

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2015-000000-5 LHM:29 15-CVS- 10583

CLERK OF SUPERIOR COURT, C.S.C.

WILLIAM FRANCIS PRITCHARD,  
ADMINISTRATOR OF THE ESTATE OF  
JEFFREY LEE WILLIAMS,

Plaintiff,

vs.

### COMPLAINT

BEST WESTERN INTERNATIONAL, INC., AJD  
INVESTMENTS, INC., APPALACHIAN  
HOSPITALITY MANAGEMENT, INC., BARRY  
DAMON MALLATERE, all d/b/a BEST  
WESTERN PLUS BLUE RIDGE PLAZA  
HOTEL, INDEPENDENCE OIL & LP/GAS,  
INC., INDEPENDENCE OIL, LLC, BLUE  
RIDGE ENERGIES, LLC, GAS NATURAL,  
INC., DALE THOMAS WINKLER, JR., d/b/a  
DJ'S HEATING SERVICES, BARRY DAMON  
MALLATERE, THOMAS DANIEL MILLER,  
EXPERT AIR, INC., PATRICK NOLAN,  
TOWN OF BOONE, NC, BOONE POLICE  
DEPT., BOONE FIRE DEPT., BOONE  
PLANNING AND INSPECTIONS DEPT.,

Defendants.

**NOW COMES** the Plaintiff, William Francis Pritchard, in his official capacity as Administrator of the Estate of Jeffrey Lee Williams, by and through his undersigned counsel, and alleges and states as follows:

#### PARTIES, JURISDICTION AND VENUE

1. The Plaintiff, William Francis Pritchard, is a citizen and resident of Charlotte, Mecklenburg County, North Carolina. Mr. Pritchard has been duly appointed as the Ancillary Administrator of the Estate of Jeffrey Lee Williams in Mecklenburg County Estates File

No. 15 E 1910 and he is appearing in that capacity for the purposes of instituting this action.

2. Decedent Jeffrey Lee Williams was a citizen and resident of Rock Hill, York County, South Carolina at the time of his death in Watauga County, North Carolina on or about June 7, 2013.
3. Upon information and belief, the Defendant, Best Western International, Inc. ("Best Western International") is a corporation organized and existing under the laws of the State of Arizona with its principal place of business in Phoenix, Arizona. By and through its subsidiaries, employees, franchisees and other agents, Best Western International is engaged in substantial activity within the State of North Carolina. Through various agreements with Defendants AJD Investments, Inc., Appalachian Hospitality Management, and/or Barry Damon Mallatere, Best Western International has the right to control, and from time to time exercises such control, over numerous aspects of the operation of the Best Western Plus Blue Ridge Plaza Hotel located at 840 East King Street in Boone, Watauga County, North Carolina.
4. Upon information and belief, the Defendant, AJD Investments, Inc. ("AJD") is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Boone, North Carolina. By and through its subsidiaries, employees, and other agents, AJD is engaged in substantial activity within the State of North Carolina. Through various agreements with Best Western International, Appalachian Hospitality Management, Inc., and/or Barry Damon Mallatere, AJD has the right to control, and from time to time exercises such control, over numerous aspects of the operation of the Best Western Plus Blue Ridge Plaza Hotel located at 840 East King Street in Boone, Watauga County, North Carolina.
5. Upon information and belief, the Defendant, Appalachian Hospitality Management, Inc., ("Appalachian Hospitality Management") is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Boone, North Carolina. Appalachian Hospitality Management was formed to manage aspects of various hotels and other properties owned by AJD within the State of North Carolina. By and through its subsidiaries, employees, and other agents, Appalachian Hospitality Management is engaged in substantial activity within the State of North Carolina. Through various agreements with Best Western International, AJD, and/or Barry Damon Mallatere, Appalachian Hospitality Management has the right to control, and from time to time exercises such control, over numerous aspects of the operation of the Best Western Plus Blue Ridge Plaza Hotel located at 840 East King Street in Boone, Watauga County, North Carolina.
6. Upon information and belief, the Defendant Barry Damon Mallatere ("Mallatere") is a natural person domiciled in Watauga County, North Carolina. Mallatere is, upon

information and belief, the principal owner, President, and Manager of Appalachian Hospitality Management.

7. At all times herein complained of, Best Western International, AJD, Appalachian Hospitality Management, and Mallatere were all doing business as the Best Western Plus Blue Ridge Plaza Hotel located at 840 East King Street in Boone, Watauga County, North Carolina (the "Hotel").
8. Upon information and belief, the Defendant Independence Oil & LP/Gas, Inc. is or was a corporation organized and existing under the laws of the State of Virginia with its principal place of business in Independence, Virginia. By and through its subsidiaries, employees, and other agents, Independence Oil & LP/Gas, Inc. is or was engaged in substantial activity within the State of North Carolina.
9. Upon information and belief, the Defendant Independence Oil, L.L.C. is a corporation organized and existing under the laws of the State North Carolina with its principal place of business in Cleveland, Ohio. By and through its subsidiaries, members, employees, and other agents, Independence Oil, L.L.C. is engaged in substantial activity within the State of North Carolina.
10. Upon information and belief, the Defendant Blue Ridge Energies, LLC is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Lenoir, North Carolina. By and through its subsidiaries, members, employees and other agents, Blue Ridge Energies, LLC is engaged in substantial activity within the State of North Carolina.
11. Upon information and belief, the Defendant Gas Natural, Inc. is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Great Falls, Montana. By and through its subsidiaries, members, employees and other agents, Gas Natural, Inc. is engaged in substantial activity within the State of North Carolina.
12. Upon information and belief, Independence Oil & LP/Gas, Inc., Independence Oil, L.L.C., Blue Ridge Energies, LLC and Gas Natural, Inc. (collectively, the "Gas Company Defendants") are or were fuel service companies that offered sales, service, and installation of equipment relating to the use of combustible gases including propane and natural gas.
13. Upon information and belief, the Defendant Thomas Daniel Miller ("Miller") is a natural person domiciled in Ashe County, North Carolina. At all times relevant to this action, Miller was an employee or agent of the Gas Company Defendants and was acting within the course and scope of his employment and/or agency.
14. Upon information and belief, the Defendant Dale Thomas Winkler, Jr., d/b/a DJ's Heating Services, ("Winkler") is natural person domiciled in Watauga County, North Carolina. Winkler, doing business as DJ's Heating Services, is engaged in substantial activity within

the State of North Carolina.

15. Upon information and belief, the Defendant Expert Air, Inc. ("Expert Air") is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Indian Trail, Union County, North Carolina. By and through its subsidiaries, employees, and other agents, Expert Air is engaged in substantial activity within the State of North Carolina.
16. Upon information and belief, the Defendant Patrick Nolan ("Nolan") is a natural person domiciled in Indian Trail, Union County, North Carolina. At all times relevant to this action, Nolan was an employee or agent of Expert Air and was acting within the course and scope of his employment and/or agency.
17. Upon information and belief, Defendant Town of Boone is a municipal corporation in North Carolina that was incorporated in 1874.
18. Upon information and belief, the Defendants the Boone Police Department, the Boone Fire Department, and the Boone Planning and Inspections Department are political subdivisions and/or departments of the Town of Boone.
19. The Defendants Town of Boone, the Boone Police Department, the Boone Fire Department, the Boone Planning and Inspections Department (collectively, the "Town of Boone"), along with various employees and agents of Town of Boone, participated at various times and for various reason with inspections and investigations at the Hotel.
20. One or more of the parties, at all times pertinent hereto, resided in Mecklenburg County, North Carolina.
21. Mecklenburg County Superior Court is the proper trial division in this case as the amount in controversy exceeds the minimum jurisdictional limit of the Superior Court trial division.
22. Jurisdiction and venue are otherwise properly with this Honorable Court.

#### **FACTS**

23. Best Western International offers and manages three franchise brands: Best Western, Best Western Plus, and Best Western Premier.
24. The Best Western brand was founded in 1946. By 1963, Best Western was the largest hotel chain in the industry, with 699 member hotels and 35,201 rooms. Since then, Best Western has established operations in more than 100 countries, with more than 4000 hotels, and remains the industry leader with respect to number of properties under a single brand. At the end of the 2014 fiscal year, Best Western had 2,070 hotels in North America alone.

25. Best Western International owns and operates a common website for all of its hotel brands and locations. It also owns and operates a common rewards program known as Best Western Rewards where members can earn points towards an extensive array of products and services, including free hotel nights, dining, retail, entertainment gift cards, merchandise and airline miles.
26. Best Western International expends significant resources marketing the Best Western brand to the public and encouraging guest loyalty.
27. As the franchisor and brand manager, Best Western International has the means, ability, and right to control many aspects of the day-to-day operations of its brand hotels, including the right to require carbon monoxide detectors in guest rooms containing or located near fossil fuel burning appliances.
28. Best Western International requires all Best Western franchisees to meet various brand standards it establishes. These standards include the appearance of the hotel building, signage, furnishings and appliances located within guest rooms and common areas and standards relating to security and safety of hotel guests and building occupants. For example, Best Western International requires all of its properties around the globe to provide 17 (14 internationally) frequently requested guest amenities and services.
29. In January 2008, Philip D. Prechtel, a 63-year-old retired engineer, died after inhaling carbon monoxide in his hotel room at the Best Western Plus Allentown Inn & Suites in Allentown, PA. Investigators determined that a makeshift canopy placed on the side of the hotel during a remodeling project trapped exhaust from propane-fired hot water heaters in the basement and pushed it back into the building. Several hotel guests were hospitalized as a result of the incident.
30. After the January 2008, incident at the Best Western Plus Allentown Inn & Suites, carbon monoxide detectors were installed in every room at Best Western hotels in the Lehigh Valley. When asked about the costs associated with installing the detectors, Larry Kolasensky, general manager at Best Western Allentown Inn and Suites, stated "There is no price tag on life."
31. In December 2009, a carbon monoxide leak was discovered at the Best Western Hotel located at the Detroit Metropolitan Airport in Romulus, Michigan, after numerous occupants complained to the hotel staff about being ill, including some that had passed out. Firefighters were called to the hotel and assisted in evacuating the building.
32. On August 20, 2011, another carbon monoxide leak forced the temporary closure of the Best Western Plus Allentown Inn & Suites. Elevated carbon monoxide levels in the building set off carbon monoxide alarms which had been installed after the earlier incident at the same hotel. No one was injured.

33. In June 2011, multiple employees of the Agate Beach Best Western in Newport, Oregon, became ill. High levels of carbon monoxide were detected in the basement of the hotel. Fire crews immediately evacuated the hotel and spent several hours containing the leak and airing out the building. Several hotel guests and employees were medically evaluated and treated for carbon monoxide exposure.
34. From 2010 through November 8, 2012, there were 30 incidents of fire departments or government officials finding elevated levels of carbon monoxide at hotels in the United States according to a USA TODAY analysis of more than 1,000 media reports and interviews with local fire departments.
35. In these 30 incidents, more than 1,300 people were evacuated, eight died, and at least 170 were affected by carbon monoxide, treated by medical personnel or hospitalized. These numbers are likely lower than the actual numbers of individuals affected because news media accounts often fail to state the total number of people evacuated or treated.
36. Lindell Weaver, a professor of medicine at the University of Utah, used similar research methods for a 2007 study that found 68 incidents involving 27 deaths and 772 people "poisoned" by carbon monoxide from 1989 through 2004 in hotels, motels and resorts. Once again, these numbers are likely lower than the actual numbers of individuals affected because news media accounts often fail to state the total number of people evacuated or treated.
37. In December 2010, five teenagers celebrating a birthday were killed in a guest room at the Presidente Hotel in Hialeah, Florida, after a car was left running in the motel's garage.
38. In February 2012, 44-year-old William J. Moran was found dead at the Holiday Inn Express in South Charleston, West Virginia. He was part of a construction crew working in the area, and several of his coworkers staying at the same hotel also became sick that night. Investigators determined that a carbon monoxide leak in the hotel's swimming pool heater, which was located near Moran's room was the cause of the incident. West Virginia passed legislation requiring hotels to install carbon monoxide detectors as a result of this incident.
39. In December 2012, more than 30 people were transported to a hospital and the Best Western Inn & Suites in Greensburg, Kansas, was evacuated after several children in the hotel swimming pool experienced difficulty breathing. The children had been exposed to high levels of carbon monoxide emitted from an improperly vented pool water heater.
40. A 2012 report by the National Fire Protection Association disclosed that 81,100 non-fire carbon monoxide incidents were reported to U.S. fire departments in 2010.
41. Best Western owns, operates or franchises hotels in several states and countries that require carbon monoxide detectors in hotel buildings.

42. Best Western International knew, or in the exercise of reasonable care should have known, that incidents involving carbon monoxide sickness or poisoning were occurring with alarming regularity throughout the hospitality industry.
43. Best Western International knew, or in the exercise of reasonable care should have known, that installation of carbon monoxide detectors in critical areas of hotel buildings would eliminate altogether or greatly reduce the potential for incidents to occur involving carbon monoxide sickness or poisoning of hotel guests.
44. Best Western International knew, or in the exercise of reasonable care should have known, that the failure to install carbon monoxide detectors in critical areas of hotel buildings would eventually result in carbon monoxide sickness or poisoning of hotel guests at one of its locations given the frequency with which these events were occurring.
45. Best Western International knew, or in the exercise of reasonable care should have known, to require annual or regular inspections of the critical areas of the physical plant of an individual property, including but not limited to, inspections of all combustible gas fueled appliances and devices.
46. Best Western International, acting by and through its officers, managers and directors, made a deliberate and conscious decision not to require the installation of carbon monoxide detectors in critical areas of its hotel buildings thereby exposing building guests and employees to an ongoing risk of carbon monoxide poisoning.
47. Best Western international, acting by and through its officers, managers and directors, made a deliberate and conscious decision not to require annual or regular inspections of an individual property's physical plant, including the inspection of combustible gas fueled appliances and devices, thereby exposing building guests and employees to an ongoing risk of carbon monoxide poisoning.
48. Upon information and belief, AJD is a company that owns and operates several hotels in and around Boone, North Carolina.
49. Sometime during or before the year 2000, AJD and/or Appalachian Hospitality Management entered into an agreement with Best Western International to purchase a franchise and to build and operate the Hotel, a Best Western Plus to be located at 840 East King Street, in Boone, North Carolina.
50. The Hotel, as it was designed and constructed, included an indoor swimming pool. Upon information and belief, the swimming pool was originally heated by a propane gas pool heater. The pool heater was located in an interior equipment room adjacent to the pool some distance from the exterior wall of the building.
51. The pool heater exhaust was required to be vented to the outside of the building in

compliance with industry standards, rules and regulations, and applicable building codes. Upon information and belief, the minimum specifications for the vent system included the use of a double walled, powered vent stack using sheet-metal of sufficient thickness.

52. From the time of its construction in 2000, to April, 2013, various repairs and alterations were made to the Hotel. These repairs resulted in various openings being created in a one-hour rated fire wall that separated various guest rooms from common areas of the hotel. Upon information and belief, applicable building codes required that all openings in the rated fire wall assemblies to be sealed with appropriate fire rated caulk and materials immediately following the repairs or alterations.
53. Prior to 2011, AJD entered into agreement with Appalachian Hospitality Management whereby Appalachian Hospitality Management assumed primary responsibility for the day-to-day management of the various hotels owned by AJD Investments, including the Hotel.
54. Upon information and belief, sometime after initial construction but prior to October 2011, AJD and/or Appalachian Hospitality Management replaced the original pool heater with another pool heater with an unknown make, model or origin.
55. Upon information and belief, Harold Robinson was an employee of Appalachian Hospitality Management and worked in the maintenance department as a supervisor.
56. Upon information and belief, on or around October, 2011, Mallatere directed Harold Robinson and two other maintenance staff employees of Appalachian Hospitality Management, Rich Moses and Steven Thigpen, to replace the propane gas pool heater located in the equipment room adjacent to the swimming pool area with a used Jandy Lite2 propane gas pool heater bearing serial number H06PB1224. The used replacement pool heater had been in operation at an outdoor pool located at The Sleep Inn, another hotel managed by Appalachian Hospitality Management and Mallatere.
57. Applicable building codes and regulations, along with sound construction practices, required that all work performed in connection with the relocation of the pool heater be performed by a properly trained and licensed heating contractor. In addition, a permit and inspection of all work performed was required.
58. Neither Harold Robinson nor the other Appalachian Hospitality maintenance workers were licensed heating contractors nor had they undergone the training required by the State of North Carolina to become licensed heating contractors. Therefore, all work performed by Appalachian Hospitality maintenance workers in connection with the relocation of the used Jandy pool heater was in violation of North Carolina law. Appalachian Hospitality Management maintenance workers failed to obtain proper permits or inspections from local governmental authorities at the time the work was performed because they were not properly licensed to perform the work.



59. Prior to the installation of the replacement Jandy pool heater in October 2011, no carbon monoxide detectors were installed in the vicinity of the previous pool heater(s) or in any adjacent rooms, floors or spaces.
60. Even though Jandy, the manufacturer of the pool heater "strongly recommends installation of suitable Carbon Monoxide detectors in the vicinity of this appliance **and in any adjacent occupied spaces,**" no detectors were installed by Appalachian Hospitality Management employees in those areas on or after October 2011.
61. Carbon monoxide is an odorless, colorless, tasteless gas that is lethal in sufficient concentrations. Carbon monoxide is a natural byproduct of combustion and is produced by any gas-fired pool heater when it is operating. In addition, failure to properly install, maintain and operate a gas-fired pool heater leads to increased production of carbon monoxide far in excess of that which is a natural byproduct of combustion.
62. Water is a natural byproduct of gas combustion and is produced by any gas-fired pool heater. Water vapor that does not exit the exhaust stack typically turns into liquid water commonly referred to as condensation or condensate. Condensate in the exhaust stack must also be managed so as to minimize/eliminate the possibility of corrosion to ensure the integrity of the exhaust stack.
63. Jandy, the manufacturer of the used Jandy Lite2 pool heater, states in the installation manual as follows: "If the Lite2 is being installed to replace an existing pool heater, it is recommended that a new, appropriate venting system be installed with the new heater. However, if an existing venting system must be used, be sure to carefully inspect the venting system to ensure it is in good condition and continues to be appropriate for the Lite2 heater."
64. Appalachian Hospitality Management employees failed to install a new vent system for the relocated pool heater and failed to adequately inspect the existing vent system to ensure that it was in proper working order and appropriate for the Jandy pool heater.
65. Upon information and belief, Appalachian Hospitality Management employees attempted to connect two different sizes and types of metal vent pipe together, which created a gap approximately 3/4" to 1" wide in one or more of the vent pipe joints. The resulting gap in the vent pipe joint was covered with foil tape in violation of the North Carolina State Mechanical Code.
66. Upon information and belief, sometime at or before the pool heater was replaced by Appalachian Hospitality Management employees, the original power venter failed. Upon information and belief, the power venter failed due to excessive corrosion to the power venter itself, as well as to the electrical wires leading to the power venter. The pool heater unit would not operate once the power venter failed due to a pressure sensing safety switch designed to prevent the pool heater from operating in the event of a power venter failure.

67. Upon information and belief, at the time the original power venter failed, Appalachian Hospitality Management employees deliberately bypassed the pressure sensing safety switch rather than expend the time, effort and money required to properly inspect, repair or replace the power venter system and its related components.
68. The non-functioning power venter had a BTU capacity that was substantially smaller than BTU output of the replacement Jandy pool heater. Even if the power venter has been operational, it clearly was insufficient to handle the exhaust, including carbon monoxide, produced by the pool heater.
69. Appalachian Hospitality Management employees failed to properly install a sediment trap in the gas line as recommended by Jandy and required by applicable building codes.
70. Upon information and belief, the pool heater exhaust venting system did not have the correct slope in violation of the applicable building codes.
71. Throughout the time period in which Appalachian Hospitality Management and Mallatere were contracted to manage the Hotel, maintenance staff regularly stored chlorine in the equipment room where the pool heater was located in direct violation of industry standards, manufacturers' instructions, and applicable building codes.
72. Before or after the installation of Jandy pool heater in October 2011, Appalachian Hospitality Management employees made numerous alterations to the pool heater controls, including, but not limited to, bypassing the on/off switch as well as the thermostat. Upon information and belief, none of these alterations were done in accordance with the manufacturer's instructions or recommendations.
73. As a result of the failure of the power venter and the conscious decision not to repair or replace it, excessive condensation formed throughout the vent system. Appalachian Hospitality Management employees were aware that excessive condensation was occurring and attempted to stop condensate water leakage from the vent system through the use of mastic compound on the joints and used ice buckets and towels to collect dripping water in the area of other gaps, holes, and leaks of the vent system.
74. Appalachian Hospitality Management employees knew, or in the exercise of reasonable care should have known, that the presence of excessive condensation was likely to cause or accelerate corrosion within the vent system which would ultimately lead to leakage of dangerous exhaust gases into the hotel building thereby endangering building occupants.
75. Appalachian Hospitality Management employees knew, or in the exercise of reasonable care should have known, that multiple holes and gaps existed in the venting system, which were readily observable and had likely existed for years prior to June 2013, indicated a loss of integrity of the venting system which in turn led to leakage of not only condensate but dangerous exhaust gases into the hotel building, thereby endangering building occupants.

76. The Gas Company Defendants were hired by AJD Investments, Appalachian Hospitality Management, and/or Mallatere to convert various appliances located within the Hotel from propane to natural gas, including the Jandy pool heater.
77. Defendant Miller was the license qualifier for the Gas Company Defendants.
78. As the license qualifier for the Gas Company Defendants, Miller undertook to supervise the conversion of various appliances located within the Best Western Plus Blue Bridge Plaza Hotel from propane to natural gas, including the Jandy pool heater.
79. After the used Jandy pool heater was relocated to the Hotel by Appalachian Hospitality Management maintenance staff, the replacement pool heater was converted from propane gas to natural gas by the Gas Company Defendants and Miller in February, 2012.
80. Propane and natural gas have different physical characteristics which make conversion of equipment from one to the other potentially dangerous if not properly performed.
81. The used Jandy Lite2 pool heater was not designed to be converted from propane to natural gas by the manufacturer, and in fact, the manufacturer specifically indicated that it should not be converted to natural gas.
82. Upon information and belief, the Town of Boone permitted this conversion and employees or agents of Boone Planning and Inspections Department were present during part or all of the conversion process.
83. Upon information and belief, the Town of Boone failed to observe and recognize that the pool heater that was being converted had been placed into service without being permitted or inspected by their office, and thus should have never been converted in the first place nor should the pool heater have been allowed to continue to operate until the pool heater and its related components and systems were inspected.
84. Upon information and belief, the Gas Company Defendants, Miller, and the Town of Boone failed to properly convert the used Jandy Lite2 pool heater in accordance with industry standards, manufacturer's recommendations and requirements and applicable building codes.
85. The Gas Company Defendants, Miller, and the Town of Boone had a duty to inspect the pool heater and its related components and systems, including the power venter in the exhaust venting system, to inspect the pool heater to determine its compatibility to be used in its then current configuration, and to perform the conversion services in such a manner that safe, efficient combustion occurred within the pool heater that produced as byproducts primarily water and carbon dioxide with minimal carbon monoxide.

86. At the time the pool heater was converted, gas fire logs located in Room 225 were also converted from propane to natural gas. Room 225 was equipped with a combustible gas detector and alarm which had been installed near the floor as is appropriate for an appliance using propane. An occupied structure using natural gas should have such devices installed near the ceiling as natural gas is lighter than air. Moreover, combustible gas detectors like the one present in Room 225 cannot detect carbon monoxide. Both Appalachian Hospitality Management and the Gas Company Defendants failed to change the location or install carbon monoxide detectors following conversion of the fire logs and pool heater from propane to natural gas.
87. Sometime before April 2013, Expert Air and Nolan were employed by AJD, Appalachian Hospitality Management, and/or Mallatere to perform repairs on the pool heater exhaust venting system. AJD, Appalachian Hospitality Management, and Mallatere knew, or in the exercise of reasonable care should have known, that the pool heater exhaust venting system was compromised due to excessive corrosion and numerous holes and gaps in the pipes. For reasons unknown, these Defendants contracted with Expert Air and Nolan to remove and replace only one section of the venting system.
88. Upon information and belief, Expert Air and Nolan replaced a section of double walled pipe with a single walled pipe using extremely thin gauge metal. The scope and method of repair violated all known applicable building codes, industry standards, sound construction practices and basic common sense.
89. Upon information and belief, the faulty work performed by Expert Air and Nolan was quickly compromised, with hundreds if not thousands of holes appearing throughout the pipe installed by these defendants, which in turn allowed the escape of hot air and toxic gas, including carbon monoxide.
90. On or about April 13, 2013, Winkler, doing business as DJ's Heating Service, was employed by Appalachian Hospitality Management maintenance staff to inspect the pool heater and to make any repairs necessary to ensure that it functioned properly. Upon information and belief, the maintenance staff was concerned that the heater was either inoperable due to mechanical or electrical failure or that the pilot light was inoperable for some other reason.
91. On or about April 13, 2013, Winkler began troubleshooting the problem with the pool heater and determined that the gas supply had been turned off by way of a shut-off valve located in a nearby ceiling. Winkler, along with Appalachian Hospitality Management maintenance staff, turned on the gas supply to the unit, fired the heater, and placed it into operation.
92. Upon information and belief, Winkler was not properly licensed to perform work upon HVAC systems and the related components in buildings as large as the Hotel.

93. On April 16, 2013, Daryl D. Jenkins and Shirley M. Jenkins were guests at the Hotel and were assigned Room 225 at the time of their check-in.
94. Room 225 is located one floor above the pool equipment room that contained the used Jandy swimming pool heater and directly above the defective exhaust vent system that led from the heater to the exterior of the building.
95. Both Daryl Jenkins and Shirley Jenkins died of acute carbon monoxide poisoning in Room 225 on April 16, 2013.
96. Upon information and belief, neither Best Western International, AJD, Appalachian Hospitality Management, nor Mallatere performed any type of investigation of the Hotel following the deaths of Daryl and Shirley Jenkins to determine the cause of death, despite the lack of any reasonable explanation for their deaths.
97. Best Western International, AJD, Appalachian Hospitality Management, and Mallatere never ceased operations at the Hotel following the deaths of Daryl and Shirley Jenkins and further placed Room 225 back into inventory without first ascertaining the cause of death of Daryl and Shirley Jenkins.
98. Upon information and belief, neither Best Western International, Appalachian Hospitality Management, AJD, nor Mallatere advised the public in any fashion that unexplained deaths had occurred in the Hotel.
99. Upon information and belief, sometime shortly after the Jenkins' death and before June 7, 2013, a birthday party was held at the Hotel involving numerous middle school aged girls and several parents. All of the children began experiencing headaches and nausea almost simultaneously and the adults ultimately canceled the birthday party and took everyone home instead of spending the night. The Hotel was advised of this incident immediately. The girls were staying in Room 325, directly above Room 225.
100. Upon information and belief, neither Best Western International, AJD, Appalachian Hospitality Management, nor Mallatere made any connection and and/or dismissed any connection between the birthday party incident and the deaths of Daryl and Shirley Jenkins, nor were any new investigations made or scheduled to determine why the children in the birthday party got sick. In addition, upon information and belief, neither Best Western International, AJD, Appalachian Hospitality Management, nor Mallatere contacted the Boone Police and Fire Department or the Medical Examiner for Watauga County to advise them of the sudden illness affecting the birthday party.
101. Best Western International, AJD, Appalachian Hospitality Management, and Mallatere knew or should have known of the dangers of carbon monoxide poisoning, specifically from gas fueled pool heaters, and specifically knew or should have known that carbon

monoxide coming from the Hotel's pool heater and its related exhaust vent system should be thoroughly investigated before the pool heater was operated and Room 225 was opened up for rentals.

102. Upon information and belief, in late April or early May of 2013, Appalachian Hospitality Management and Mallatere asked Winkler to come look at the gas logs in Room 225 as well as the gas lines connected to the pool heater to determine if any combustible gas was leaking. Those tests were negative. Carbon Monoxide does not naturally occur or reside in raw natural gas; instead, it is a byproduct of the combustion of natural gas.
103. Upon information and belief, Winkler was also asked to check for carbon monoxide but he advised Appalachian Hospitality Management maintenance employees that he lacked the necessary equipment and made recommendations to the employees regarding a company that could inspect for carbon monoxide. Despite the recommendations, it does not appear that Appalachian Hospitality Management or Mallatere contacted the company recommended by Winkler nor does it appear that any company was contacted to investigate for the presence of carbon monoxide.
104. Sometime around mid-to-late May 2013, Winkler was asked by Appalachian Hospitality Management employees to review the pool heater and vent system. Upon information and belief, Winkler performed only a cursory inspection that involved activating the pool heater and putting his or someone else's hand over the exhaust pipe opening on the side of the building where the nonfunctioning powered venter was located.
105. Upon information and belief, no additional inspections were performed on the used Jandy pool heater or the exhaust vent system. Further, upon information and belief, at no point in time was any inspection made of the pool heater itself to determine if it was operating correctly and efficiently nor were there any visual inspections performed of the pool heater exhaust venting system.
106. Winkler, Expert Air, Nolan, the Gas Company Defendants, and Miller knew or should have known to inspect the pool heater's exhaust venting system prior to placing the heater into operation, and such inspection would have revealed numerous holes and areas of deterioration in the vent system, an inoperable power venter exhaust fan, use of improper single duct vent pipe, mismatched vent pipe sizes, and other open and obvious defects which would allow the leakage of potentially lethal exhaust fumes containing carbon monoxide into the Hotel.
107. Simple observation of the pool heater by properly trained and licensed contractors, such as Winkler, Expert Air, Nolan, the Gas Company Defendants, and Miller claimed to be, should cause the contractor to immediately conclude that the pool heater was a natural draft appliance due to the presence of a vent hood at the top of the heater. Winkler, Expert Air, Nolan, the Gas Company Defendants, and Miller knew, or in the exercise of reasonable

care should have known, that when a natural draft appliance is located indoors, it is required to be vented or exhausted either by a vent flue pipe extending higher than the roof line of the building, or by the use of a forced draft system or power venter. In addition, Winkler, Expert Air, Nolan, the Gas Company Defendants, and Miller knew, or in the exercise of reasonable care should have known, that a natural draft appliance draws air from the adjacent area in the room and discharges that air, as well as exhaust gases containing combustion byproducts from the flame, into the flue.

108. Winkler, Expert Air, Nolan, the Gas Company Defendants, and Miller knew, or in the exercise of reasonable care should have known, that the equipment room and the humid air in the room where the pool heater was located also contained common pool chemicals such as chlorine, which are highly corrosive to metal such as the vent pipes from the pool heater to the exterior of the building and further that corrosive air and gasses were being drawn into and through the pool heater and exhaust flue during its normal operation. Evidence of severe corrosion was plainly visible by simple visual observation of the openly visible portions of the pool heater and vent system.
109. On and before June 7, 2013, a group of wires were hanging in the air in plain sight near the pool heater which were not connected to the pool heater in any way but were terminated with wire nuts instead. These wires had originally been installed to supply power for the power venter which had been previously disconnected for months if not years. Evidence of that disconnection was readily apparent by even a cursory visual observation.
110. On and before June 7, 2013, the clearly nonfunctioning power venter fan was tenuously hanging from the side of the Hotel, and its wire were dangling from the fan in plain sight to anyone walking in and out of the rear door of the Hotel.
111. Despite the obvious deficiencies in the pool heater and its exhaust vent system and the existence of extremely hazardous conditions resulting therefrom, Winkler, Expert Air, Nolan, the Gas Company Defendants, and Miller placed the pool heater into service at various times, failed to instruct Appalachian Hospitality Maintenance staff to disable the pool heater, and failed to advise Appalachian Hospitality Maintenance staff regarding various deficiencies found in and around the pool heater, the vent system above the drop ceiling tiles of the hotel, and the power venter fan outside the hotel.
112. Despite the open, obvious, and readily observable hazards and deficiencies in the pool heater and its exhaust vent system and the existence of extremely hazardous conditions resulting therefrom, AJD, Appalachian Hospitality Management, Mallatere, Winkler, Expert Air, Nolan, the Gas Company Defendants, and Miller placed the pool heater into service at various times, allowed the pool heater's continued operation, failed to call the gas utility company and advise them to shut off the gas, failed to replace the power venter, failed to connect the control wiring to the power venter, and failed to properly inspect or evaluate the condition and integrity of the venting system between the pool heater and the exterior of the building.

113. Following the deaths of Daryl and Shirley Jenkins, the Town of Boone participated in and undertook an investigation into the unexplained deaths of the Jenkins.
114. Upon information and belief, this investigation included but was not limited to a review of Room 225 at the Hotel, as well as other areas of the infrastructure of the Hotel.
115. Upon information and belief, the Town of Boone also interviewed various witnesses, including but not limited to, family members of the Jenkins family.
116. Upon information and belief, during the forensic investigation of Room 225, the Town of Boone examined a device located on the floor adjacent to the fireplace that is commonly referred to as a combustible gas detector.
117. Upon information and belief, the combustible gas detector was designed to detect the presence of raw fuel, such as propane or natural gas. However, combustible gas detectors such as the one present in Room 225 cannot detect carbon monoxide, and this limitation appears clearly on the combustible gas detector itself.
118. Upon information and belief, during the interviews with witnesses and family, the Town of Boone was advised that a defective pool heater generating lethal levels of carbon monoxide needed to be investigated immediately.
119. Upon information and belief, ample evidence and information regarding the connection of carbon monoxide and hotel deaths was and is easily found during a basic Internet search.
120. Upon information and belief, all such warnings were either ignored or dismissed, and further upon information and belief, the Town of Boone failed to take any affirmative action to continue or expand their investigation into the deaths of Daryl and Shirley Jenkins.
121. Upon information and belief, the Town of Boone failed to take any steps to temporarily or permanently close the operations of the Hotel or Room 225 until a determination could be made as to the cause of death of the Jenkins.
122. Upon information and belief, the Town of Boone failed to consult, hire, and/or employ qualified experts to assist in the determination of the cause of the Jenkins' deaths, especially in light of the fact that the Town of Boone knew, or in the exercise of reasonable care should have known, that carbon monoxide is one of, if not the primary, causes of unexplained hotel deaths.
123. Upon information and belief, the Town of Boone failed to adequately train, educate, and/or supervise its employees and agents to properly perform investigations such as the one performed at the Hotel following the deaths of Daryl and Shirley Jenkins.



124. Jeannie and Jeff Williams are married and live in Rock Hill, South Carolina. They have a daughter, Breanne, and they had a son, Jeffrey.
125. On or about June 7, 2013, Jeannie Williams and her 11-year-old son, Jeffrey, traveled to Boone, North Carolina on the day before they were to pick up Breanne, Jeffrey's older sister, from an educational summer camp program. Breanne was scheduled to be picked up the following day (Saturday) around lunchtime.
126. Jeannie and Jeffrey Williams checked into the Hotel. Neither Jeff, Jeannie, nor Jeffrey Williams were aware that the Hotel was owned by a local company and managed by a local company. Instead, the Williams assumed that, based on what they had read and seen through the internet, television, and other written media, most but not all of which formed part of Best Western International's marketing effort and strategy, Best Western International owned and operated its various hotels throughout the United States.
127. Jeff, Jeannie, and Jeffrey Williams also reasonably believed that Best Western International had established uniform and comprehensive standards for the operation of its individual hotels, including, but not limited to, safety protocols and standards and the requirement of regular inspections of critical systems of an individual hotel's buildings, structures, and/or physical plant, especially those that could pose a significant risk of danger to hotel guests and employees and to the general public.
128. Had Jeff, Jeannie, and Jeffrey Williams been made aware that the Hotel was not fully owned or controlled by Best Western International, the Williams family would not have stayed in this Hotel.
129. Had Jeff, Jeannie, and Jeffrey Williams been made aware that Best Western International lacked uniform and comprehensive standards for the operation of the individual best Western hotels, including any safety protocols and standards and the requirement of regular inspections of critical systems, especially those that pose significant risk of danger, the Williams family would not have stayed at the Hotel.
130. Upon information and belief, Best Western International continues to market their company in such a manner that a reasonable person would assume they were the owners and operators of the individual Best Western hotels throughout the United States.
131. Upon information and belief, Best Western International has failed to establish uniform and comprehensive standards for the operation of its individual hotels, including, but not limited to, safety protocols and standards and requirements of regular inspections of critical systems of an individual hotel's buildings, structures, and/or physical plant, thus creating a significant risk of harm and danger to hotel guests and employees and to the general public.
132. Initially, Jeffrey and Jeannie Williams were given a different room than Room 225. However, that particular room smelled of cigarette smoke. As a result, Jeannie Williams

asked the Hotel staff to change rooms. The Hotel staff made a conscious decision to place Jeannie and Jeffrey Williams into Room 225. Jeannie and Jeffrey Williams were advised that they were being given an "upgrade" when they were assigned to Room 225.

133. At no time did the Hotel staff inform Jeannie Williams that two adults had died in Room 225 on April 16, 2013.
134. As Jeannie and her son prepared for bed, neither was aware that large amounts of carbon monoxide had been in, and continued to enter, their hotel room.
135. At approximately 9:30 PM, Jeffrey was lying in bed playing with electronics. Jeannie Williams went into the bathroom to get ready for bed. She immediately began feeling sick and nauseous. Her attempts to sit down to feel better and to clear her head were to no avail. Still not comprehending what was happening to her, Jeannie Williams' last thought before losing consciousness was that she had to get to her cell phone, which was not in the bathroom, to call for help because she did not want her son to be by himself if she was incapacitated.
136. As result of toxic exposure to carbon monoxide, Jeffrey Williams died in the bed in Room 225 of the Hotel on or about June 8th, 2013.
137. Jeannie Williams was found on the bathroom floor unconscious approximately 15 to 16 hours after initially losing consciousness and was immediately hospitalized.
138. Jeannie Williams suffered and continues to suffer numerous severe physical, mental, and emotional injuries as a result of her exposure to carbon monoxide and prolonged lack of oxygen (as well as the death of her son).
139. Subsequent investigations have shown that the used Jandy pool heater was producing extremely high amounts of carbon monoxide exceeding the limits of most devices designed to test for the presence of carbon monoxide and that carbon monoxide produced by the pool heater escaped through multiple holes and gaps in the exhaust vent system due to excessive corrosion that existed for a long period of time prior to June 8, 2013. These same subsequent investigations revealed that the carbon monoxide escaped from the exhaust vent system and travelled through improper openings and penetrations of walls and/or floors into Room 225 of the Hotel.

**FIRST CAUSE OF ACTION**  
(Negligence as to Best Western International)

140. The Plaintiff incorporates by reference all allegations in the preceding paragraphs as if fully set forth herein.

141. Through various agreements with AJD, Appalachian Hospitality Management, and/or Mallatere, Best Western International maintains the right to control, and from time to time exercises such control, over numerous aspects of the appearance and operation of the Hotel.
142. As the franchisor of the Hotel had a non-delegable duty to ensure that the building was safe for hotel guests and other members of the general public.
143. Defendant Best Western International, by its acts and omissions, was negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, including but not limited to:
  - a. Failing to establish, maintain and enforce adequate guest safety standards at the Hotel, including, but not limited to the failure to require installation of carbon monoxide detectors in the pool equipment room, swimming pool area, guest rooms and other areas adjacent to the pool heater as well as in rooms that contain gas-fired appliances, such as gas fireplace logs, as recommended by the pool heater manufacturer and as required by reasonable safety practices in the hotel and hospitality industry;
  - b. Failing to establish, maintain and enforce adequate guest safety standards for its hotel properties which would prohibit the use of unlicensed and/or unqualified contractors and/or hotel employees to perform work on hotel buildings and the equipment located therein;
  - c. Failing to establish any type of protocol or standards to investigate deaths that occur at their hotel properties to ensure the ongoing safety and health of their hotel guests and employees and the general public;
  - d. Failing to establish a system of annual regular inspections of the physical plant of its hotel properties, including the inspection of combustible gas fueled appliances and devices, thereby exposing building guests and employees to an ongoing risk of carbon monoxide poisoning;
  - e. Failing to adequately inspect the Hotel and to detect the presence of dangerous hidden conditions in the building including the lack of a proper exhaust vent system for the pool heater and inadequate fire stopping and improper penetrations through rated firewalls;
  - f. Failing to warn hotel guests and other occupants of Hotel of the hidden danger created by the defective and dangerous pool heater and its related components and systems, including the pool heater exhaust vent system as well as from the presence of deadly levels of carbon monoxide gas; and
  - g. In such other and further ways as may be revealed in discovery and shown at trial.

144. As a direct and proximate cause of the negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of Best Western International, as set forth above, Decedent Jeffrey Lee Williams suffered injuries, pain and suffering, mental anguish, and terror and lost his life as set forth herein.

**SECOND CAUSE OF ACTION**

(Breach of Implied Warranties as to Best Western International)

145. The Plaintiff incorporates by reference all allegations in the preceding paragraphs as if fully set forth herein.
146. Defendant Best Western International, through its advertising and promotional materials, warranted their guest rooms at the Hotel were safe and fit for their intended purpose.
147. Defendant Best Western International, through its advertising and promotional materials, warranted their guest rooms at the Hotel were habitable.
148. Best Western International breached these implied warranties of fitness for a particular purpose and habitability by its failure to provide Jeffrey Lee Williams and Jeannie Lloyd Williams a guest room which was, in fact, safe for its intended purpose of providing a place to attend to their personal needs and sleep at night free from an unreasonable risk of death or personal injury.
149. Best Western International's breach of warranties as set forth above were a proximate cause of injuries to Jeffrey and of his resulting death.

**THIRD CAUSE OF ACTION**

(Unfair and Deceptive Trade Practices Act as to Best Western International)

150. The Plaintiff incorporate by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
151. Best Western International engaged in unfair and/or deceptive acts or practices, as set forth in this Complaint.
152. Best Western International's actions, claims and/or representations had the capacity, effect or tendency to deceive.
153. Best Western International's actions, claims and/or representations were in or affecting commerce.
154. Best Western International's unfair and/or deceptive acts or practices were a proximate cause of the injuries and damages sustained by the Decedent Jeffrey Lee Williams and his resulting death.

**FOURTH CAUSE OF ACTION**  
(Negligence as to AJD)

155. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
156. Defendant AJD, as the owner of the Hotel, had a non-delegable duty to ensure that the Hotel was safe for hotel guests and other members of the general public and free from hidden dangers. Further, as the owner of the Hotel, AJD had a non-delegable duty to protect guests from injury from negligent acts of his or her own employees and agents. The obligation to protect guests is not accomplished merely by warning them, but must be coupled with policing and inspection of the premises to protect guests from harm.
157. At all times relevant to this action, Appalachian Hospitality Management was an agent of Defendant AJD and was acting within the course and scope of its agency.
158. AJD is liable for the acts and omissions of Appalachian Hospitality Management and its employees and/or agents based on the legal doctrine of *respondeat superior*.
159. AJD Investments, by its acts and omission, was negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, including but not limited to:
  - a. failing to warn hotel guests and other occupants of the building of the hidden danger created by the defective and dangerous pool heater exhaust vent system and the presence of deadly levels of carbon monoxide gas;
  - b. failing to retain and contract with properly trained, licensed, and competent building design and construction professionals to ensure that all modifications, additions, and repairs to the hotel would perform properly, in compliance with all of applicable rules and regulations and in conformity with industry practice for the purposes of which the improvements would be utilized;
  - c. failing to obtain the proper permitting and approval for all modifications, additions and repairs constructed and/or installed in the hotel in order to ensure all authorities, including the city of Boone, would be placed on notice of the changing uses and the involvement of new construction, materials and equipment to ensure adherence to any applicable industry standards, rules and regulations, and applicable building codes;
  - d. failing to adequately inspect the Best Western Plus Blue Ridge Plaza Hotel building and to detect the presence of dangerous hidden conditions in the building, including the lack of a proper vent system for the pool heater and inadequate fire stopping through rated firewalls;

- e. failing to ensure that renovations, repairs, additions and/or other modifications done to the hotel continued to maintain the required fire rated assemblies and by allowing penetrations, holes and other openings to exist in walls and floors that otherwise should have been sealed in accordance with industry practices, rules and regulations, and applicable building codes;
- f. using hotel employees who were not properly trained or licensed to perform installation and maintenance work upon the hotel HVAC and pool equipment, including but not limited to the installation and maintenance of the pool heater as well as the maintenance of the pool heater's related components and systems, including but not limited to the power venter and the exhaust venting system;
- g. failing to conduct regular or annual inspections of the Hotel's mechanical systems, including but not limited to propane, natural gas, or other combustible gas fueled equipment and their related components and systems;
- h. failing to repair or replace the electric power venter which was an essential part of the pool heater exhaust vent system when it became inoperable;
- i. failing to ensure adequate safety measures were in place in the hotel to lesson or eliminate the risk of death or injury to persons inside the hotel due to improperly functioning or maintained HVAC systems and/or other devices and systems, such as the pool heater, that operate using propane, natural gas or other combustible gases, including but not limited to the installation of carbon monoxide detectors in rooms and on floors adjacent to rooms containing such devices and systems, all of which is in violation of known and excepted industry practices as well as manufacturer's recommendations and requirements;
- j. allowing unlicensed, unqualified or improperly licensed contractors to perform work on the Hotel and the equipment located therein;
- k. allowing employees of Appalachian Hospitality Management to perform work on the Hotel and the equipment located therein without being properly licensed by the State of North Carolina and without obtaining proper permits and inspections from local government authorities;
- l. allowing the pool heater to operate in such a manner that extremely high levels of carbon monoxide, well in excess of any normal byproduct from an efficient combustible event, to continue indefinitely, exposing the occupants and employees of the hotel to harmful and deadly levels of carbon monoxide;
- m. failing to initiate proper repairs of the pool heater and the double walled (and single walled), power-ventilated exhaust vent system, despite having actual knowledge of severe corrosion, gaps, holes and openings in the pipe that allowed for the direct

transfer of condensate and exhaust gases, including but not limited to carbon monoxide, into the area directly below Room 225;

- n. taking affirmative steps to conceal the evidence of the pool heater's defective and malfunctioning vent system, including but not limited to, using improvised devices such as VCR tapes to prop up sagging areas of severely corroded pipe, and by using pool towels and ice buckets to collect the condensate before it damaged the ceiling tiles in the pool room;
  - o. allowing Hotel building equipment to be modified in ways that were prohibited by the equipment manufacturer, particularly the conversion of the pool heater from propane to natural gas;
  - p. failing to properly store and maintain hazardous fluids and chemicals that were highly flammable, caustic, corrosive, and/or toxic;
  - q. storing chlorine and other corrosive chemicals in close proximity to the pool heater, in contravention of industry standards, manufacturer's instructions, rules and regulations and applicable building codes;
  - r. failing to act as a reasonable and prudent company would have done under the same or similar circumstances; and
  - s. In such other and further ways as may be revealed in discovery and shown at trial;
160. As a direct and proximate cause of the negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of Defendant ADJ, as set forth above, Decedent Jeffrey Lee Williams suffered injuries, pain and suffering, mental anguish, and terror and lost his life as set forth herein.

**FIFTH CAUSE OF ACTION**  
(Breach of Implied Warranties as to ADJ)

161. The Plaintiff incorporates by reference all allegations contained in the preceding as if fully set forth herein.
162. ADJ, through its advertising and promotional materials, warranted their guest rooms at the Hotel were safe and fit for their intended purpose.
163. ADJ, through its advertising and promotional materials, warranted their guest rooms in the Hotel were habitable.
164. ADJ breached these implied warranties of fitness for a particular purpose and of habitability by failing to provide Jeannie and Jeffrey Williams a guest room which was, in fact, safe and appropriate for obtaining a place to stay away from their personal home where they could

attend to their personal needs and sleep at night free from an unreasonable risk of danger or harm, including death or personal injury.

165. AJD's breach of warranties as set forth above was a proximate cause of the injuries to the Decedent Jeffrey Lee Williams and of his resulting death.

**SIXTH CAUSE OF ACTION**

(Negligence as to Mallatere and Appalachian Hospitality Management)

166. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
167. At all times relevant to this action, Mallatere was an employee and/or agent of Appalachian Hospitality Management and was acting within the course and scope of his employment and/or agency. Thus, Defendant Appalachian Hospitality Management is liable for the acts and omissions of Mallatere based on the legal doctrine of *respondeat superior*.
168. Upon information and belief, at all times relevant to this action, Mallatere was the President of Appalachian Hospitality Management and the General Manager of the Hotel.
169. Mallatere and Appalachian Hospitality Management, by their acts and omissions, were negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, including but not limited to:
- a. failing to warn Hotel guests and other occupants of the building of the hidden danger created by the defective and dangerous pool heater exhaust vent system and the presence of deadly levels of carbon monoxide gas;
  - b. failing to retain and contract with properly trained, licensed, and competent building design and construction professionals to ensure that all modifications, additions, and repairs to the hotel would perform properly, in compliance with all of applicable rules and regulations and in conformity with industry practice for the purposes of which the improvements would be utilized;
  - c. failing to obtain the proper permitting and approval for all modifications, additions and repairs constructed and/or installed in the hotel in order to ensure all authorities, including the city of Boone, would be placed on notice of the changing uses and the involvement of new construction, materials and equipment to ensure adherence to any applicable industry standards, rules and regulations, and applicable building codes;
  - d. failing to adequately inspect the Hotel building and to detect the presence of dangerous hidden conditions in the building, including the lack of a proper vent system for the pool heater and inadequate fire stopping through rated firewalls;



- e. failing to ensure that renovations, repairs, additions and/or other modifications done to the hotel continued to maintain the required fire rated assemblies and by allowing penetrations, holes and other openings to exist in walls and floors that otherwise should have been sealed in accordance with industry practices, rules and regulations, and applicable building codes;
- f. using Hotel employees who were not properly trained or licensed to perform installation and maintenance work upon the Hotel HVAC and pool equipment, including but not limited to the installation and maintenance of the used Jandy pool heater in question as well as the maintenance of the pool heater's related components and systems, including but not limited to the power venter and the exhaust venting system;
- g. failing to conduct regular or annual inspections of the Hotel's mechanical systems, including but not limited to propane, natural gas, or other combustible gas fueled equipment and their related components and systems;
- h. failing to repair or replace the electric power venter which was an essential part of the pool heater exhaust vent system when it became inoperable;
- i. failing to ensure adequate safety measures were in place in the Hotel to lesson or eliminate the risk of death or injury to persons inside the Hotel due to improperly functioning or maintained HVAC systems and/or other devices and systems, such as the pool heater, that operate using propane, natural gas or other combustible gases, including but not limited to the installation of carbon monoxide detectors in rooms and on floors adjacent to rooms containing such devices and systems, all of which is in violation of known and excepted industry practices as well as manufacturer's recommendations and requirements;
- j. allowing unlicensed, unqualified or improperly licensed contractors to perform work on the Hotel building and the equipment located therein;
- k. allowing employees of Appalachian Hospitality Management, Inc. to perform work on the Hotel building and the equipment located therein without being properly licensed by the State of North Carolina and without obtaining proper permits and inspections from local government authorities;
- l. allowing the pool heater to operate in such a manner that extremely high levels of carbon monoxide, well in excess of any normal byproduct from an efficient combustible event, to continue indefinitely, exposing the occupants and employees of the hotel to harmful and deadly levels of carbon monoxide;
- m. failing to initiate proper repairs of the pool heater and the double walled (and single walled), power-ventilated exhaust vent system, despite having actual knowledge of

severe corrosion, gaps, holes and openings in the pipe that allowed for the direct transfer of condensate and exhaust gases, including but not limited to carbon monoxide, into the area directly below Room 225;

- n. taking affirmative steps to conceal the evidence of the pool heater's defective and malfunctioning vent system, including but not limited to, using improvised devices such as VCR tapes to prop up sagging areas of severely corroded pipe, and by using pool towels and ice buckets to collect the condensate before it damaged the ceiling tiles in the pool room;
  - o. allowing Hotel building equipment to be modified in ways that were prohibited by the equipment manufacturer, particularly the conversion of the pool heater from propane to natural gas;
  - p. failing to properly store and maintain hazardous fluids and chemicals that were highly flammable, caustic, corrosive, and/or toxic;
  - q. storing chlorine and other corrosive chemicals in close proximity to the pool heater, in contravention of industry standards, manufacturer's instructions, rules and regulations and applicable building codes;
  - r. failing to act as a reasonable and prudent person and/or company would have done under the same or similar circumstances; and
  - s. In such other and further ways as may be revealed in discovery and shown at trial;
170. As a direct and proximate cause of the negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of Mallatere and Appalachian Hospitality Management, as set forth above, Decedent Jeffrey Lee Williams suffered injuries, pain and suffering, mental anguish, and terror and lost his life as set forth herein.

#### **SEVENTH CAUSE OF ACTION**

(Breach of Implied Warranties as to  
Mallatere and Appalachian Hospitality Management)

171. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
172. Mallatere and Appalachian Hospitality Management, through their advertising and promotional materials, warranted their guest rooms at the Hotel were safe and fit for their intended purpose.
173. Mallatere and Appalachian Hospitality Management, through its advertising and promotional materials, warranted their guest rooms in the Hotel were habitable.

174. Mallatere and Appalachian Hospitality Management breached these implied warranties of fitness for a particular purpose and of habitability by failing to provide Jeannie and Jeffrey Williams a guest room which was, in fact, safe and appropriate for obtaining a place to stay away from their personal home where they could attend to their personal needs and sleep at night free from an unreasonable risk of danger or harm, including death or personal injury.
175. Mallatere and Appalachian Hospitality Management's breach of warranties as set forth above was a proximate cause of the injuries to the Decedent Jeffrey Lee Williams and of his resulting death.

#### **EIGHTH CAUSE OF ACTION**

(Negligence as to Thomas Daniel Miller and the Gas Company Defendants)

176. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
177. At all times relevant to this action, Miller was an employee and agent of the Gas Company Defendants and was acting within the scope of his employment or agency relationship with the Gas Company Defendants.
178. The Gas Company Defendants are vicariously liable to the Plaintiff for the negligence of its agent or employee, Miller, pursuant to the doctrine of *respondeat superior*.
179. The Gas Company Defendants and Miller, by their acts and omissions, were negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, including but not limited to:
  - a. failing to properly supervise and/or perform the gas conversion work at the Hotel;
  - b. failing to properly train, educate, test and/or review the qualifications, abilities, and work product of its subsidiaries, members, employees and agents;
  - c. performing work on gas fueled appliances located in the Hotel which violated the minimum standards of the North Carolina State Fuel Gas Code;
  - d. failing to inspect the used Jandy propane gas pool heater to determine its suitability and capacity to act as a pool heater in light of the existing infrastructure at the Hotel;
  - e. failing to inspect the related components and systems of the pool heater, including but not limited to reviewing the size and condition of the fresh air intake piping and the exhaust vent piping as well as the status and condition of the power venter;
  - f. failing to observe that the pool heater was installed and operating in a manner that pose significant danger to the Hotel's employees and guests;

- g. converting the pool heater's fuel source from propane to natural gas and then placing the pool heater into service despite numerous open, obvious, and readily observable hazards, including, but not limited to, disconnected safety interlock switches, evidence of severe corrosion, a nonfunctioning power venter, and pool heater controls that were obviously altered, any or all of which were in violation of industry standards, manufacturer's recommendations and requirements, and applicable building codes;
  - h. converting the Jandy propane gas pool heater to natural gas in violation of the manufacturer's installation and operation instructions;
  - i. failing to properly convert the Jandy pool heater from propane to natural gas, specifically including, but not limited to, the failure to replace the pilot, burner tray assembly and gas valve with the appropriate parts as specified by the manufacturer;
  - j. failing to review and test the conversion process to ensure that the pool heater created an efficient, safe combustion event that produced minimal, if any, carbon monoxide;
  - k. unreasonably and recklessly creating a risk of personal injury or property damage; and
  - l. In such other and further ways as may be revealed in discovery and shown at trial;
180. As a direct and proximate cause of the negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Gas Company Defendants and Miller, as set forth above, Decedent Jeffrey Lee Williams suffered injuries, pain and suffering, mental anguish, and terror and lost his life as set forth herein.

#### **NINTH CAUSE OF ACTION**

(Breach of Implied Warranty as to Miller and the Gas Company Defendants)

- 181. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
- 182. The Gas Company Defendants and Miller impliedly warranted that their work and service would be performed in a workmanlike manner and sufficiently free of major defects.
- 183. The Gas Company Defendants and Miller breached the implied warranty of workmanship by failing to properly supervise and/or perform the gas conversion work at the Hotel.
- 184. The Gas Company Defendants and Miller's breach of the implied warranty of workmanship as set forth above was a proximate cause of the injuries to Decedent Jeffrey Lee Williams and of his resulting death.

**TENTH CAUSE OF ACTION**  
(Negligence as to Winkler)

185. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
186. Winkler, doing business as DJ's Heating Services, by his acts and omissions, was negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, including but not limited to:
- a. Placing the pool heater into service despite the open and obvious deficiencies with the pool heater and the exhaust vent system and the existence of extremely hazardous conditions resulting therefrom;
  - b. Failing to instruct Appalachian Hospitality Management maintenance staff to disable the Jandy pool heater until a proper exhaust vent system was installed;
  - c. Failing to contact the gas utility company and advise them to shut off the gas until a proper exhaust vent system was installed on the pool heater;
  - d. Failing to repair or replace the power venter in the pool heater exhaust system or to advise anyone that the power venter's current condition was dangerous prior to placing the pool heater back in operation;
  - e. Failing to conduct a proper and thorough investigation of the pool heater and its related components and systems;
  - f. Failing to connect the control wiring to the power venter in the pool heater exhaust system prior to placing the pool heater back in operation;
  - g. Failing to properly inspect or evaluate the condition and integrity of the exhaust venting system prior to placing the pool heater back in operation;
  - h. Leaving the pool heater in operation despite numerous open, obvious and readily observable safety hazards which exposed the occupants of the hotel building to serious personal injury or death;
  - i. Performing work on the Hotel building and the equipment located therein without having the proper education and training and without being properly licensed by the state of North Carolina and without obtaining proper permits and inspections from local government authorities;
  - j. Failing to act as a reasonable and prudent contractor would have done under the same or similar circumstances; and

- k. In such other and further ways as may be revealed in discovery and shown at trial.
187. As a direct and proximate cause of the negligent, grossly negligent, careless, reckless, and willful and wanton acts and/or omissions of Winkler, doing business as DJ's Heating Services, as set forth above, Decedent Jeffrey Lee Williams suffered injuries, pain and suffering, mental anguish, and terror and lost his life as set forth herein.

**ELEVENTH CAUSE OF ACTION**  
(Breach of Implied Warranty as to Winkler)

188. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
189. Winkler, doing business as DJ's Heating Services, impliedly warranted that his work and service would be performed in a workmanlike manner and sufficiently free of major defects.
190. Winkler, doing business as DJ's Heating Services, breached the implied warranty of workmanship by failing to properly perform any of his work and services at the Hotel, by placing the pool heater back into operation despite the existence of numerous open, obvious and dangerous conditions; and by failing to properly inspect the pool heater and its related components and systems.
191. Winkler's breach of the implied warranty of workmanship as set forth above was a proximate cause of the injuries to Jeffrey Lee Williams and of his resulting death.

**TWELFTH CAUSE OF ACTION**  
(Negligence as to Expert Air and Nolan)

192. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
193. Expert Air is vicariously liable to the Plaintiff for the negligence of its agent or employee, Nolan, pursuant to the doctrine of *respondeat superior*.
194. Expert Air and Nolan, by their acts and omissions, were negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, including but not limited to:
- a. Placing the pool heater into service despite the open and obvious deficiencies with the pool heater and the exhaust vent system and the existence of extremely hazardous conditions resulting therefrom;

- b. Failing to instruct Appalachian Hospitality Management maintenance staff to disable the Jandy pool heater until a proper exhaust vent system was installed;
  - c. Failing to contact the gas utility company and advise them to shut off the gas until a proper exhaust vent system was installed on the pool heater;
  - d. Failing to repair or replace the power venter in the pool heater exhaust system or to advise anyone that the power venter's current condition was dangerous prior to placing the pool heater back in operation;
  - e. Failing to conduct a proper and thorough investigation of the pool heater and its related components and systems;
  - f. Failing to connect the control wiring to the power venter in the pool heater exhaust system prior to placing the pool heater back in operation;
  - g. Improperly performing repairs on the double walled, powered vent stack, including but not limited to, replacing a portion of the double walled pipe with a single walled pipe fabricated from extremely thin gauge sheet metal and by failing to replace sections of the venting system network compromised due to excessive corrosion, gas and holes;
  - h. Performing repairs to the pool heater's exhaust venting system in violation of industry standards, manufacturer's recommendations and requirements, and applicable building codes;
  - i. Failing to properly inspect or evaluate the condition and integrity of the exhaust venting system prior to placing the pool heater back in operation;
  - j. Leaving the pool heater in operation despite numerous open, obvious and readily observable safety hazards which exposed the occupants of the hotel building to serious personal injury or death;
  - k. Performing work on the Hotel building and the equipment located therein without having the proper education and training and without being properly licensed by the state of North Carolina and without obtaining proper permits and inspections from local government authorities;
  - l. Failing to act as a reasonable and prudent contractor would have done under the same or similar circumstances; and
  - m. In such other and further ways as may be revealed in discovery and shown at trial.
195. As a direct and proximate cause of the negligent, grossly negligent, careless, reckless,

willful and wanton acts and/or omissions of Expert Air and Nolan as set forth above, Decedent Jeffrey Lee Williams suffered injuries, pain and suffering, mental anguish, and terror and lost his life as set forth herein.

**THIRTEENTH CAUSE OF ACTION**

(Breach of Implied Warranty as to Expert Air and Nolan)

196. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
197. Expert Air and Nolan impliedly warranted that their work and service would be performed in a workmanlike manner and sufficiently free of major defects.
198. Expert Air and Nolan breached the implied warranty of workmanship by failing to properly perform any of their work and services at the Hotel, by placing the pool heater back into operation despite the existence of numerous open, obvious and dangerous conditions; by failing to properly inspect the pool heater and its related components and systems; and by performing in proper repairs to the exhaust venting system in violation of industry standards, manufacturer's recommendations and requirements and applicable building codes.
199. Expert Air and Nolan's breach of the implied warranty of workmanship as set forth above was a proximate cause of the injuries to Jeffrey Lee Williams and of his resulting death.

**FORTEENTH CAUSE OF ACTION**

(Negligence as to the Town of Boone)

200. The Plaintiff incorporate by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
201. Upon information and belief, policies of liability insurance coverage exist that provide coverage and protection to the Town of Boone and its various departments, employees, and agents, and as such, the defense of sovereign immunity has been waived.
202. At all times relevant to this action, various employees and agents were acting within the scope of their employment or agency relationship and within their official capacity with the Town of Boone and its various departments.
203. Town of Boone is vicariously liable to the Plaintiff for the negligence of its employees and agents, pursuant to the doctrine of *respondeat superior*.
204. Town of Boone, by its acts and omissions, was negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, including but not limited to:



- a. failing to properly supervise and/or inspect and/or perform the gas conversion work at the Hotel;
- b. allowing work to be performed on combustible gas fueled appliances located in the Best Western Plus Blue Ridge Plaza Hotel which violated the minimum standards of the North Carolina State Fuel Gas Code;
- c. failing to inspect the Jandy propane gas pool heater to determine its suitability and capacity to act as a pool heater in light of the existing infrastructure at the Hotel;
- d. failing to inspect the related components and systems of the pool heater, including but not limited to reviewing the size and condition of the fresh air intake piping and the exhaust vent piping as well as the status and condition of the power venter;
- e. failing to observe that the pool heater was installed and operating in a manner that posed significant danger to the Hotel's employees and guests;
- f. converting the pool heater's fuel source from propane to natural gas and then placing the pool heater into service despite numerous open, obvious and readily observable hazards, including but not limited to, disconnected safety interlock switches, evidence of severe corrosion, a nonfunctioning power venter, and pool heater controls that were obviously altered, any or all of which were in violation of industry standards, manufacturer's recommendations and requirements and applicable building codes;
- g. allowing the conversion of the Jandy propane gas pool heater to natural gas in violation of the manufacturer's installation and operation instructions;
- h. failing to review and test the conversion process to ensure that the pool heater created an efficient, safe combustion event that produced minimal, if any, carbon monoxide;
- i. unreasonably and recklessly creating a risk of personal injury or property damage;
- j. failing to adequately train, educate and/or supervised its employees and agents to properly perform investigations such as the one performed at the Hotel following the deaths of Daryl and Shirley Jenkins;
- k. failing to consult, hire and/or employ qualified experts to assist in the determination of the cause of the Jenkins' deaths, especially in light of the fact that the Town of Boone knew or in the exercise of reasonable care should known that carbon monoxide is a leading cause of unexplained hotel deaths;
- l. refusing to listen to all warnings and suggestions and information provided during

the investigation that carbon monoxide from a pool heater was the likely explanation for the Jenkins' deaths;

- m. failing to properly investigate the deaths of Daryl and Shirley Jenkins;
  - n. failing to take any steps to temporarily or permanently close the operations of the Hotel until a determination could be made as to the cause of death of the Jenkins;
  - o. In such other and further ways as may be revealed in discovery and shown at trial.
205. The acts or omissions of Town of Boone as set forth in this Complaint constitute proprietary activities and functions, in whole or in part.
206. As a direct and proximate cause of the negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Town of Boone, as set forth above, Jeffrey Lee Williams sustained injuries, pain and suffering, mental anguish, and terror and lost his life as set forth herein.

### **DAMAGES**

207. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
208. As a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, Decedent Jeffrey Lee Williams suffered and continued to suffer until his death, great pain of the body and mind.
209. The Plaintiff has incurred expenses for the funeral and burial services of Decedent Jeffrey Lee Williams, and the Decedent Jeffrey Lee Williams' family and loved ones have lost his income or earning capacity, society, companionship, comfort, guidance, kindly offices, and advice.
210. That as a proximate result of all of the above, Plaintiff has been damaged for personal injuries to the Decedent and for his wrongful death by a sum in excess of Twenty-Five Thousand and no/100 Dollars (\$25,000.00).
211. Pursuant to N.C. Gen. Stat. § 28A-18-2, Plaintiff seeks to recover damages recoverable for death by wrongful act.

### **PUNITIVE DAMAGES**

212. The Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.
213. Defendants' actions, as alleged above, constitute willful or wanton conduct of Defendants

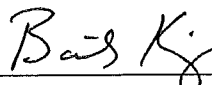
and/or their employee(s) or agent(s) while in the course and scope of their employment and/or agency.

214. Defendants and/or at least one officer, director, or manager of Defendants either participated in or condoned the willful or wanton conduct constituting the aggravating factor giving rise to punitive damages in this case.
215. Pursuant to N.C. Gen. Stat. § 1D-1, Plaintiff seeks punitive damages to punish Defendants for their egregiously wrongful acts and to deter the Defendants and others from committing similar wrongful acts.

**WHEREFORE**, Plaintiff respectfully prays the Court for relief as follows:

- A. That the Plaintiff have and recover of the Defendants, jointly and severally, for personal injuries and damages and wrongful death, a sum in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with prejudgment interest from the date of the filing of this action and post-judgment interest until any verdict is paid, pursuant to North Carolina General Statutes §§ 24-1 and 24-5;
- B. That the Plaintiff have and recover of the Defendants, jointly and severally, punitive damages in a sum to be determined by a jury, together with prejudgment interest from the date of the filing of this action and post-judgment interest until any verdict is paid, pursuant to North Carolina General Statutes §§ 24-1 and 24-5;
- C. That the Defendants be taxed with the costs of this action;
- D. That all issues of fact be tried by a jury; and
- E. For such other, further and different relief as the Court deems just and proper.

This the 5th day of June, 2015.

  
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