVIL RIGHTS CLAIM- 42 U.S.C. 1983**

**(Plaintiff v. All Defendants other than MEBH, Michael K. Kamuvaka and Julius Murray)**

45. The Defendants listed above in this Count acted under color of state law at all times relevant hereto with respect to decedent.

46. The death of decedent was the result of, inter alia, affirmative actions and policies of said Defendants that amounted to a state-created danger.

47. At all times relevant hereto, said Defendants had a special relationship with decedent such that they were responsible for her medical care, monitoring, and treatment.

48. The actions of said Defendants, as aforesaid, constituted a violation of decedent's rights to life, liberty, the pursuit of happiness, privacy, equal protection, and due process as

guaranteed by the laws and Constitution of the United States of America, including the First, Fifth, and Fourteenth Amendments to the Constitution.

49. As a result of the said violation of decedent's civil rights, decedent suffered an untimely death and all of the aforesaid damages resulting therefrom, in addition to damages the civil rights violations.

50. The aforesaid damages are recoverable under 42 USC Section 1983.

WHEREFORE, Plaintiff requests judgment against Defendants for compensatory and punitive damages to be determined at trial, plus interest and costs, attorney's fees and costs of suit, and for such further or additional relief as the interests of justice may require, and will ever pray.

#### COUNT IV

**DIRECT CLAIM UNDER 1<sup>ST</sup>, 5<sup>TH</sup>, AND 14<sup>TH</sup> AMENDMENTS TO THE U.S.**

#### **CONSTITUTION**

**(Plaintiff v. All Defendants other than MEBH, Michael K. Kamuvaka and Julius Murray)**

51. The foregoing paragraphs are incorporated herein by reference.


WHEREFORE, Plaintiff requests judgment against said Defendants for compensatory and punitive damages to be determined at trial, plus interest and costs, attorney's fees and costs of suit, and for such further or additional relief as the interests of justice may require, and will ever pray.

#### JURY DEMAND

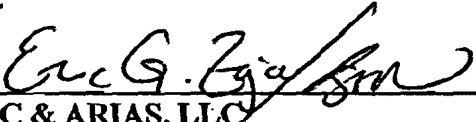
Plaintiff demands a trial by jury as to all issues so triable herein.

Dated: August 1, 2008

Respectfully Submitted,

  
MILDENBERG AND STALBAUM, P.C.  
By: BRIAN R. MILDENBERG, ESQUIRE  
Identification No.: 84861  
DAVID S. MILDENBERG, ESQUIRE  
Identification No.: 205488  
123 South Broad Street, Suite 1610  
Philadelphia, PA 19109  
(215) 545-4870  
*Counsel for Plaintiff*

-AND-

  
ZAJAC & ARIAS, LLC  
BY: ERIC G. ZAJAC, ESQUIRE  
Attorney No. 66003  
1818 Market Street, 30<sup>th</sup> Floor  
Philadelphia, PA 19103  
Phone: 215-575-7615  
Facsimile: 215-575-7640  
*Counsel for Plaintiff*

VERIFICATION

I, BRIAN R. MILDENBERG, CERTIFY THAT DUE TO EXIGENCIES IN FILING DEADLINES, I WAS NOT ABLE TO OBTAIN THE VERIFICATION OF THE ADMINISTRATORS OF THE ESTATE OF DANIEAL KELLY PRIOR TO FILING THIS COMPLAINT. I WILL SUBSTITUTE THEIR VERIFICATION IN DUE COURSE. I VERIFY THAT ALL FACTS STATED HEREIN ARE VERIFIED BY ME TO BE ALLEGED IN PUBLIC RECORDS, NEWSPAPERS, AND RECORDS OF PUBLIC OR GOVERNMENTAL INVESTIGATIONS.

I MAKE THIS VERIFICATION SUBJECT TO 18 PA.C.S. 4904.

  
\_\_\_\_\_  
BRIAN R. MILDENBERG, ESQ.

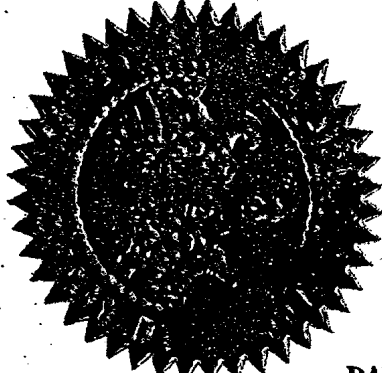
DATED:

8/1/08

LETTERS OF ADMINISTRATION

REGISTER'S OFFICE  
PHILADELPHIA COUNTY, PA

Nº A4317-2008



ESTATE OF DANIEAL NICOLE KELLY  
AKA: DANIEAL N. KELLY

Social Security No. \_\_\_\_\_

WHEREAS, DANIEAL NICOLE KELLY

late of 1722 MEMORIAL AVE., PHILADELPHIA, PA 19104

died on the 4th day of August, 2006  
and

WHEREAS, the grant of letters of administration is required for the administration of his estate.

THEREFORE, I, RONALD R. DONATUCCI, Register for the Probate of Wills and Grant of Letters Testamentary and of Administration, in and for the County of Philadelphia in the Commonwealth of Pennsylvania, hereby certify that I have granted Letters of Administration

to ANDREA KELLY and DANIEL KELLY

who ha<sup>ve</sup> duly qualified as Administrator of the estate of the above named decedent and ha<sup>ve</sup> agreed to administer the estate according to law, all of which fully appear of record in the Office of the Register of Wills of Philadelphia County, Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at Philadelphia, the 29th day of July, 2008

*Domenico Dimella*  
Deputy Register

EXHIBIT *A*

IN THE REGISTER OF WILLS OFF. 3 PHILADELPHIA COUNTY  
COMMONWEALTH OF PENNSYLVANIA

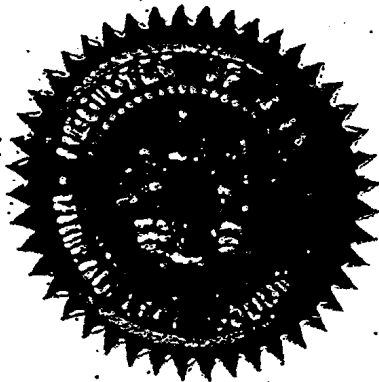
ESTATE OF DANIEAL NICOLE KELLY  
Deceased

ADMINISTRATION  
OF  
2006

DECREE

A-3

AND NOW, this 31<sup>st</sup> day of October, 2006, in consideration of the  
Petition for Citation filed in the estate of DANIEAL NICOLE KELLY, the hearing  
held on Thursday, October 12, 2006, citing Daniel Kelly, father of the Decedent,  
Proof of Service filed and appearance by attorney for Respondent, it is hereby  
ORDERED and DECREED, BY AGREEMENT, Letters of Administration shall issue  
to ANDREA KELLY and DANIEL KELLY, upon otherwise complying with the  
requirements of the Probate Code.



RONALD R. DONATUCCI, ESQUIRE  
Register of Wills