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**THE
DAUPHIN COUNTY REPORTER**

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Scott v. Families United Network, Inc.**Torts - Negligence - Duty of Care - Breach - Causation - Injury**

Two foster children died and another was injured, all siblings, in a residential fire that was deemed accidental. This action was commenced against the Defendant, a non-profit corporation providing foster care services under contract with Dauphin County, acting through the Department of Social Services for Children and Youth. Plaintiffs alleged that, as a result of numerous failures by the Defendant, the children were wrongfully placed with the foster parent in the foster home, and had the Defendant performed its professional obligations in accordance with the standard of care, the children would not have been living at the foster home on the night of the fire. Defendant filed a motion for summary judgment, which the Court granted.

1. Negligence is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances. *Martin v. Evans*, 551 Pa. 496, 711 A.2d 458, 462 (1998). To establish a prima facie case of negligence, a plaintiff must plead that “the defendant owed a duty of care to the plaintiff, the defendant breached that duty, the breach resulted in injury to the plaintiff, and the plaintiff suffered an actual loss or damage.” *Id.* At 461.

2. Generally, a party to a contract does not become liable for a breach thereof to one who is not a party thereto. However, a party to a contract by the very nature of his contractual undertaking may place himself in such a position that the law will impose upon him a duty to perform his contractual undertaking in such manner that third persons - strangers to the contract - will not be injured thereby; *Prosser, Torts* (2nd ed. 1955) § 85, pp. 514-519. It is not the contract *per se* which creates the duty; it is the law which imposes the duty because of the nature of the undertaking in the contract. *Evans v. Otis Elevator Co.*, 168 A.2d 573, 575-576 (Pa. 1961).

3. Under traditional principles of negligence, an important element of duty is foreseeability. *Gibbs v. Ernst*, 647 A.2d 882, 891-92 (Pa. 1994). A duty does not exist if the defendant could not reasonably foresee any injury as the result of his acts or if his conduct was reasonable in light of what he could anticipate - no one is expected to guard against events which are not reasonably to be anticipated or that are so unlikely that the risks would be commonly disregarded. *Id.* At 892. The rationale behind this rule is that it would be unfair to impose a duty upon persons to prevent a harm that they could not foresee or avoid. *McPeake v. William T. Cannon, Esquire, P.C.*, 553 A.2d 439, 442 (Pa. Super. 1989).

4. Even with proof of both breach of duty and the occurrence of injury, a plaintiff must still show the two are linked by causation. *Eckroth v. Pa. Elec., Inc.*, 12 A.3d 422, 427 (Pa. Super. 2010).

5. The proximate cause inquiry requires a determination by the court whether, as a matter of law, “the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of.” *Kote v. Bank of N.Y. Mellon*, 169 A.3d 1103, 1111-1112 (Pa. Super. 2017). Where a defendant’s negligence is so remote to the subsequent harm, the defendant cannot be held legally responsible as a matter of law. *Id.* Stated another way, if the court determines that it is “highly extraordinary that the defendant’s conduct should have brought about the plaintiff’s harm” then the court should refuse to find that the defendant’s conduct was the proximate cause of the plaintiff’s harm. *Id.*

Motion for Summary Judgment. C.P., Dau. Co., No. 2017 CV 5295 CV. Motion granted.

Benjamin D. Andreozzi and Nathaniel L. Foote, for the Plaintiffs

Scott D. McCarroll, John F. Yaninek and Julia A. Morrison, for the Defendant

McNally, J., May 4, 2020.

MEMORANDUM OPINION

Before the court is the summary judgment motion filed by Defendant Families United Network, Inc. (FUN) seeking dismissal of the Complaint filed by Plaintiffs Dorothy Scott, as Administrator of the

Estates of S.J. and D.J., and Dorothy Scott, as guardian *ad litem* for J.J., a minor. For the reasons set forth below this court grants the summary judgment motion and dismisses the Complaint.

Overview

This litigation arises out of a fire that occurred on the night of November 9, 2016, at the home of Toshia Singleton (Singleton), at 2517 Barkley Lane in Harrisburg, Pennsylvania (Singleton Foster Home). Residing there at the time were Singleton's three foster children, sisters S.J. and D.J., and their brother J.J. Both S.J. and D.J., then fifteen and seven years old, respectively, perished as a result of the fire. J.J., then ten years old, was injured. S.J. had been initially placed in the Singleton Foster Home in April of 2015 and her two younger siblings joined her in May of 2016. The fire was accidental and originated in the basement of the home, where Singleton's adult son was living. Following the fire, Scott commenced this action.

According to the Complaint, Defendant FUN entered into a contract with Dauphin County in 2014, acting by and through Dauphin County's Department of Social Services for Children & Youth (DCCY), by which Defendant would facilitate foster care placements for DCCY. Plaintiffs allege that the children were wrongfully placed with Singleton in the Singleton Foster Home as a result of numerous failures by Defendant, which was professionally responsible for screening Singleton and the home and providing relevant and accurate background information necessary to determine whether the home was appropriate for foster placements. (Complaint ¶¶ 10-13) Plaintiffs assert that Defendant failed to comply with criteria required for approval of a foster parent including that: (a) the prospective foster parent must be successful in managing their family life and finances; (b) Defendant must be aware of protective orders filed by or against the prospective foster parent; and (c) Defendant must have evidence of financial stability by the foster parent. (*Id.* ¶ 15) Plaintiffs assert that Singleton had difficulty managing her finances both prior to and after her approval as a foster parent and that this was known or should have been known to Defendant, as evidenced by subsequently discovered public records reflecting Singleton's history of judgments for unpaid rent and a judgment for unpaid taxes. (*Id.* ¶¶ 16-18) Plaintiffs also assert that Defendant failed to discover a public record showing entry of a protective order (PFA) against Singleton. (*Id.* ¶¶ 19-21) Plaintiffs contend that had Defendant performed its professional obligations in accordance with the standard of care – by discovering the liens/financial problems and protective order – the children would not have been living at the Singleton Foster Home on the night of the fire. (*Id.* at ¶¶ 22-23)

Under Count I (negligence), Plaintiffs assert that Defendant was negligent or careless by

- d. failing to adopt, implement, and/or enforce adequate policies and procedures related to the supervision and placement of children in foster care;
- e. failing to reasonably investigate and/or terminate the Singleton Foster Home;
- f. failing to reasonably investigate and/or terminate Singleton's status as a foster parent;
- g. placing [the children] in the Singleton Foster Home despite Singleton's above-described problems;
- h. failing to warn [the children] or their guardian(s) of the dangers posed in the Singleton Foster Home;

- i. making false representations regarding the safety of children entrusted to FUN; and/or,
- j. violating the laws, regulations, statutes, and/or ordinances that govern the Defendant and Pennsylvania foster homes, including, but not limited to, 55 Pa. Code § 3700, et seq.

(*Id.* ¶ 27) ¹

Plaintiff Scott also asserts, as guardian *ad litem* on behalf of J.J. only, a claim for negligent infliction of emotional distress in Count II. Under this count, Plaintiff asserts that Defendant violated its duties and was otherwise negligent and careless by placing J.J. at the scene of the fire which killed his sisters, and which he contemporaneously experienced. Plaintiffs also raise Wrongful Death and Survival causes of action in the Complaint.

Procedural Background

After Plaintiffs filed their Complaint, Defendant filed preliminary objections, assigned to the Hon. Andrew H. Dowling. Judge Dowling directed them granted in part and denied in part, by order of May 24, 2018, including in relevant part, overruling Defendant's demurrer to the negligence claims for failure to sufficiently allege proximate/factual cause. Judge Dowling held that the Complaint sufficiently set forth a negligence claim "including, at the very least, an inference that supports a finding that Defendant's alleged negligence was a proximate cause of the Plaintiffs' harm" and that "the issue is more appropriately brought at the dispositive motion stage after discovery has been completed."

After the pleadings were closed, the parties engaged in extensive discovery. On November 9, 2018, Plaintiffs filed a motion for leave to file an amended complaint to add a negligence *per se* count against Defendant. Defendant opposed the amendment as offered by the two Estate Plaintiffs as seeking to add new theories of negligence beyond the statute of limitations. Defendant did not oppose the motion to amend insofar as the new count would be asserted by the minor J.J. Following oral argument, this court issued an order February 5, 2019, denying the motion as to the Estates but granting the right to amend to the minor J.J. Plaintiffs sought to certify the order to pursue interlocutory appeal, which this court denied March 29, 2019. Plaintiffs did not ultimately file an appeal and further elected to not file an amended complaint to add a negligence *per se* count on J.J.'s behalf.

Defendant filed its summary judgment motion on October 1, 2019. Plaintiffs filed their response and a supplemental statement of facts on October 31, 2019. Both parties have since filed briefs, and oral argument on the motion was held before this court on January 31, 2020.

Summary Judgment Motion Record

The record presented to this court relevant to the resolution of the summary judgment motion contains the depositions of eight individuals including of Toshia Singleton and her son Thomas Carter, two

¹ Plaintiffs agreed, in their response to the summary judgment motion, to the dismissal of their allegations in ¶27(a)-(c) concerning claims for negligent hiring, retention, supervision and entrustment.

of Defendant's employees, two DCCY employees and two employees of the Department of Human Services (DHS), as well as a hundreds of pages of records, summarized as follows:

a. Defendant's Duties and Relationship with Dauphin County / DCCY

Defendant FUN is a non-profit corporation that provides foster care services. On July 2, 2014, it entered into a Purchase of Service Agreement (Agreement) with Dauphin County, acting on behalf of DCCY, to provide "certain non-placement child welfare services" as well as providing the County "with social and/or rehabilitative services for the children and/or youth as described in Appendix A." (Exbt. E (Agreement, p. 1)) The Appendix listed Defendant's many obligations including the following:

(¶ 1) Providing support to foster families including making monthly visits to the foster homes; attending meetings, communicating with and reporting to DCCY issues concerning the family; logging all communications with the family; and ensuring foster parents are current with all criminal clearances, driver's license, vehicle insurance, vehicle registration and home/renter's insurance.

(¶ 2) Providing training to foster parents both during the vetting process and after the parents have been approved.

(¶ 3) Conducting an annual re-evaluation of an approved family to assess its continued suitability including checking that parent training has been completed, confirming the home is safe (via a completed home safety list), reviewing the family's financial stability and current employment, updating criminal background checks and child abuse clearances, confirming participation in bi-annual training with CPR and first aid, among many items.

(¶ 5) Conducting all information gathering and vetting of prospective foster parents in collaboration with DCCY on all aspects of the process of approval (i.e. "vet candidate resource families according to the regulatory requirements of [DHS] and recommend resource family approval or disapproval to [DCCY]"); vetting a family according to the detailed items listed therein including of DPW regulations under 55 Pa. Code Chapter 3700 regarding foster parent suitability as well as conducting screening of all applicants as required under the law (discussed in detail below); and submitting a written home study to DCCY including its recommendation as to approval or disapproval of the foster parent applicant.

(*Id.* (Appx. ¶¶ 2, 3, 5))

As incorporated into the FUN-DCCY Agreement ¶ 5, state law and regulations govern the criteria for persons and families to meet in order to become foster parents, as well as the duties of both foster parents and foster care agencies, primarily as set forth in 55 Pa. Code Chapter 3700 (§ 3700.1- 3700.73) and Act 160, amending the Child Protection Services Law, 23 Pa.C.S.A. § 6344(d). (See Exbt. D, Rohde dep. at 79-88) The relevant law and regulations set forth minimum requirements concerning foster care placement and monitoring. (Exbt. AA, G. Williams dep. at 96; Exbt. Y, Blough dep. at 88)

Chapter 3700 of the DHS regulations include requirements relating to foster parent requirements, foster child discipline, punishment and control policy, assessment of foster parent capability, foster parent training, foster family residence requirements and safety requirements. 55 Pa. Code § 3700.62 - 3700.67. Section 6344(d) of Act 160 lists criteria or information that must be provided by the prospective foster parent or obtained from other sources during the application process, including the following relevant provisions:

6344(d) Employees having contact with children; adoptive and foster parents.

(8) The department shall require information based upon certain criteria for foster and adoptive parent applications. The criteria shall include, but not be limited to, information provided by the applicant or other sources in the following areas:

- (v) Protection from abuse orders filed by or against either parent, provided that such orders are accessible to the county or private agency.
- (viii) Evidence of financial stability, including income verification, employment history, current liens and bankruptcy findings within the last 10 years.

23 Pa.C.S.A. § 6344.

Hope Rohde, Foster Care Program Manager for DCCY, testified that she oversaw the FUN program as implemented with Dauphin County. (Exbt. D, Rohde dep. at 10-11) According to Rohde, Defendant FUN

... did all of our legwork, to say. So, they did the approval process of the foster parent applicants, and they did all the work, the training of our foster parents And when they did the approval of foster parents and work with our foster parents, they would submit that information to me, and then I would review that, those documents, and give the final approval. So, I would oversee them. So, anything - any time there were any issues with foster parents, I was the one that would be the kind of the final say in what was going on.

(Id. at 11) As reflected in the Agreement, one of Defendant's primary roles was to gather information necessary to offer a recommendation to DCCY so it could make an informed final decision whether to approve. (Exbt. Y, Blough dep. at 92) Following the vetting process, Dauphin County was the entity with authority to formally place a child in a foster home. (Id.)

Rohde described DCCY's relationship with Defendant FUN as very collaborative given their shared goal of providing homes for children. (Exbt. D, Rohde dep. at 57). She testified that she relied upon Defendant's recommendation in making a decision whether to license a home for foster care services and could not recall disagreeing with a recommendation from Defendant for approval or disapproval. (Id. 128-129) Indeed, the Agreement required that "FUN will collaborate and communicate closely with [DCCY] on all aspects of, and work related to, foster homes in process of approval." (Exbt. E, Appx. A (Sec. 5(c)))

With regard to the many checks and clearances required of prospective foster parents under Section 6344(d), the Agreement in ¶ 5 delegated *all* responsibility for obtaining them to Defendant:

d. The foster family approval process shall include, at a minimum, the following activities:

vii. Screening: FUN shall screen all applicants according to the PA [DHS] requirements to qualify as foster parents. These include:

1. State Police Clearances – renewed every two years (all members 14 years old and older)
2. Child Line Abuse Registry – renewed every two years (all members 14 years of age and older)
3. FBI Clearance – renewed every two years (all members 18 years of age and older)

6. County Children & Youth Agency involvement inquiry
7. Local Prothonotary review (Review of county records for protection from abuse orders)
8. Review of Bankruptcy filings, liens
9. Review of applicant(s) history of district magisterial and court of common pleas involvement [.]

(*Id.* (Sec. 5(d)(vii)) Despite this clear language, Defendant and Dauphin County disregarded portions of this Agreement whereby Dauphin County, through DCCY and Hope Rohde specifically, continued to perform numerous checks, including those required under Agreement terms (vii) (6), (7), (8) and (9), as designated on DCCY's "Clear/Check" Form (discussed below).

Finally, a provision also relevant to the matter before the court in the FUN-DCCY Agreement addressed the grounds upon which Defendant FUN could choose to disapprove a prospective foster family:

5. k. Disapproval: if there is a determination that a family has not been truthful or information collected does not support the applicant(s) approval as resource parents, the FUN supervisor will give a written recommendation with supporting evidence to the Dauphin County Foster Care Program Manager to discontinue the study process and to disapprove the candidate family.

(Exbt. E, Appx. A (Sec. 5(k))

b. Selection and Approval of the Foster Parent and Foster Parent Home

In 2014, Singleton and her mother Rose moved into a townhouse rented by Singleton at 2517 Barkley Lane. Rose expressed an interest in becoming a foster parent. Singleton was 43 years old and Rose 71. (Exbt. J) Singleton agreed to be the "backup" foster parent since she worked full time, commuting to a staffing agency job in Silver Spring, Maryland, while Rose was retired. On October 24, 2014, Singleton submitted three items of paperwork to Defendant including a Foster Parent Application (jointly submitted with Rose), an Autobiography and a Checklist. (Exbts. G, R, S) In the joint application, the Singletons listed 22-year-old old Ahmad Grant as living in their home; Grant was not related to the Singletons but had been raised by Rose and Singleton referred to him as her nephew. (Exbt. G; Exbt. B, Singleton dep. at 27) The application listed Singleton's teen-aged son Thomas Carter as living in another household, though he moved back in with her during the application process. (Exbt. G) On the application, in response to questions whether "you or a family member have experienced or are currently experiencing ... Domestic Violence / Protection from Abuse ... [or] Financial Problems ...," the Singletons checked the box "no." (*Id.* p. 4)

In her Autobiography, Singleton answered "no" to the question "Have you ever been cited for a PFA (Protection from Abuse) order?" (Exbt. R p. 12) She also answered "no" to the question "have you ever had any problems with a landlord?" (*Id.* p. 7) She indicated employment by the Aspen Group since April 2007 and listed past employers showing near continual employment since 1997. (Exbt. R) The foster parent Checklist requested information of each individual applicant about most of the criteria listed in Section 6344(d)(8) (*supra*). (Exbt. S) Singleton swore and affirmed in it that she had "provided accurate information to the following: ... Protection from Abuse Orders filed by or against either myself or co-applicant" and

“Evidence of financial stability including income verification, employment history, current liens and bankruptcies within the last ten years.” (*Id.* p.2)

Following receipt of the paperwork, Latoya Braddy, a Family Support Worker for FUN, commenced a review of both Singletons and of their home, which took months to complete. (See Exbts. I, J, K; Exbt H, Braddy dep. at 64) The Foster Parent Tracking Sheet reflected, among other things, attendance by the Singletons at six orientation sessions, including four in their home, four in-home visits by Defendant staff, submission of four personal references, confirmation of renter’s insurance, auto insurance and a driver’s license, completed medical reports, a disaster plan, and a discipline policy. (Exbt. I) The Tracking Sheet also showed that in December 2014, Singleton submitted a monthly financial statement, pay stubs and ten-year income verification. (*Id.*)

On April 14, 2015, Braddy conducted a home inspection and found the Singleton Foster Home in compliance with all items on a Home Safety Checklist. (Exbt. L) The list included many of the requirements listed Chapter 3700 concerning the minimum DHS regulatory requirements for approval of foster parent applicants including emergency telephone numbers conspicuously posted, operable smoke detectors on each level of the residence, a portable fire extinguisher and, if allowed under local ordinance, a space heater if used according to the manufacturer’s directions. (Exbt. L; Exbt. H, Braddy dep. 35, 37, 39, 42-48)

During the course of the screening, and just prior to final approval, an emergency need for placement of children developed concerning S.J., her older sister S. and S.s’ newborn son P. They were all placed with Singleton at her residence on April 20, 2015. (See Exbt. M) In order to make room, Singleton’s son moved out of his second floor bedroom and set up a separate bed in the basement where Ahmad Grant was living. (Exbt. B, Singleton dep. at 59, 70, 72)

Braddy completed her review and submitted the final Home Study on April 24, 2015, in which she recommended foster family approval. (Exbt. J) She testified that DCCY “for the most part” went along with FUN’s recommendation for approval and in her case specifically, had accepted all six of her recommendations for approval. (Exbt. H, Braddy dep. at 19)

Braddy described the residence in the Home Study as a two-story townhouse with a basement which was at the time being used as Grant’s bedroom. (Exbt. J) The study stated that “the basement will not be used by any placements that the Singletons receive.” (*Id.*) Braddy testified that there was no regulation or prohibition against someone living in the unfinished, unheated basement. (Exbt. H, Braddy dep. at 48-49) The second floor of the home included a master bedroom occupied by Singleton and two other bedrooms, occupied by her mother Rose and a third bedroom that Thomas Carter had vacated a few days earlier. (Exbt. J) The study noted that any children placed with the Singletons would use Rose’s bedroom, presuming no more than two children would be placed in the home, which was the maximum number Singleton sought to foster. (*Id.*)

Braddy reported in the Home Study that Singleton was working full-time in Maryland and also had a part time job. (Exbt. J) Rose had retired in 1993 as a certified nurse’s assistant. (*Id.*) Braddy reported

the Singletons had a combined income of \$3,895.20 and monthly expenses of \$2,566.72 and that “[t]hey appear to be financially stable and able to care for a foster child. There is no history of large amounts of debt or bankruptcy.” (*Id.*) Braddy was not asked at her deposition about these income and expense figures and the record does not include any further reference to the original financial information the Singletons supplied, including a monthly financial statement, pay stubs and ten-year verification of income.

Finally, the Home Study reflected that all required DHS clearances had been completed by Braddy. (Exbt. J; Exbt. H. Braddy dep. at 51) These clearances were done for everyone in the Singleton Foster Home and included an FBI check for criminal history, a Pennsylvania State Police check for criminal history, a Child Line check for child abuse history and corresponding checks for both criminal history and child abuse in every state outside of Pennsylvania in which the family members had previously resided. (Exbt. J)

As noted above, DCCY’s Hope Rohde performed the other required screening of prospective foster parents using a Clear/Search Form, even though the obligation to do all searches and clearance checks was contractually delegated to Defendant. Rohde’s screening included local prothonotary review, county record review and district magisterial and court of common pleas review. (See Exbt. H, Braddy dep. at 54)

One of the screening requirements involved a search on the CAPS (Child Accounting and Profile System) used by Dauphin County to house data from children and youth services. (See Exbt. AA, G. Williams dep. at 61) Rohde noted that when DCCY entered its Agreement with Defendant FUN, FUN did not have access to CAPS and thus could not perform that check. (Exbt. D, Rohde dep. at 85) Therefore, pursuant to both necessity and custom, and by mutual consent, DCCY continued to perform all checks delineated on the Clear/Search Form. (*Id.* at 41, 76-77, 84-86, 111)

In addition to the CAPS, the Clear/Search Form also listed other checks to be performed including of ChildLine (for child abuse and welfare), the UJS portal (for actions filed within the Pa. Unified Judicial System), local filings involving Domestic Violence (DV) and Protection From Abuse (PFA) (via the Dauphin County Prothonotary) and bankruptcy filings. (Exbt. F; Exbt. D, Rohde dep. at 35-51; Exbt. AA, G. Williams dep. at 61-63) The UJS portal included data from Pennsylvania criminal, civil and miscellaneous dockets filed in the courts of common pleas and magisterial district courts. (Exbt. D, Rohde dep. at 47-48; Exbt. Z (email)) The UJS portal would include landlord tenant actions filed in magisterial district courts. The DV/PFA search was limited to a search of the county records of the county in which the applicant resided. (Exbt. D, Rohde dep. at 50-51, 102; Exbt. E; see also Exbt. Y, Blough dep. at 43)

The Clear/Search Form submitted by Rohde in this case reflects that she completed her check of the UJS portal on October 29, 2014, Childline on January 14, 2015 and the remaining checks – CAPS, DV/PFA (in county only) and bankruptcy – on April 22, 2015. (Exbt. F) Rohde found Singleton “clear” on all checks. (Exbt. F; Exbt. D, Rohde dep. at 36-51)

Once the Clear/Check Form was complete, Singleton was “ready for approval.” (Exbt. D, Rohde dep. at 77) On April 24, 2015, after obtaining that form, and following submission of the home study, Singleton and her mother were formally granted approval by Rohde to be foster parents and operate a foster family home for DCCY. (See Exbt. N, Pa. Certificate of Approval)

c. Post-Foster Home Events and Foster Home Reapproval

Shortly after the emergency placement, S. turned eighteen and both she and her newborn moved out of the Singleton Foster Home, while S.J. remained. In May of 2016, S.J.'s brother J.J. and sister D.J. were placed in the Singleton Foster Home. (Exbt. B, Singleton dep. at 23-26) Just a month later, Rose moved out to take care of her ailing mother. (Exbt. B, Singleton dep. at 29)

At some point after April of 2015, Danyelle Williams replaced Latoya Braddy as the FUN Family Support Worker assigned to support Singleton. (See Exbt. H, Braddy dep. at 65-66) In that role, she conducted the monthly on-site visits. (Exbt. T, D. Williams dep. at 11-12) She checked the smoke alarms during every monthly visit. (*Id.* at 17) If she saw anything out of the ordinary during her visits she would make sure it was fixed. (*Id.* at 17-18) Williams was often accompanied on her site visits by DCCY caseworker Samantha Weirich. (Exbt. CC, Weirich dep. at 14) Williams primarily supported the foster family while Weirich supported the foster children. (*Id.* at 11, 12, 14)

Singleton testified that in July of 2015, she informed Danyelle Williams she was having trouble paying rent due to reduced work hours. She told Williams that papers had been filed against her and she might get evicted and was worried about the children. Singleton indicated that she had a judgment against her for \$3,036.12. (Exbt. B, Singleton dep. at 212-214) (discussed below)) According to Singleton, Williams provided unhelpful advice. Nevertheless, Singleton was able to pay off the judgment with family assistance. (*Id.* at 214). Singleton testified that this was the first and only time she discussed rent problems or landlord issues with anyone from Defendant FUN. (*Id.*) Danyelle Williams was not asked at her deposition about having this discussion with Singleton regarding rent issues, her potential eviction or that Singleton possibly lacked a stable income.

In addition to home visits, Williams also conducted the home inspection and paperwork as part of the annual foster home re-evaluation. (See Exbt. AA, G. Williams dep. at 51-52) The Singleton Foster Home was re-approved on April 1, 2016. (Exbt. P) In conjunctions with reapproval, Williams inspected the home on March 21, 2016. (Exbt. O) Her reevaluation report included updated PSP, Childline and FBI clearances and that Singleton had attended all additional training sessions. (*Id.*) The Home Safety Checklist completed in conjunction with the re-evaluation stated that the home continued to be in compliance with requirements including proper household facilities (toilets, shower, heating, operable telephone, approved sleeping locations with proper bedding), safety details (emergency phone numbers, space heaters being used within manufacturer's specs, operable smoke alarms, a working and tested fire extinguisher, no exposed electrical wires) and other items including that the foster parent maintained renter's and auto insurance, vehicle inspection and a valid driver's license. (Exbt. O; Exbt. T (Exbt. 1 therein)) There was no inquiry on the form about the foster parent's financial condition during the re-evaluation period and it was not otherwise indicated as a problem. (Exbt. O; Exbt. T, D. Williams dep. at 23-29)

Williams recalled inspecting the basement during the re-evaluation period. (*Id.* at 35-36) The last time she went into the basement was during her second last visit to the Singleton Foster Home, on October 19, 2106. (*Id.* at 47; Exbt. CC, Weirich dep. at 94) Williams noticed a wall socket near the bed and one cord

plugged into it. She also saw a power strip on the floor with one cord plugged into it. She observed an X-box and TV in the bedroom but neither a space heater nor mini-fridge. (Exbt. T, D. Williams dep. at 70-71)

d. Public Records Discovered After the Fire

Following the fire, Plaintiffs discovered six public records involving Singleton that they claim Defendant should have discovered or become aware of during the vetting and screening process, or following approval. They include:

- Dauphin County Landlord / Tenant Judgments (Exbt. B, Singleton dep. (Exbt. 15)):

First Dauphin County Judgment. On February 19, 2014, the landlord filed an action against Singleton and Darnell Manning² seeking past due rent and costs. (No. MJ-12105-LT-00099-2014) Judgment was entered on February 26, 2014 for \$227.86. There is no indication on the record whether the judgment was satisfied. (Id.)

Second County Judgment. On January 22, 2015, the landlord filed an action against Singleton and Darnell Manning seeking past due rent and costs. (No. MJ-12105-LT-00034-2015) Judgment was entered on February 3, 2015 for \$2,003.14. The judgment was marked satisfied on March 10, 2015. (Id.)

Third Dauphin County Judgment. On June 17, 2015, the landlord filed an action against Singleton and Darnell Manning seeking past due rent and costs. (No. MJ-12105-LT-000310-2015) Judgment was entered July 1, 2015 for \$3,036.12. The judgment was marked satisfied on August 21, 2015. (Id.)

Fourth Dauphin County Judgment. On March 2, 2016, the landlord filed an action against Singleton and Ahmad Grant seeking past due rent and costs. (No. MJ-12105-LT-000125-2016) Judgment was entered on March 15, 2016 for \$1,136.53. There is no indication on the record whether the judgment was satisfied. (Id.)

- 2014 Maryland Tax Lien (Exbt. B, Singleton dep. (Exbt. 12)):

On July 31, 2014, the State of Maryland entered a lien and judgment against Singleton in the amount of \$1,345.99. The judgment was entered for 2007 taxes of \$703 owed by Singleton. The final judgment and lien included costs and penalties. (Id.)

- 2007 Maryland Peace Order (Exbt. U):

Singleton's Maryland roommate Matreshia Bennett filed a petition for a Peace Order on May 31, 2007, seeking protection from Singleton and claiming harassment. (Id.) Bennett alleged Singleton had been trying to cause harm to their home by burning candles with no one at home and leaving the stove on. She also alleged Singleton's children were destroying property and harassing Bennett's children and locking them from the house. Following a hearing, a Final Peace Order was entered for a period of six months directing, among other things, that Singleton not contact or harass Bennett and be excluded from the home. (Id.)

The existence of these six public records were revealed to DCCY's Hope Rohde for the first time after the fire. (See Exbt. D, Rohde dep. at 103-105)

FUN's Latoya Braddy testified that had she become aware of Singleton having financial difficulties through the rent judgments, she would have had a conversation with her and asked to review her bills to see if she could pay them. If Singleton could not show she could keep up with her bills, "then it could

² Darnell Manning is Toshia Singleton's oldest son who co-signed prior leases with her.

have been terms for disapproval.” (Exbt. T, Braddy dep. at 68) Braddy also testified that she was aware dishonesty by a prospective foster parent was a ground under the FUN-DCCY Agreement for FUN to recommend that the study process be discontinued and the candidate family disapproved. (Exbt. T, Braddy dep. at 58-59) She agreed that Singleton’s inability to pay rent would be a financial problem and that, assuming she had been sued for not paying rent, she would have been dishonest for indicating on her Foster Parent Application that neither she nor any family member were experiencing or had experienced “financial problems.” Braddy stated such dishonesty “could be grounds for disapproval.” (*Id.* at 61-62)

With regard to the 2007 Maryland Peace Order, Braddy testified that had she known about it, it would not have meant certain disapproval but that she would have assessed how old the order was and had discussions with Singleton about it. (*Id.* at 69)

Rohde stated that in assessing an applicant’s financial stability, the inquiry primarily involves whether he or she can pay their bills by looking at the income and expense sheet, 10-year income history and pay stubs. (*Id.* at 119, 122) According to Rohde, the information submitted by Singleton revealed she was financially stable. (*Id.* 118) Furthermore, Rohde testified that a failure to pay rent one or multiple times might not reflect financial instability if the applicant has the ability to pay off debts at the time of application, nor would a past history of failure to pay rent render inconsistent Singleton’s statement in her application materials that she was financially stable. (*Id.* at 118-119)

Rohde was aware of the provision in the Agreement under which terms an untruthful candidate could be disapproved. (*Id.* at 88-89, 120) Rohde testified that if an applicant provided inaccurate information they might be disqualified, and that a deliberate lie should disqualify them. (*Id.* at 89-90) In this case, if they became concerned Singleton had lied in her application, “we would have to have a conversation about her” and she might be disqualified. (*Id.* at 121) Ultimately, Rohde testified she was not aware that Singleton had provided Defendant with “any information that [Rohde] later found out to be false” in the application and reapproval process. (*Id.* at 106)

With regard to the Maryland PFA, Rohde stated she had no obligation to search outside the county where the applicant lived and that in this case she properly contacted the Dauphin County Prothonotary’s office and it conducted the search. (*Id.* at 49-51; Exbt. Z (email))

According to Rohde, her Clear/Search Form search is a once and done thing required during the application process and there was no further obligation to redo checks later. (*Id.* at 55-56, 125)

Rohde concluded that had she known about any of six records during the approval process, it would not have changed her decision to approve Singleton as a foster parent. (Exbt. D, Rohde dep. at 55 (rent judgments), 103 (PFA), 105 (tax lien))

Singleton testified that she believed she provided accurate answers in her application including that she had not been cited in a PFA order, had never had problems with a landlord and had not or was not currently experiencing financial problems. (Exbt. B, Singleton dep. at 91-92, 95, 97; Exbts. G, R) She similarly testified that she was truthful in filling out the Checklist including that she provided accurate

information regarding PFA orders filed against her and evidence of financial stability (including income verification, employment history, current liens and bankruptcies within the last ten years). (Exbt. B, Singleton dep. at 98-99; Exbt. S)

Singleton explained that she did not consider the Maryland Peace Order to involve "abuse" but only a disagreement with her roommate. (Id. at 92-93, 96-97, 103-111) She also considered herself financially stable at the time of her application to be a foster parent since she was employed and had no liens outstanding against her. (Exbt. B, Singleton dep. at 99) When presented at the deposition with the Maryland tax lien, she indicated no prior knowledge of its existence or having been served with it, noting that the lien documents listed an incorrect Social Security number. (Id. at 99-102)

With regard to the landlord tenant actions, only one was filed before she submitted her foster parent paperwork. (Id. at 115-123, 208-209) Regarding that First Dauphin County Judgment, entered in February 2014, she testified that she paid it. (Id. at 118) She explained that at certain times she had difficulty paying rent because she had been furloughed twice with Aspen Group. Though she was unclear of the exact time periods, the first furlough appears to have occurred sometime in 2014 when her hours were reduced from 40 to 16, and the second furlough was probably in 2015. (Id. at 116-117, 119, 122, 206-207, 213) She nevertheless believed that because she was able to pay off all back rent owed, she was financially stable. (Exbt. B, Singleton dep. at 122) As noted, she reached out to FUN's Danyelle Williams in July 2015 when she had difficulty paying rent, at the time the Third Dauphin County Judgment was entered. (Id. at 212-214)

e. The Fire at the Singleton Foster Home

Thomas Carter testified at his deposition that on the date of the fire, November 9, 2016, he came home from work around 10:00 p.m. and later cleaned his basement bedroom. (Exbt. C, Carter dep. at 31-34) Carter was nineteen years old at the time. He turned on the space heater he had been using because the basement was cold. (Id. at 30) After it warmed up he turned it off, about one hour before the fire started. (Id. at 34) He did not unplug it. (Id. at 39) Ahmad Grant had moved out of the basement a month earlier and Carter inherited the space heater. (Id. at 26-27; Exbt. B, Singleton dep. at 84) Carter used a wall outlet near his bed into which was plugged a deep freezer and a power strip. The power strip had three items plugged into it: the space heater, a TV and his gaming system. (Exbt. C, Carter dep. at 40-41)

Carter testified that while cleaning his room, he heard a "hissing" sound and believed it was coming from an Air Wick aerosol can located under his bed. (Id. at 53-54, 58, 72-73) Carter went upstairs to the kitchen to prepare food and when he returned, he saw a glow under his bed. He looked under and saw the bottom of his box spring on fire. (Id. at 41-42, 44, 45, 73) He ran upstairs to get a pot of water and returned to see fire covering the entire bottom of the bed. He again ran upstairs and yelled out to his mother "the bed's on fire, get everybody out of the house." (Id. at 59) Carter went to the kitchen to look for the fire extinguisher but could not find it. He and his mother then ran to the basement and were unable to put out the fire with a blanket. (Id. at 61-62) His mother then ran upstairs to retrieve the children. Carter soon retreated outside due to heavy smoke and later attempted to get back into the house to get S.J. and D.J., but was unable. (Id. at 66)

Police spoke with Carter on the night of the fire and according to their report, he told them a story consistent with his deposition; that is, he heard a hissing noise which he attributed to an aerosol can near his bed and that after hearing the noise he discovered the fire. (Exbt. C (Exbt. 2 - Police Call Summary Report)) The Police Report also reflected that police interviewed Singleton twice on the night of the fire. At the scene, Officer Pierce spoke with her and reported that she told him her son said to her that “he lit a candle and there was some type of cleaner or air freshener that was next to the candle which exploded,” landing on the mattress. (*Id.*) Following a second interview, Officer Schriver reported Singleton as saying her son “heard a strange noise which he thought was coming from an aerosol can of air freshener ... Soon after hearing this hissing sound, flames erupted ... near the foot of the bed. Carter had said [to his mother] he had two candles lit, ... but neither were near where the flames [were] ...” (*Id.*)

At his deposition, Carter recalled telling his mother on the night of the fire that after he lit a candle, a cleaner or air freshener can next to the candle ignited, though he denied there was an explosion. (Exbt. C, Carter dep. at 52-53)

Singleton testified that on the night of the fire, she and all three children had fallen asleep on the second floor. D.J. heard Carter yelling and woke up Singleton. She ran downstairs and tried to extinguish the fire with a blanket. She then ran upstairs to get the children. She woke up S.J. and J.J. and told them to run downstairs and out of the house. She went back to her bedroom with D.J. and called 911. S.J. and J.J. were turned back by heavy smoke and met Singleton back at her bedroom. The four of them then formed a chain holding hands with J.J. in front, Singleton next, D.J. third and S.J. at the end. They proceeded down the steps in heavy smoke but Singleton could feel D.J. being pulled back and they lost contact. Singleton and J.J. made it out but S.J. and D.J. did not and were later retrieved by fire fighters unconscious. They were later transported to CHOP where they later died. (Exbt. B, Singleton dep. at 138-149)

Singleton testified that she was aware on the night of the fire that Carter had used his space heater and it was plugged into the surge protector (power strip). (*Id.* at 65-66) She did not consider this a safety problem. (*Id.*)

Singleton testified at her deposition that Carter told her he had gone upstairs for something to eat and when he came back downstairs he heard a “pop” and then saw flames. (*Id.* at 150) She asked him what would pop and he said he thought the air freshener near his bed, which she understood to mean it got too hot near the bed and exploded. (*Id.* at 166) She said he did not tell her that he had lit a candle and that she knew him to never light candles. (*Id.* at 132-133, 151) Singleton denied that her son ever told her he heard a hissing sound. (*Id.* at 171) With regard to the police report – in which Officer Pierce reported that Singleton told him, right after the fire, that Carter told his mother “he lit a candle” causing a can to ignite – that she did not remember telling Officer Pierce this version of events but “I’m not saying (Officer Pierce) got it wrong.” (*Id.* at 166-167; see Exbt. C (Exbt. 2))

Following the fire, police recovered a heavily damaged power strip from the area where the fire was reported to have started. (Exbt. C (Exbt. 2 - Police Call Summary Report)) The police officer stated in

the report that “due to this being found in the immediate area of origin, and due to its almost complete destruction, the power strip was first considered as the ignition source.” (*Id.*)

The Harrisburg Fire Department issued a report one week after the fire. (Exbt. AA, G. Williams dep. (Exbt. 2 of dep., Exbt. D therein)) It stated “[o]rigin was strongly suggested as the basement bedding area (mattress) and also the numerous extension cords running into a power strip which was supplying a space heater, a mini refrigerator and possibly television/gaming equipment. ... Fire labeled as accidental in nature.” (*Id.*) The report also noted that the smoke detectors were working on the night of the fire and the 911 dispatcher could hear them in the background. (*Id.*)

f. DHS Review of the Foster Care Placement

Following the fire, Plaintiffs’ counsel submitted a complaint letter to DHS raising issues similar to those alleged in the Complaint filed in this action including that Defendant failed to discover Singleton was financially unstable as exhibited by the later-discovered public records. Plaintiffs also raised two claims not asserted in this action, including that there were too many appliances plugged into the power strip as well as a failure to have a fire extinguisher in the home. (Exbt. Q)

The DHS investigator assigned to the case, Faith Blough, concluded that FUN acted within reason in completing its review and approving the foster family and home. (Exbt. Y, Exbt. 1) She found the home met all standard regulatory requirements including that DCCY obtained all Act 160 information including necessary clearances (out-of-state child abuse, FBI, CPS, Pa. Childline, Pa. UJS, DV and PFA through county Proth. Office and bankruptcy). (*Id.*) Further, the home safety checklist of April 14, 2015, reflected compliance including a working fire extinguisher. (*Id.*) Regarding the re-evaluation process, no safety concerns were raised by FUN’s Danyelle Williams during her March 2016 inspection, or during any of her subsequent monthly visits. (*Id.*)

Blough testified that no law or regulations say a foster parent cannot become a foster parent due to a civil judgment but that the decision is left to the discretion of the placing agency. (*Id.* at 33-34, 37-38) She believed the landlord tenant judgments did not support disapproval of Singleton on financial instability grounds. (*Id.* at 38) She also stated that neither DCCY nor FUN had an obligation under “the financial stability” piece of Act 160 (Section 6344(d)) to search for an out-of-state tax lien. (*Id.* at 39) Similarly, no regulations or laws required search for a PFA outside the county of the prospective foster parent’s residence. (*Id.* at 43-44)

Following the investigation, DHS issued a letter to Plaintiffs’ attorney on July 7, 2017, from Gabi Williams, the Central Region Director for DHS. (Exbt. AA, Exbt. 1) She informed counsel that DHS determined the foster home met the standard regulatory requirements for initial approval and annual re-evaluation and that DCCY acted within reason to complete the review and approval process. (*Id.*)

Williams testified that none of the public records discovered after the foster family’s approval would have resulted in regulatory disqualification of Singleton. (*Id.* at 44, 48-50, 81, 86-87) In all cases, the decision whether to disqualify was within the discretion of Dauphin County (DCCY). (*Id.* at 33-35, 48-50)

Similarly, the agency also had discretion to disqualify an applicant if it was discovered the applicant was dishonest in any manner. (*Id.* at 91) With regard to the applicant showing “financial stability” under the regulations, Williams stated that it is not a defined term but its meaning depends upon the circumstances of the foster family and that the decision whether to approve or disapprove on that ground is discretionary. (*Id.* at 33-35) She opined that the existence of a suit for unpaid rent or a tax lien might or might not reveal financial instability. (*Id.* at 35-36)

Legal Discussion

Plaintiffs assert in their Complaint that Defendant failed to perform its obligations in accordance with the standard of care, including failure to discover the public records involving Singleton showing she had a history of judgments for unpaid rent and one for unpaid taxes, which reflected her lack of financial stability and difficulty managing finances both before and after she became a foster parent. (Complaint ¶¶ 15-18) Plaintiffs also allege that Defendant failed its obligation to discover the 2007 Maryland protective order which concerned accusations Singleton posed a fire risk to her residence. (*Id.* ¶¶ 15, 19-21) Plaintiffs assert that had Defendant not failed to perform its obligations, the children would not have been living at the Singleton Foster Home on the night of the fire. (*Id.* at ¶¶ 22-23)

Though Plaintiffs assert what appears to be a common law claim for negligence in Count I, they clarified in subsequent filings that they are also seeking to impose liability against Defendant for negligence under the Restatement (Second) of Torts §323 and §324A. In addition, they claim in Count II negligent infliction of emotional distress, as well as the Wrongful Death and Survival causes of action. All claims are premised on a finding that Defendant was negligent. Defendant seeks dismissal of the Complaint arguing that the record before the court fails to establish that Defendant owed any duty to Plaintiffs, or breached any duties owed to Plaintiffs, or that there exists any causal connection between Defendant’s alleged breach of any duty recognized by law and Plaintiffs’ injuries.

Summary judgment may be granted only when the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. *Reliance Ins. Co. v. IRPC, Inc.*, 904 A.2d 912, 914 (Pa. Super. 2006). The moving party has the burden of proving that no genuine issues of material fact exist. *Id.* In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. *Id.* at 914-15. Therefore, summary judgment is proper only when the uncontroverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *Id.* 915. In reviewing defendant’s motion, this court must accept the non-moving party’s evidence and all reasonable inferences deducible therefrom as true. *Schindler v. Sofamor, Inc.*, 774 A.2d 765, 775 n. 11 (Pa. Super. 2001).

Negligence Claims - Prologue

Before addressing the merits of Defendant's summary judgment motion, this court initially notes that a number of undisputed facts have been established from the record and have more narrowly defined the allegations upon which Plaintiffs can assert negligence.

Plaintiffs overarching claim, as fleshed out in their brief and statement of facts, is that "FUN failed to identify salient issues related to Toshia Singleton's fitness to serve as a foster parent. A jury could readily find Toshia Singleton's financial issues (and related dishonesty) are connected to the November 2016 fire." This claim is primarily predicated upon Plaintiffs' assertion that Defendant had a duty to discover six public records during the foster parent approval process, or sometime thereafter, and it failed to perform this duty. The records include four Dauphin County Judgments entered against Singleton between 2015 and 2016 for unpaid rent, a Maryland Peace Order issued against her in 2007 and a 2014 Maryland lien entered against her for unpaid taxes. Plaintiffs assert these records were relevant to foster parent qualification requirements that Singleton be financially stable and that they also reflect she was not truthful during the application process. Plaintiffs also suggest that Defendant's negligence continued beyond the foster parent approval process whereby following approval, Defendant was directly informed by Singleton she had financial problems and might get evicted but that Defendant did not pursue that issue and recommend she be terminated as a foster parent.

Plaintiffs argue that had Defendant not breached its duty by failing to discover these records or otherwise learn about their contents, or later follow-up on the financial stability issue, Singleton would not have been approved a foster parent would have been terminated following approval, and the children S.J., D.J. and J.J. would not have been placed with her and later killed and injured in the fire at her home.

Prior to addressing Defendant's obligations, this court first dispatches with Defendant's argument that it had no obligation whatsoever to screen prospective parents concerning any of the types of records at issue. Defendant argues that it and DCCY had established a course of conduct under their Agreement by which DCCY undertook screening for Defendant and that Defendant agreed to this arrangement. Defendant argues that this was in essence an oral modification to their Agreement of screening obligations, as delineated in Paragraph 5(d)(vii) of Appendix to the Agreement. Defendant contends that as such, it no longer had any legal obligation to do any screening for the six records at issue. This court disagrees.

The FUN-DCCY Agreement included a provision that required any modification to its terms be made in writing:

38. Any alterations, variations, modifications, amendments, waivers or additional provisions to this Agreement will be valid only when reduced to writing No oral amendment or waiver shall be effective and this provision may not be orally amended or waived. The parties hereto further agree that any particular course of performance may not be used by any trier-of-fact to imply or infer a modification of this Agreement.

(Exbt. E, ¶ 38) Inasmuch as there is no evidence that Defendant FUN and DCCY ever modified the Agreement in writing to reflect the delegation of any screening responsibilities from Defendant to DCCY, *all* screening responsibilities remained legally with Defendant under the clear contract terms.³

Turning back to the six public records at issue, the summary judgment record submitted to this court establishes unequivocally that Plaintiffs' negligence claims cannot be grounded upon allegations Defendant failed to discover the Maryland Peace Order and Maryland tax lien. Regarding the Maryland Peace Order, Plaintiffs "admitted" in Response to Defendant's Summary Judgment Motion, that "there was no obligation on *any* entity to check for protection from abuse orders outside of Dauphin County if the prospective foster parent resided in Dauphin County at the time of the application process." (Summary Judgment Motion and Response, ¶ 150) (italics in original) All other testimony on this issue established this to be the case. (See Exbt. E, App. A (Sec. 5(d)(vii)); Exbt. D, Rohde dep. at 50-51, 102) Similarly, the testimony was uncontradicted that there was no duty by Defendant (through Rohde) to search for an out-of-state tax lien. (Exbt. Y, Blough dep. at 39)

Furthermore, there has been no evidence produced in the record that Defendant, or DCCY through Rohde, learned independently about the Maryland records from Singleton or anyone else. The record is undisputed that Singleton failed to inform Defendant in her application forms that a Maryland protective order had been entered against her in 2007. Singleton did not otherwise divulge the existence of the 2014 tax lien. Thus, upon thorough review of the record, this court rejects any claims of negligence-based liability for failure to discover the Maryland records.

With regard to the four Dauphin County rent judgments, the record before this court is that Defendant, during the approval process, was obligated under its Agreement with DCCY to search district magisterial and court of common pleas records for cases involving the prospective foster parent. The First Dauphin County Judgment, entered in February of 2014 for past rent due, was a district magisterial record that existed when DCCY's Rohde conducted her search (on Defendant's behalf) for Singleton's records, on October 29, 2014. The summary judgment record thus reflects that the First Dauphin County Judgment should have been discovered and shared with Defendant, but was not.

With regard to the other three Dauphin County Judgments, Defendant argues that it had no obligation to discover them since Rohde (on Defendant's behalf) completed her Clear/Check Form searches before any of the actions had been filed and that further, she had no continuing obligation to conduct subsequent searches after Singleton was approved. While this court agrees that this is a fair summation of some of the testimony from Defendant's own witnesses, the full record, when viewed in a light most favorable

³ FUN further argues that the parties orally agreed to modify Paragraph 38 to allow for oral modification of the FUN-DCCY Agreement. Pennsylvania law will allow an oral modification to a contract even where the contract prohibits oral modification if there is a subsequent oral agreement to do so, but only if the parties' conduct clearly shows the intent to waive the requirement that amendments must be made in writing. ADP, Inc. v. Morrow Motors, Inc., 969 A.2d 1244, 1249 (Pa. Super. 2009)(citations omitted). Evidence that parties have so modified the contract terms must be proved by clear, precise and convincing evidence. *Id.* There is no evidence in the record, much less evidence of a clear, precise and convincing nature, that FUN and DCCY orally agreed to waive the requirement in Paragraph 38 that oral modifications be in writing.

to Plaintiffs, reflects sufficient facts for a factfinder to conclude that had Defendant not failed to obtain the First Dauphin County Judgment, it might have become aware of subsequent Dauphin County judgments. In any event, in the case of one of the judgments, Defendant was directly informed about it.

With regard to the First Dauphin County Judgment, FUN's Latoya Braddy indicated that if she had been apprised of any financial difficulties by Singleton during the foster parent application process, she would have had a conversation with her and asked that she produce evidence she could pay her bills, and if she failed to do so, Braddy would consider it grounds for recommending disapproval of Singleton as a foster parent. (Exbt. H, Braddy dep. at 61, 68) Braddy also testified that an inability to pay rent was a financial problem that Singleton should have divulged on her Foster Parent Application. (*Id.* at 61; see also Exbt. AA, G. Williams dep. at 35-36 (stating that the existence of a suit for unpaid rent might reveal financial instability)) Braddy further agreed that if she had known Singleton had been sued for not paying rent she would have considered her to have been dishonest for reporting on her application she did not have financial problems, and that such dishonesty "could be grounds for disapproval." (Braddy dep. at 61-62) Singleton had previously indicated in her application paperwork that she had not experienced or was experiencing financial problems, that she had not "ever" had any problems with a landlord, and that she had provided accurate information concerning evidence of financial stability. (Exbts. G, R, S) Braddy testified that under the FUN-DCCY Agreement, dishonesty by a prospective foster parent was a ground for Defendant to discontinue the study process and disapprove the candidate family. (*Id.* at 58-59)

As noted, the First Dauphin County Judgment was for just \$227.86, entered in February of 2014. Singleton claims she paid it off a shortly after its entry, and she believed she did not have financial difficulties and was truthful on her Application, submitted October 24, 2014. Nevertheless, reading the record in a light most favorable to the Plaintiffs, the existence of the First Dauphin County Judgment would have prompted Braddy to conduct an inquiry during the approval process with Singleton (sometime between October 2014 and April 2015) concerning her ability to pay bills, including rent. Such an inquiry would have most likely resulted in Braddy learning from Singleton about her furlough situation, which Singleton testified was the reason she was having difficulty paying rent. In addition, had Braddy learned about the First Dauphin County Judgment from Rohde, it would have most likely been sometime towards the end of the application process when Rohde completed all entries on her Clear/Search Form, the last of which were noted to have been completed on April 22, 2015. By that time, the Second Dauphin County Judgment had been filed against Singleton. That action had been filed January 22, 2015, for unpaid rent and was marked satisfied after Singleton paid \$2,003.14 on March 10, 2015. This too, might have very possibly been part of Braddy's inquiry into Singleton's financial stability. As noted, Singleton was approved by DCCY on April 24, 2015.

Finally, with regard to the Third Dauphin County Judgment, Singleton testified that she essentially told FUN's Danyelle Williams about its existence in July 2015. At that time, Williams had replaced Braddy as Singleton's FUN Family Support Worker. Singleton testified that she informed Williams she was having trouble paying rent due to reduced work hours, that papers had been filed against her and she might get evicted. Singleton's testimony indicated she was referring to the Third Dauphin County Judgment, which had been entered against her for \$3,036.12. (Exbt. B, Singleton dep. at 212-214)

Defendant argues that even if the factual record could show a *prima facie* case that it failed to provide complete background information on Singleton, there is no further evidence of record to support that DCCY would not have approved her to be a foster parent or later terminated her, had the additional background information been identified regarding inability to pay rent. Defendant posits that it lacked any final decision making authority to approve or terminate a foster parent. Those duties belonged to DCCY. DCCY's Rohde, who had such authority, testified that had she known about any of the missing background information (six public records) during the approval process, it would not have changed her decision to approve Singleton as a foster parent. (Exbt. D, Rohde dep. at 55 (rent judgments), 103 (PFA), 105 (tax lien)) Defendant further notes that Rohde believed Singleton had submitted sufficient information to be considered financially stable. (*Id.* 118) Rohde also testified that while dishonesty by an applicant could be grounds for disqualification, she was not aware that Singleton provided Defendant with any information that she later found out to be false, in either the application or reapproval process. (*Id.* at 89-90, 106)

This court disagrees with Defendant's argument that the record clearly shows that Plaintiffs cannot prove that any alleged negligence by Defendant could not have resulted in DCCY disapproving (or terminating) Singleton as a foster parent. Braddy testified that DCCY generally accepted Defendant's recommendations and in her case specifically, had never rejected one. (Exbt. H, Braddy dep. at 19) Rohde similarly testified that DCCY's relationship with Defendant was highly collaborative, that she relied upon the its recommendations and could not recall ever rejecting one. (Exbt. D, Rohde dep. at 58, 128-129) Indeed, the Agreement required close collaboration between Defendant and DCCY on all aspects of the approval process. (Exbt. E, Appx. A (Sec. 5(c))) In addition, Rohde broadly conceded that failure to pay rent one or multiple times might reflect financial instability and that lying by an applicant could be grounds for disqualification. (Exbt. D, Rohde dep. at 118-119, 121) Finally, this court's review of the record indicates Rohde was never apprised of Singleton's furlough problem and reduced income at any time during Singleton's tenure as a foster parent and was not asked to consider that factor in predicting whether she would still have approved Singleton in retrospect. Nor was Rohde asked whether, if she had been presented with a recommendation for *disapproval*, she would have accepted it. Given the record before us, there is sufficient evidence for a factfinder to determine that had Defendant not been negligent in collecting all required background information on Singleton leading it to offer a recommendation for disapproval, or termination (post-approval), DCCY may have followed that recommendation and rejected Singleton as a foster parent, or later terminated her. This court thus turns to the merits of the summary judgment motion.

Negligence Claims

Plaintiffs are pursuing negligence claims under a common law theory as well as under the Restatement (Second) of Torts §§ 323 and 324A. All theories include the basic construct of a negligence claim; i.e. duty, breach, causation and harm. Defendant asserts that as a matter of law, Plaintiffs have failed to adequately allege all elements under all theories, other than harm, warranting judgment in its favor. This court agrees and grants summary judgment in Defendant's favor holding that Plaintiffs have failed in their common law negligence claim to show both duty and causation. This court further holds that under the Restatement theories, Plaintiffs fail to show causation.

a. Common Law Negligence

Our Supreme Court recently addressed common law negligence, as follows:

Negligence is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances.” Martin v. Evans, 551 Pa. 496, 711 A.2d 458, 462 (1998). “While the existence of a duty is a question of law, whether there has been a neglect of such duty is generally for the jury.” Emerich v. Phila. Ctr. for Human Dev., Inc., 554 Pa. 209, 720 A.2d 1032, 1044 (1998). “[T]he plaintiff has the burden of establishing, by a preponderance of the evidence, that the defendant engaged in conduct that deviated from the general standard of care expected under the circumstances, and that this deviation proximately caused actual harm.” Martin, 711 A.2d at 462. To establish a *prima facie* case of negligence, a plaintiff must plead that “the defendant owed a duty of care to the plaintiff, the defendant breached that duty, the breach resulted in injury to the plaintiff, and the plaintiff suffered an actual loss or damage.” Id. at 461. ...

... We have characterized the duty inquiry as the “primary” inquiry in negligence. Phillips v. Cricket Lighters, 576 Pa. 644, 841 A.2d 1000, 1008 (2003).

Walters v. UPMC Presbyterian Shadyside, 187 A.3d 214, 221–22 (Pa. 2018).

With regard to the existence of duty, the record reveals that Defendant FUN and the foster care children had no direct contractual relationship. Plaintiffs argue that Defendant nevertheless owed a duty to the children under a longstanding Pennsylvania legal principle:

Generally a party to a contract does not become liable for a breach thereof to one who is not a party thereto. However, a party to a contract by the very nature of his contractual undertaking may place himself in such a position that the law will impose upon him a duty to perform his contractual undertaking in such manner that third persons - strangers to the contract - will not be injured thereby; Prosser, Torts (2nd ed. 1955), § 85, pp. 514–519. It is not the contract *per se* which creates the duty; it is the law which imposes the duty because of the nature of the undertaking in the contract.

Evans v. Otis Elevator Co., 168 A.2d 573, 575–576 (Pa. 1961) (see also, Farabaugh v. Pennsylvania Turnpike Com’n, 911 A.2d 1264, 1283 (Pa. 2006) (noting it had long been the law of Pennsylvania that a contracting party could owe a duty, imposed by law and society, to perform its contractual obligations in such a manner as to avoid injury to third parties, citing Evans).⁴

This court agrees with Plaintiffs that this expression of duty set forth in Evans broadly applies in this case. Here, Defendant contractually undertook to render a plethora of services to Dauphin County’s foster children program (run by DCCY) that directly implicated responsibilities to foster children placed in approved homes. In fact, Defendant explicitly agreed that it would be providing Dauphin County “with social and/or rehabilitative services *for the children and/or youth as described in Appendix A.*” (Exbt. E (Agreement, p. 1) (italics provided)) Defendant’s vetting and re-approval responsibilities of foster parents included, for example, that a foster home meet safety conditions such as working smoke alarms, existence of a fire extinguisher, that foster families have clear criminal backgrounds and child abuse histories, training in

⁴ In 1984, when Pennsylvania formally adopted the Restatement (Second) of Torts §324A, the adopting court noted that “[a]lthough this Court has never had occasion to consider § 324A of the Restatement, the essential provisions of this section have been the law in Pennsylvania for many years.” Cantwell v. Allegheny County, 483 A.2d 1350, 1353 (1984) (citing Evans v. Otis Elevator).

CPR and first aid, and so forth. Many if not most of Defendant's obligations were clearly for the benefit of foster children placed within foster homes such that Defendant would owe "a duty to perform [its] contractual undertaking in such manner that third persons [the children] - strangers to the contract - will not be injured thereby." Evans, supra.

That Defendant broadly owed a duty to foster children in performing its duties is not the end of the duty inquiry. Notably, under traditional principles of negligence, "[a]n important element of duty is foreseeability." Gibbs v. Ernst, 647 A.2d 882, 891-92 (Pa. 1994) (citing Foster v. Bass, 575 So.2d 967 (Miss.1990) (other citations omitted)). The Gibbs court explained that "[a] duty does not exist if the defendant could not reasonably foresee any injury as the result of his acts or if his conduct was reasonable in light of what he could anticipate — no one is expected to guard against events which are not reasonably to be anticipated or that are so unlikely that the risks would be commonly disregarded." Id. at 892 (quoting Foster at 975) (holding that an adoption agency can be liable for negligent misrepresentation as "limited to those conditions reasonably predictable at the time of placement"). Similarly, "[i]n the duty element in a negligence action, foreseeability limits a defendant's liability to only the risks and plaintiffs that are reasonably foreseeable." In re: Asbestos Prod. Liab. Litig. (No. VI), 873 F.3d 232, 236-37 (3d Cir. 2017), *aff'd* Air & Liquid Sys. Corp. v. DeVries, 139 S. Ct. 986, 203 L. Ed. 2d 373 (2019) (citation omitted).⁵ "The rationale behind this rule is that it would be unfair to impose a duty upon persons to prevent a harm that they could not foresee or avoid." McPeake v. William T. Cannon, Esquire, P.C., 553 A.2d 439, 442 (Pa. Super. 1989)

This court agrees with Defendant that it cannot be reasonably argued that it owed Plaintiffs a duty to protect the children against an accidental fire for which the cause remains undetermined. Defendant cannot be held to guard against an event that it could not reasonably anticipate in relationship to its alleged negligence in failing to discover background information concerning the foster parent's financial stability and untruthfulness, which might have resulted in it negligently recommending the parent be approved a foster parent, or negligently failing to recommend termination of the parent post-approval. This is true particularly where the background information Defendant failed to obtain - concerning financial stability and possible untruthfulness - were foster care parental qualifications completely unrelated to the fire, much less to any

⁵ In the In re: Asbestos Prod. Liab. Litig. (No. VI) decision, the court there addressed a confusing aspect to foreseeability, which is that it is a component of both duty and of causation under Pennsylvania law:

This debate over foreseeability sounds in both duty and cause, because foreseeability is a concept embedded in each element. See Gibbs v. Ernst, 538 Pa. 193, 647 A.2d 882, 891 (1994) (highlighting "the common law notion of foreseeability as found in the concepts of duty and proximate cause"). In the duty element in a negligence action, foreseeability limits a defendant's liability to only the risks and plaintiffs that are reasonably foreseeable. See Restatement (Third) of Torts: Phys. & Emot. Harm § 7, cmt. j (2010 Am. Law Inst.) (acknowledging "widespread use" of foreseeability as an aspect of the duty of reasonable care, despite the Restatement's disagreement with such an approach). And in proximate cause, foreseeability limits a defendant's liability to only the injuries that are a reasonably foreseeable result of the defendant's actions. Id. § 29, cmt. j (discussing foreseeability as an aspect of proximate cause in both negligence and strict-liability actions).

Id. As such, this court will be visiting the foreseeability issue again when addressing Defendant FUN's argument that Plaintiffs failed to sufficiently allege causation.

safety issues concerning the foster parent in relationship to the fire. Furthermore, the fire occurred more than seven months following re-approval of the home, six months after the placement of D.J. and J.J. at the Singleton Foster Home and more than a year after placement of S.J. there.

This court finds persuasive a recent California case cited by Defendant addressing a similar set of facts in which the court found no duty by the private foster care agency for harm caused to a foster child. Doe v. L.A. County Dep't of Children & Family Servs., 37 Cal. App. 5th 675 (Cal. Ct. App. 2019). There, a minor sued the county's child and family services agency as well as a private foster care agency for negligence after she was sexually abused by her foster brothers. Id. at 679. The minor asserted that the private foster care agency was negligent in failing to follow statutorily mandated duties including a pre-placement home study, certifying the home even though it was overcapacity, failing to follow-up with the foster mother regarding the removal of a bed and failure to train the foster mother. Id. at 684. The minor argued that had the agency not been negligent in failing to perform its statutory duties, she would not have been placed at the foster home at the outset and been in a position to be abused. Id. The court, in granting a nonsuit, concluded that there was no evidence the foster care agency owed the minor a duty to protect her from her foster brothers because their sexual abuse was not foreseeable or imminent. Id. at 682.

The fire here was simply not a foreseeable result of the alleged actions and/or inactions of Defendant in not identifying that the foster parent might have had some financial stability issues and was possibly untruthful in her application; these are completely remote to and unrelated to any risk of a fire in her home. "[N]o one is expected to guard against events which are not reasonably to be anticipated or that are so unlikely that the risks would be commonly disregarded." Gibbs, supra. Inasmuch as "it would be unfair to impose a duty upon persons to prevent a harm that they could not foresee or avoid," this court grants judgment in Defendant's favor on the duty element. McPeake. This court further addresses lack of foreseeability in even greater detail below, in addressing the foreseeability component of causation, and incorporates it here to the extent relevant to the foreseeability inquiry in a duty context.

Defendant next argues that even assuming a duty could be alleged, that Plaintiffs failed to sufficiently establish a breach thereto. This court disagrees. As discussed in detail above (Negligence – Prologue), Plaintiffs have produced a record upon which a factfinder might find Defendant breached a duty to obtain all necessary information it was required to obtain in vetting Singleton as a foster parent, and in further failing to follow through when post-approval concerns were raised by Singleton that she was possibly financially unstable.

Even with proof of both breach of duty and the occurrence of injury, a plaintiff must still show the two are linked by causation. Eckroth v. Pa. Elec., Inc., 12 A.3d 422, 427 (Pa. Super. 2010). The question of causation may be decided by the court as a matter of law where the relevant facts show that the causal connection between the defendant's alleged negligence and the plaintiffs' injury is remote. Id. at 427-428.

While our supreme court has admitted difficulty in defining exactly what constitutes the nexus between wrongful acts or omissions, i.e., causation, it is beyond dispute that in this jurisdiction causation involves two separate and distinct concepts, cause in fact and legal (or proximate) cause. See Reilly, supra.

Cause in fact or 'but for' causation provides that if the harmful result would not have come about but for the negligent conduct then there is a direct causal connection between the negligence and the injury. Legal or proximate causation involves a determination that the nexus between the wrongful acts (or omissions) and the injury sustained is of such a nature that it is socially and economically desirable to hold the wrongdoer liable.

E.J. Stewart, Inc. v. Aitken Products, Inc., 607 F.Supp. 883, 889 (E.D.Pa.1985) (citations omitted). The test for proximate causation is whether the appellees acts or omissions were a "substantial factor" in bringing about appellant's harm. Takach v. B.M. Root Co., 279 Pa.Super. 167, 420 A.2d 1084 (1980).

First v. Zem Zem Temple, 686 A.2d 18, 21 n. 2 (Pa. Super. 1996); see also, Straw v. Fair, 187 A.3d 966, 993-995 (Pa. Super. 2018).

With regard to factual cause (cause in fact), this court agrees with Plaintiffs that assuming duty and breach have been stated, that the breach was the cause in fact. This court agrees that application of this causation test in this matter amounts to a statement that but for Defendant's negligence in recommending that Singleton be approved as a foster parent, or later negligently failing to recommend her termination from that position, DCCY would not have approved her as a foster parent, or would have later terminated her, the result of which is that the children would never have been placed with her and suffered death and injuries from a fire occurring in her home. Thus, Plaintiffs have adequately pled but for causation in this matter.

The proximate cause inquiry requires a determination by the court whether, as a matter of law, "the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of." Kote v. Bank of N.Y. Mellon, 169 A.3d 1103, 1111-1112 (Pa. Super. 2017) (citation omitted). Where a defendant's negligence is so remote to the subsequent harm, the defendant cannot be held legally responsible as a matter of law. Id. (citation omitted). Stated another way, if the court determines that it is "highly extraordinary that the defendant's conduct should have brought about the plaintiff's harm" then the court should refuse to find that the defendant's conduct was the proximate cause of the plaintiff's harm. Id. citation omitted).

A further clarification of the concept of proximate cause (legal cause) was explained by our Supreme Court, as follows:

Under the Restatement approach the issue is whether the defendant's conduct was, on the one hand, a "substantial factor" or a "substantial cause" or, on the other hand, whether the defendant's conduct was an "insignificant cause" or a "negligible cause." See Section 431, Restatement of Torts, Second. The determination of the issue simply involves the making of a judgment as to whether the defendant's conduct although a cause in the "but for" sense is so insignificant that no ordinary mind would think of it as a cause for which a defendant should be held responsible. Section 431, comment a, Restatement of Torts, Second, explains the distinction between substantial cause and cause in fact as follows:

The word 'substantial' is used to denote the fact that the defendant's conduct has such an affect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called 'philosophic sense,' which includes every one of the great number of events without which any happening would not have occurred. Each of

these events is a cause in the so-called 'philosophic sense,' yet the effect of many of them is so *insignificant* that no ordinary mind would think of them as causes.

Ford v. Jeffries, 379 A.2d 111, 114 (Pa. 1977) (emphasis in original).

The fire here undisputedly started in the basement bedroom where Singleton's nine-teen-year-old son was living. He was there when it started. Its cause has never been definitively established, though there was a suggestion in a fire report that it was related to the power strip used by Carter. Other evidence in the record indicated the fire started when Carter lit a candle which ignited an aerosol can, or that an aerosol can on its own may have been the cause. In any event, none of these causes are remotely connected to Defendant's alleged failures as they relate to Singleton's financial difficulties and/or untruthfulness. There is no evidence that the fire was the natural and probable outcome of the children's placement in Singleton's care. There is simply no causal relationship between the fire and the Defendant's involvement in the children's lives.

It is noteworthy that Plaintiffs do not plead or argue that either Singleton herself or her home in particular were unsafe for foster children. Numerous witnesses testified that the home was safe and/or that they noticed no safety issues. The home was subject to a safety inspection during the application process in April 2015 and again during the re-evaluation in March 2016. A working fire extinguisher was present as well as smoke detectors on every level. The smoke detectors were tested every month by the FUN Family Support Worker Danyelle Williams and were in working condition on the night of the fire. Furthermore, no safety concerns were ever noted following placement of the children with Singleton nor were there any concerns she was not meeting all foster parent requirements. The bulk of the voluminous record presented to the court was that Singleton was a loving and conscientious foster parent who was, at a minimum, competent in her role.

Plaintiffs do not attempt to advance a causal connection between Singleton's alleged untruthfulness on her applications forms and the fire, and there clearly is none. Plaintiffs' sole attempt to connect Defendant's alleged negligence to the fire is to suggest that Defendant should have discovered Singleton's alleged financial instability and failure to pay rent during the application process and/or her continued money problems following her approval, which would have revealed to Defendant that she lacked the financial wherewithal to afford a home big enough so that all residents would have a bedroom of their own. Because she could not afford such a home, her son had to create a bedroom in the unfinished, unheated basement which presumably created a fire hazard for all residents. The suggestion is that had Singleton been able to afford a larger home, her son would have had his own room and no fire would have ever occurred ("[g]iven Singleton's inability to afford her rent, it stands to reason she could not afford a place large enough to give the foster children and Thomas Carter each their own, finished room").

When the home was initially visited and inspected in April 2015, during the approval process, Defendant knew that the basement was being used as a bedroom, at the time by Ahmad Grant. Defendant later became aware Carter began to live there alone in October 2016. Braddy testified that there was no regulation or prohibition against someone living in the unfinished, unheated basement. (Exbt. H, Braddy dep.

at 48-49) Notably, Plaintiffs have presented no evidence that a person living in a basement increases the risk of a fire occurring in a home as compared to persons living in other levels of a home. Even assuming that Plaintiffs had presented such evidence, they presented no further evidence that anyone, including Singleton, other occupants of her home or any of the FUN or DCCY caseworkers who visited the home, had any such knowledge of a potentially increased danger posed by basement occupancy.⁶ It is pure speculation to connect possible financial instability by the foster parent to the fire.

Defendant directs this court to a decision issued by Judge Stengel of the Eastern District of Pennsylvania which addressed a similar fact situation and which this court finds persuasive. (*Exbt. DD (In re I.H. v. The Lutheran Home at Topton*, No. 04-CV-3890 at p.13 (E.D. Pa., February 28, 2007, Stengel, J.), *aff'd* on other grounds, 610 F.3d 797 (3rd Cir. 2010)). One of the issues before the court there was whether the defendant, an independent foster family care agency that placed a child with a foster family and supervised the placement, was liable for the foster child's injuries from a car accident caused by the foster father's careless driving. (See *Id.*) The plaintiff alleged that the agency was negligent by failing to remove the child from the foster home six months prior to the car accident, following a swimming pool incident in the family back yard when the child nearly drowned. See, *Harris ex rel. Litz v. Lehigh Cty. Office of Children & Youth Servs.*, 418 F. Supp. 2d 643, 646 (E.D. Pa. 2005). Following an investigation concerning abuse and neglect by the foster family, the agency decided to continue the placement of I.H. with the foster household over the strong objections of his biological mother. *Id.*

Plaintiff's theory of liability in that case was nearly identical to the one at hand; namely, that had the private foster care agency removed I.H. from placement with the foster father, he would not have still been living with that family later and injured in an accident, which was unrelated to any reason suggested for his removal. Judge Stengel granted the defendant foster care agency's summary judgment motion on the negligence claim finding a lack of proximate cause:

After careful consideration, I find that the Lutheran Home's decision not to remove I.H. from the Norton home following the swimming pool incident was not a proximate or factual cause of his injuries. I.H. cannot demonstrate that the car accident was the natural and probable outcome of the Lutheran Home's failure to remove him from the Norton's care. There is no evidence that suggests that the automobile accident was the result of abuse or neglect. Therefore, the decision to leave him in the care of the Nortons could not have been a proximate cause of his injuries. No amount of foster care training, knowledge, or experience could have prevented this tragic car accident

Moreover, nearly six months passed between the decision to allow I.H. to remain with the Nortons following the swimming pool incident and the car accident. The accident was too remote in time from the decision not to remove to be the proximate cause of I.H.'s injuries.

⁶ Plaintiffs argue in their filings, that "[h]ad [Carter] not lived in the unfinished basement the fire may not have been as deadly." (See e.g. Brief in Opposition, p. 8) In support, Plaintiffs cite to online publications by FEMA and Fireengineering.com for the proposition that basement fires can be especially hazardous and overtake a home's occupants more readily than a fire originating in other locations. (*Id.* fn. 2) None of this information is part of the record and cannot be considered by the court. Even were this information of record, there is no allegation or evidence that Singleton, her occupants nor any FUN and DCCY caseworkers were aware of this particular danger and ignored it.

In re I.H. at 13-14.

As was the case in In re I.H., the causative gap cannot be closed. There is no evidence that the fire was the result of Defendant's allegedly negligent recommendation that Singleton be approved as a foster parent and/or its allegedly negligent failure to recommend her termination as a foster parent. Furthermore, as in In re I.H., the injuries suffered to the children are too remote to the alleged negligence, occurring many months thereafter. The connection between Defendant's alleged negligence and the accidental fire in which Singleton had no involvement whatsoever "is so *insignificant* that no ordinary mind would think of it as a cause for which a defendant should be held responsible." Ford v. Jeffries *supra* (italics in original). Accordingly, judgment is granted in Defendant's favor on Plaintiffs' common law negligence claim for failure to assert both duty and proximate cause.

b. Negligence Under the Restatement (Second) of Torts §§323, 324A

Plaintiffs next assert negligence claims against Defendant under Sections 323 and 324A of the Restatement (Second) of Torts. Defendant first argues that neither theory of negligence can be advanced because Plaintiffs failed to plead these theories in their Complaint, particularly on the element of causation. Defendant also asserts that these claims fail on the merits because Plaintiffs, under the record, have failed to show existence of duty, breach and causation.

Section 323 provides:

§ 323 Negligent Performance of Undertaking to Render Services

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts §323. See DeJesus v. Liberty Mut. Ins. Co., 223 A.2d 849 (Pa.1966) (adopting Section 323).

Section 324A provides:

§ 324A Liability to Third Person for Negligent Performance of Undertaking

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if

- (a) his failure to exercise reasonable care increases the risk of such harm, or
- (b) he has undertaken to perform a duty owed by the other to the third person, or
- (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Restatement (Second) of Torts § 324A. See Scampone v. Grane Healthcare Co., 169 A.3d 600, 619 (Pa.Super. 2017) (Scampone II) (holding that Section 324A sets forth a correct statement of Pennsylvania law).

These sections parallel one another with Section 323 addressing liability of the actor to the one to whom he or she has undertaken to render services while Section 324A deals with liability to third persons. Restatement (Second) of Torts § 324A cmt. These Sections are collectively referred to as the Good Samaritan laws. Filter v. McCabe, 733 A.2d 1274, 1276 (Pa. Super. 1999).

As set forth above in addressing Plaintiffs' common law negligence claim, this court agreed with Plaintiffs' contention that the duty element they were asserting was accurately expressed in Evans v. Otis Elevator Co.; i.e. that a party to a contract, by the nature of the contractual undertaking, may place himself in such a position that the law will impose a duty to perform the contractual undertaking in such manner that third persons will not be injured thereby. Id. at 575. Our Supreme Court later acknowledged that this duty is the same one as is expressed in the Restatement (Second) of Torts §324A. Cantwell v. Allegheny County, 483 A.2d 1350, 1353 (1984) (adopting Restatement (Second) of Torts §324A). Thus, as between the two Restatement Sections, Section 324A applies here and this court will thus address only it in considering the summary judgment motion.⁷

Section 324A can be broken down into the following elements, which as expressed in this case requires Plaintiffs prove:

- (1) that Defendant FUN undertook, gratuitously or for consideration, to render services to DCCY;
- (2) that the services so rendered were of a kind which Defendant should have recognized as necessary for the protection of the foster children;
- (3) that Defendant failed to exercise reasonable care in the performance of its undertaking;
- (4) that the failure to exercise reasonable care resulted in harm to the foster children; and
- (5) that Defendant's failure to exercise such care (a) increased the risk of such harm, or (b) the undertaking was to perform a duty owed by DCCY to Plaintiffs, or (c) the harm was suffered because of the reliance of DCCY or Plaintiffs.

See, Kirk v. United States, 604 F. Supp. 1474, 1482 (D.N.H. 1985). The first four elements listed above encompass duty, breach, and harm in the traditional negligence analysis. The fifth element, with its three provisional requirements, encompasses the final element in the traditional negligence analysis, proximate causation. Id. (citing Blessing v. United States, 447 F. Supp. 1160, 1193 n. 51 (E.D.Pa.1978)) ("Pennsylvania courts have construed the provisional requirements of § 323 and § 324A to state the requirements of proximate cause"). The plaintiff must show that the requirements of one of the three provisional proximate cause requirements have been met. Santillo v. Chambersburg Eng'g Co., 603 F. Supp. 211, 214 (E.D. Pa. 1985).

⁷ Outside of the expression of the persons to whom a duty is owed, the Restatement Sections are identical in their application as to other elements at issue here and as such, the court's analysis of Section 324A would be identical to that of Section 323.

Subsection (b) of the provisional requirements clearly does not apply here; no interpretation of the record can support an allegation that Defendant undertook to perform a duty owed by DCCY to the children. The opposite of that is in fact shown here; i.e. that DCCY, via Hope Rohde, undertook a duty owed by Defendant to perform all screening. As such, Plaintiffs can only proceed on a claim of increased risk or reliance as a basis for proximate cause.

Defendant's initial attack on Plaintiffs' Section 324A claim is procedural in nature. It argues that Plaintiffs have failed to plead in their Complaint the existence of the provisional requirements; i.e. that the alleged negligence by Defendant in the investigation process increased the foster children's risk of harm or that the foster children relied on Defendant's investigation of Singleton. Indeed, the Complaint here does not explicitly assert any "increased risk" or "reliance" claims but only broadly asserts causation; i.e. "as a result of the actions and omissions of the Defendant as described above, S.J. and D.J. died, and J.J. was injured." (Complaint ¶ 24). In support of its argument that this is insufficient, Defendant cites the following:

Such boilerplate pleadings may provide an adequate allegation of proximate cause for some common law torts, but they would appear to be insufficient under §323 and §324A. Insofar as both of these sections provide that a negligent actor is liable for "physical harm resulting from his failure to exercise reasonable care to perform his undertaking, "if" the plaintiff or the one to whom the actor undertook to render services relied on the undertaking or "if" the negligence increased the plaintiff's risk of harm (emphasis supplied), the language of the Restatement assumes that the injuries somehow factually "result" from the defendant's negligence before it even reaches the issues of reliance or increased risk - questions of legal cause. In other words, that harm "results" from the negligence charged is inadequate under the Restatement unless the harm is caused by increased risk or reliance. Plaintiff's allegations never get past the "resulting from" language of the Restatement, and so could be said not to address at all the issue of legal cause.

Blessing v. United States, 447 F. Supp. 1160, 1197 (E.D. Pa. 1978) (applying Pennsylvania law); see also, Miller v. United States, 530 F. Supp. 611, 617 (E.D. Pa. 1982) ("the absence of allegations indicating either reliance or increased harm makes the complaint legally insufficient because of the lack of allegations of proximate cause") (citing Blessing at 1197-1198 and DeJesus v. Liberty Mutual Ins. Co., 223 A.2d 849, 850 (Pa. 1966)).

A complaint can nevertheless be held sufficient as to these causative elements where the complaint includes sufficient inferences that they exist. Miller at 616-17. Plaintiffs note that they have alleged in the Complaint that Defendant failed in its obligation "to screen the Singleton Foster Home to determine whether the home was appropriate for foster children and to determine whether Toshia Singleton was an appropriate foster care provider." (Complaint ¶¶ 12, 27) This court agrees that given the nature of the services provided by Defendant under its contract, it can be inferred that if Defendant negligently rendered services thereunder this could increase the risk of harm to foster children and also that foster children would be relying upon Defendant to render services non-negligently. As such, this court rejects Defendant's argument that the Restatement-based negligence claims should be dismissed on procedural grounds.

This court thus turns to the merits of Defendant's argument that Plaintiffs have failed as a matter of law to state claims of duty, breach and causation under Restatement Section 324A. With regard to duty, this court has already recognized that Plaintiffs have asserted a duty as set forth in the Restatement (Second)

of Torts §324A, i.e. that that Defendant undertook services to another (DCCY) which it should recognize as necessary for the protection of a third party (the foster children). Furthermore, with regard to duty language expressed in Section 324A, our Supreme Court has recognized that it is essentially expressing a “requirement of foreseeability.” Walters v. UPMC Presbyterian Shadyside at 224 (2018) (quoting Cantwell at 2353-54). “Thus, even if the defendant has undertaken to render a service to another, and the plaintiff (third person) has suffered physical harm, if there was no reason that the defendant should have foreseen that his actions were necessary for the protection of the plaintiff, no cause of action will lie under § 324A.” Cantwell at 1353–54 (citation omitted).

This foreseeability component, as embedded in Section 324A’s statement of duty, appears to address a different foreseeability concept than in the common law negligence duty in that the former has been interpreted as being limited to whether the plaintiff or victim was foreseeable. See Cantwell at 1353; Estate of Witthoeft v. Kiskaddon, 733 A.2d 623, 630 (Pa. 1999) (decendent could not reasonably be deemed a foreseeable victim of defendant’s actions or omissions). In this case, the foster children were potentially the foreseeable victims of services undertaken by Defendant. As noted, Defendant’s Agreement with DCCY set forth obligations that Defendant provide services for foster children. In addition, it agreed to undertake duties related to keeping foster children safe within foster homes; Defendant retained sole responsibility to ensure foster homes met numerous safety conditions including having working smoke alarms and fire extinguishers, and that the foster parent be financially stable, for instance. Many if not most of Defendant’s obligations were for the benefit of foster children placed within foster homes. As such, the foster children would fall within the orbit of foreseeable victims where Defendant negligently rendered services under its Agreement with DCCY. As such, Plaintiffs established existence of duty under Section 324A.

This court also finds that Plaintiffs have also established breach of duty for the same reasons as set forth above in the discussion on common law negligence. In addition, the element of harm has not been challenged.

We thus turn to the issue of proximate cause. Defendant argues, and this court agrees, that Plaintiffs fail to show causation either under a claim of increased risk or of reliance.

First, Plaintiffs fail to adequately produce a record upon which to advance a claim that Defendant increased the foster children’s risk of harm. There is no evidence that at any time there was a specific risk of fire at the Singleton Foster Home, nor more broadly that there was any safety risk at all to the foster children in the Singleton Foster Home. To the extent there was some risk to the children in the Singleton Foster Home, there is no allegation or indication in the record as to how any actions taken by Defendant increased such a risk, assuming it even existed. Instead, all evidence of record reflected that the foster home was safe including as against potential fires, including working smoke detectors and the existence of a fire extinguisher. Defendant in fact rendered services in this case that in fact reduced the risk of harm from a fire.

Even assuming this court could find a record adequately supporting a claim that Defendant’s acts or omissions did in fact increase the foster children’s risks in the Singleton Foster Home, this court must then determine whether the increased risk was in turn a substantial factor in bringing about the resultant harm; i.e.

that it was the proximate cause. Straw v. Fair, 187 A.3d 966, 998 (Pa. 2018) (quoting Jones v. Montefiore Hosp., 431 A.2d 920, 924 (Pa. 1981)) (“once a plaintiff has demonstrated that defendant's acts or omissions ... have increased the risk of harm to another, such evidence furnishes a basis for the fact-finder to go further and find that such increased risk was in turn a substantial factor in bringing about the resultant harm; the necessary proximate case will have been made out if the jury sees fit to find cause in fact”). This court has fully addressed the causation issue above in its discussion of common law negligence, including of proximate cause, and found that the record was woefully lacking in showing such cause. This court fully incorporates that reasoning here.

Plaintiffs also fail to adequately assert a Section 324A claim based upon reliance. As this court understands it, Plaintiffs are arguing that broadly, the foster children, or more accurately, their parents and/or legal guardians, relied upon Defendant to fully vet foster parents and their homes so that the foster children would be placed with appropriate foster parents in a safe foster home that complied with all rules and regulations. Assuming that is the allegation here, indeed, the broad allegation of reliance has been stated. Again, however, a finding that one of the provisional requirements of Section 324A exists (increased risk or reliance), is a predicate finding; the court must next determine whether there was proximate cause between the reliance and the harm. See Straw, supra. The reliance claim comes down to a specific assertion that the foster children (and parents/guardians) specifically relied upon Defendant to fully discover all relevant records regarding Singleton and fully vet her as to her financial stability and relatedly, as to her truthfulness, and also to follow through post-approval when it learned of financial instability issues. This court has fully discussed the lack of proximate cause between any such acts and omissions and the fire in this matter in the common law negligence discussion, and fully incorporates it here. As such, Plaintiffs have failed to present a record upon which it can assert a claim under Section 324A based upon either increased risk or upon reliance.

Accordingly, this court enters the following:

ORDER

AND NOW, this 4th day of May 2020, upon consideration of the Defendant’s Motion for Summary Judgment, it is hereby directed that for the reasons set forth above, the Motion is **GRANTED** and Plaintiffs’ Complaint is dismissed, with prejudice.

BY THE COURT:
John J. McNally, III, Judge

FIRST PUBLICATION

ESTATE NOTICES

ESTATE OF JOAN RENNINGER aka JOAN E. RENNINGER, late of Lower Paxton Township, Dauphin County, PA (died: March 2, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Jean D. Seibert, Esquire c/o Caldwell & Kearns, 3631 North Front Street, Harrisburg, PA 17110 m22-jn5

ESTATE OF KENNETH R. WHISLER, late of Hummelstown Borough, Dauphin County, PA (died: March 23, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Kendra L. Rankin, 542 W. Caracus Ave., Hershey, PA 17033

Attorney: Jean D. Seibert, Esquire, Caldwell & Kearns, 3631 North Front Street, Harrisburg, PA 17110 m22-jn5

ESTATE OF KALLIE A. BEACHTL, late of West Hanover Township, Dauphin County, PA (died: October 31, 2019)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Administrator: Tara D. Beachtel, c/o Hazen Law Group, 2000 Linglestown Road, Suite 202, Harrisburg, PA 17110

Attorney: Estate of Kallie A. Beachtel c/o Hazen Law Group, 2000 Linglestown Road, Suite 202, Harrisburg, PA 17110 m22-jn5

ESTATE OF DOUGLAS G. JORICH, late of South Hanover Township, Dauphin County, PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby

given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: Donald W. Jorich, 6409 Brittan Road, Harrisburg, PA 17111

Attorney: Robert Freedenberg, Esq., SkarlatosZonarich, LLC, 320 Market Street, Suite 600 West, Harrisburg, PA 17101 m22-jn5

ESTATE OF IRWIN S. TOLINS aka IRWIN SOLOMON TOLINS, late of Lower Paxton Township, Dauphin County, PA (died: March 30, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Amy Mann, 5425 Sequoia Farms Drive, Centerville, VA 20120

Attorney: Christa M. Aplin, Esquire, JSDC Law Offices, 11 East Chocolate Avenue, Suite 300, Hershey, PA 17033, (717) 533-3280

m22-jn5

ESTATE OF GOVAN A. MARTIN, JR., late of Susquehanna Township, Dauphin County, PA (died: March 27, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Administrators: Ashley M. Martin & Govan A. Martin, III

Attorney: Colleen A. Baird, Martson Law Offices, 10 East High Street, Carlisle, PA 17013 m22-jn5

ESTATE OF EVELYN B. SLAUGHTER, late of West Hanover Township, Dauphin County, PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Co-Executors: John W. Slaughter II and Kathryn J. Pope, c/o Keith D. Wagner, P. O. Box 323, Palmyra, PA 17078 Attorney. m22-jn5

SECOND PUBLICATION

ESTATE OF LESTER F. KENFIELD, late of Lower Swatara Township, Dauphin County, PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: John R. Zonarich, SkarlatosZonarich, LLC, 320 Market Street, Suite 600 West, Harrisburg, PA 17101

Attorney: Jennifer M. Merx, Esq. SkarlatosZonarich, LLC, 320 Market Street, Suite 600 West, Harrisburg, PA 17101 m15-29

ESTATE OF RUTH BROWN GREENE, late of Harrisburg, Dauphin County, PA, (died: March 27, 2018)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Suzanne Greene, PO Box 73395, San Clemente, CA 92673 m15-29

ESTATE OF KERRY ANNE DRAYTON a/k/a KERRY A. DRAYTON WALLACE, late of Harrisburg City, Dauphin County, PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Administrator: Stephen Drayton, 100 Oaklea Road, Harrisburg, PA 17110

Attorney: Elizabeth B. Place, Esq., SkarlatosZonarich, LLC, 320 Market Street, Suite 600 West, Harrisburg, PA 17101 m15-29

ESTATE OF GEORGE H. VAN WAGNER late of Middle Paxton Township, Dauphin County, PA (died: February 23, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: G. Michael and Wendy J. Van Wagner, 1300 Overlook Street, Dauphin, PA 17018

Attorney: Nicholas A. Fiaschetti, Esq., McCarthy Tax Law, P.C., 2041 Herr Street, Harrisburg, PA 17103 m15-29

ESTATE OF ELKE POTTEIGER, late of the Township of Lower Paxton, Dauphin County, PA (died: February 20, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Ruth M. Jarvis, 600 Valley St., Marysville, PA 17053

Attorney: Madelaine N. Baturin, Esquire, BATURIN & BATURIN, 2604 North Second Street, Harrisburg, PA 17110, (Attorneys for the Estate) m15-29

ESTATE OF JOSEPH S. MEIZEN, late of Derry Township, Dauphin County, PA, (died: April 18, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: David J. Meizen, c/o George W. Porter, Esquire, 909 East Chocolate Avenue, Hershey, Pennsylvania 17033. m15-29

ESTATE OF CHARLES R. PEGUESE, late of Harrisburg City, Dauphin County, PA (died: March 23, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: Nathaniel Hench, 256 Herr Street, Harrisburg, PA, 17102

Attorney: Catherine E. Rowe, Esq., 132 State Street, Harrisburg, PA, 17101 m15-29

THIRD PUBLICATION

ESTATE OF TAMA MAE LAHR, a/k/a TAMA M. LAHR, late of Wayne Township, Dauphin County, PA (died: March 24, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Co-Executors: Linda M. Lahr Kulp, 200 Rivervista Drive, Halifax, Pennsylvania 17032; Larry G. Lahr, Jr., 1200 Matamoras Road, Halifax, Pennsylvania 17032

Attorney: Gregory M. Kerwin, Esquire, 4245 State Route 209, Elizabethtown, PA 17023.

m8-22

ESTATE OF MELVIN THOMAS JOHNSON, late of Susquehanna Township, Dauphin County, PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: Kia R. Johnson, 1406 Emerson Street NW, Washington, D.C. 20011

m8-22

ESTATE OF GERALDINE INGAGLIO, late of Derry Township, Dauphin County, PA (died: March 20, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Co-Executrix: Francene I. Shiffler, Paul L. Shiffler, 1225 Stonegate Road, Hummelstown, PA 17036

Attorney: Christa M. Aplin, Esquire, JSDC Law Offices, 11 East Chocolate Avenue, Suite 300, Hershey, PA 17033, (717) 533-3280

m8-22

ESTATE OF HARRIET L. EPLER, late of Swatara Township, County of Dauphin, PA (died: April 1, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to

the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Sharon D. Sanderson, 401 Bonnymead Avenue, Harrisburg, PA 17111

Attorney: Stanley A. Smith, Esquire, Barley Snyder, 213 Market Street, 12th Floor, Harrisburg, PA 17101

m8-22

ESTATE OF ELLEN B. MUSSAF, late of Susquehanna Township, Dauphin County, PA (died: December 27, 2019)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: Joshua Mussaf, c/o Hynum Law, P.O. Box 5620, Harrisburg, PA 17110

Attorney: Brian K. Zellner, Esquire, Hynum Law, P.O. Box 5620, Harrisburg, PA 17110, (717) 774-1357

m8-22

ESTATE OF MICHAEL A. MAGILTON late of Harrisburg, Dauphin County, PA, (died: February 20, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: CJ McGilton, 1515 Penn Street, Harrisburg, PA 17102

m8-22

ESTATE OF TED B. WINDSOR a/k/a THEODORE B. WINDSOR, TED BACON WINDSOR late of Susquehanna Township, Dauphin County, PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Laurel Windsor c/o James D. Bogar, Esq., One West Main Street, Shiremanstown, PA 17011

m8-22

ESTATE OF WARREN W. BRUBAKER, late of Derry Township, Hershey, Dauphin County, PA, (died: April 10, 2020).

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby

given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: David B. Brubaker or Elaine O'Neal, c/o George W. Porter, Esquire, 909 East Chocolate Avenue, Hershey, Pennsylvania 17033. m8-22

THIRD PUBLICATION

TRUST NOTICES

TRUST ESTATE OF THEODORE B. DELUCA, late of Elizabethtown, Dauphin County, PA (died: April 6, 2020).

All persons having claims against said Trust Estate are required to make such claims known to the undersigned. Those persons indebted to the decedent are requested to make payment without delay to:

Trustee: Gregorio DeLuca, 6 West Schoolside Drive, Mechanicsburg, PA 17055

Attorney: William R. Kaufman, Esquire, 940 Century Drive, Mechanicsburg, PA 17055

m8-22

FIRST PUBLICATION

CORPORATE NOTICES

NOTICE IS HEREBY GIVEN **EMS Management & Consultants, Inc.**, a foreign business corporation incorporated under the laws of North Carolina, with its princ. office located at 2540 Empire Dr., Ste. 100, Winston-Salem, NC 27103, has applied for a Statement of Registration to do business in Pennsylvania under the provisions of Chapter 4 of the Association Transactions Act. The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that **Exactus Pharmacy Solutions, Inc.**, a foreign corporation formed under the laws of the State of Delaware and with its principal office located 4110 George Road, Suite 100, Tampa, FL 33634, will register to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, under the provisions of the

Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that **NUTEC INC.**, a foreign corporation formed under the laws of the State of Delaware and with its principal office located 11810 Mt Holly Huntersville Road, Huntersville, NC 28078, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 4/27/20, under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that **RTS Americas, Inc.**, a foreign corporation formed under the laws of the State of Delaware and with its principal office located One Baxter Parkway, Deerfield, IL 60015, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 4/16/20, under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that **Live Life Now Health Group, PC**, a foreign corporation formed under the laws of the State of Florida and with its principal office located 350 7th Ave, NY, NY 10001, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 5/4/20, under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that **Heliogen, Inc.**, a foreign corporation formed under the laws of the State of Delaware and with its principal office located 130 W. Union St, Pasadena, CA 91103, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 4/30/20, under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that, pursuant to the Business Corporation Law of 1988, **EOSON NB Limited**, a corporation incorporated under the laws of the Country of British Virgin Islands withdrew from doing business in Pennsylvania. The address of its principal office in its jurisdiction of incorporation is Craigmuir Chambers, Road Town, Tortola, VG1110, British Virgin Islands and the name of its commercial registered office provider in Pennsylvania is C T Corporation System. m22

NOTICE IS HEREBY GIVEN that **Syslink Xandria Inc.**, a foreign corporation formed under the laws of the State of Delaware and with its principal office located 33 Monroe St, Ste 1025, Chicago, IL 60603, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 5/13/20, under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County m22

NOTICE IS HEREBY GIVEN that a Foreign Registration Statement has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on or about April, 30, 2020, for a foreign corporation with a registered address in the state of Pennsylvania as follows: **SitePro Automation Software Solutions, Inc.** c/o Capitol Corporate Services, Inc.

This corporation is incorporated under the laws of Delaware.

The address of its principal office is 9502 US Highway 87, Lubbock, TX 79423.

The corporation has been qualified in Pennsylvania under the provisions of the Business Corporation Law of 1988, as amended. m22

NOTICE IS HEREBY GIVEN that **INSIDE MORTGAGE FINANCE PUBLICATIONS, INC.** filed a foreign registration statement to do business in the Commonwealth of Pennsylvania on April 17, 2020. The street and mailing address of the association's principal office is 7910 Woodmont Avenue, Suite 1000, Bethesda, MD 20814.

The commercial registered office provider is in c/o PennCorp Servicegroup, Inc. in Dauphin County.

The Corporation is filed in compliance with the requirements of the applicable provisions of 15 Pa. C.S. 412. m22

NOTICE IS HEREBY GIVEN **Homebound Technologies, Inc.**, a foreign business corporation incorporated under the laws of California, with its princ. office located at 1 Letterman Dr., Ste. C3500, San Francisco, CA 94129, has applied for a Statement of Registration to do business in Pennsylvania under the provisions of Chapter 4 of the Association Transactions Act. The street address in the association's jurisdiction of formation is 251 Little Falls Dr., Wilmington, DE 19808. The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN **Sunwave USA Holdings Inc.**, a foreign business corporation incorporated under the laws of Delaware, with its princ. office located at Cambridge St., 14th Fl., Boston, MA 02114, has applied for a Statement of Registration to do business in Pennsylvania under the provisions of Chapter 4 of the Association Transactions Act. The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN **Redfish Labs, Inc.**, a foreign business corporation incorporated under the laws of Delaware, with its princ. office located at 100 Bush St., Ste. #780, San Francisco, CA 94104, has applied for a Statement of Registration to do business in Pennsylvania under the provisions of Chapter 4 of the Association Transactions Act. The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that **BBY Solutions, Inc.**, a foreign corporation formed under the laws of the State of Minnesota and with its principal office located 7601 Penn Ave S., Richfield, MN 55423, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 5/12/20, under the

provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that a Foreign Registration Statement has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on or about May 4, 2020, for a foreign corporation with a registered address in the state of Pennsylvania as follows: **XCMR Inc.** c/o Corporation Service Company

This corporation is incorporated under the laws of Delaware.

The address of its principal office is 144 N. Narberth Avenue, #740, Narberth, PA 19072. The corporation has been qualified in Pennsylvania under the provisions of the Business Corporation Law of 1988, as amended.

BLANK ROME LLP

One Logan Square

130 North 18th Street

Philadelphia, PA 19103

m22

NOTICE IS HEREBY GIVEN that, pursuant to the Business Corporation Law of 1988, **Unga Remainder, Inc.**, a corporation incorporated under the laws of the State of Missouri withdrew from doing business in Pennsylvania on 4/2/20. The address of its principal office in its jurisdiction of incorporation is 239 W 52nd St, KANSAS CITY, MO 64112 and the name of its commercial registered office provider in Pennsylvania is National Registered Agents, Inc. m22

NOTICE IS HEREBY GIVEN a Foreign Registration Statement has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on or about May 6, 2020, for a foreign corporation with a registered address in the state of Pennsylvania as follows: **BERG MANUFACTURING, INC.** c/o Registered Agent Solutions, Inc.

This corporation is incorporated under the laws of Washington.

The address of its principal office is 6811 E. Mission Avenue, Spokane Valley, WA 99212.

The corporation has been qualified in Pennsylvania under the provisions of the Business Corporation Law of 1988, as amended. m22

NOTICE IS HEREBY GIVEN that **USGA Foundation**, a foreign nonprofit corporation formed under the laws of the State of Delaware and with its principal office located 77 Liberty Corner Rd, Liberty Corner, NJ 07938, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 4/21/20, under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN **PRB Management Services Inc.**, a foreign business corporation incorporated under the laws of Georgia, with its princ. office located at 1180 Peachtree St., Ste. 2500, Atlanta, GA 30309, has applied for a Statement of Registration to do business in Pennsylvania under the provisions of Chapter 4 of the Association Transactions Act. The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN **AUSA U.S. CORP.**, a foreign business corporation incorporated under the laws of Delaware, with its princ. office located at 9841 Industrial Center Dr., Unit 3, Ladson, SC 29456, has applied for a Statement of Registration to do business in Pennsylvania under the provisions of Chapter 4 of the Association Transactions Act. The street address in the association's jurisdiction of formation is 9841 Industrial Center Dr., Unit 3, Ladson, SC 29456. The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

NOTICE IS HEREBY GIVEN that **Pembina Midstream (U.S.A.) Inc.**, a foreign corporation formed under the laws of the State of Delaware and with its principal office located 5615 Kirby Drive, Suite 500, Houston, TX 77004, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 4/24/20, under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. m22

FICTITIOUS NAME NOTICES

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act of Assembly No. 295, effective March 16, 1983, of the filing in the office of the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, an application for the conduct of a business in Dauphin County, Pennsylvania under the assumed or fictitious name, style or designation of Name: **GreatCall**, with its principal place of business at: 7601 Penn Ave S, Richfield, MN 55423. The names and addresses of all persons or entities owning or interested in said business are: Best Buy Health, Inc., 7601 Penn Ave S, Richfield, MN 55423. The application has been filed on 3/19/2020. m22

NOTICE IS HEREBY GIVEN that an application for registration of the assumed name **Arlington Orthopedics-UPMC** for the conduct of business in Dauphin County, Pennsylvania, with the principal place of business being 409 S. Second Street, P.O. Box 8700, Harrisburg, PA 17105 was made to the Department of State of Pennsylvania at Harrisburg, Pennsylvania, on the 21st day of April 2020, pursuant to 54 Pa.C.S. §311. The name of the entity owning or interested in the said business is Pinnacle Health Medical Services.

McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
m22 Harrisburg, PA 17108-1166

NOTICE IS HEREBY GIVEN that an application for registration of the assumed name **UPMC Imaging Services at South Hanover** for the conduct of business in Dauphin County, Pennsylvania, with the principal place of business being 409 S. Second Street, P.O. Box 8700, Harrisburg, PA 17105 was made to the Department of State of Pennsylvania at Harrisburg, Pennsylvania, on the 22nd day of April 2020, pursuant to 54 Pa.C.S. §311. The name of the entity owning or interested in the said business is Pinnacle Health Medical Services.

McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
m22 Harrisburg, PA 17108-1166

MISCELLANEOUS NOTICES

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN a Petition for Reinstatement to the active practice of law has been filed by **Stacy Parks Miller** and will be the subject of a hearing on August 28, 2020 before a hearing committee designated by the Board. Anyone wishing to be heard in reference to this matter should contact the District III Office of the Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Ave., Ste. 5800, Harrisburg, Pennsylvania 17106, phone number (717) 772-8572, on or before **August 14, 2020.**

Marcee D Sloan
Board Prothonotary
The Disciplinary Board of the
m22 Supreme Court of Pennsylvania

TAX ASSESSMENT NOTICE

NOTICE IS HEREBY GIVEN by the DAUPHIN COUNTY BOARD OF ASSESSMENT APPEALS that the real property assessment roll is available for inspection by any citizen at the Dauphin County Assessment Office, Second Floor, Dauphin County Administration Building, 2 South 2nd Street, Harrisburg PA, 17101, between the hours of 8:30 am and 4:30 pm, Monday through Friday. ADDITIONALLY, NOTICE is also given that any Dauphin County property owner may file an annual appeal of his/her/it's real estate tax assessment with the Board of Assessment Appeals between June 1st and August 1st, 2020. Appeal forms and the Rules of Appeal Procedure utilized by the Board maybe secured from the Office of the Board, Second Floor, Dauphin County Administration Building, or by calling the Boards Office at 717-780-6102; or online at www.dauphincounty.org, Government Services, Property & Taxes, Board of Assessment, Appeals. The Rules of Appeal Procedure utilized by the Board should be reviewed by an appellant as they will be strictly followed by the Board at the time of an assessment hearing. Failure to abide by the rules may result in the loss of your appeal.

Dauphin County Board of Assessment Appeals
Jeffrey B. Engle, Esquire Solicitor
m22 Board of Assessment Appeals

NOTICE OF AUDIT

TO LEGATEES, NEXT OF KIN, CREDITORS AND ALL OTHER PERSONS CONCERNED:

NOTICE IS HEREBY GIVEN that the following accounts have been filed by the respective accountants in the Office of the Register of Wills or with the Clerk of the Orphans' Court Division of the Common Pleas of Dauphin County, as the case may be, and that the same shall be duly presented to the said Orphans' Court Division at the Office of the Court Administrator for Audit, Confirmation and Distribution of the said ascertained balances to and among those legally entitled thereto June 24, 2020. Pursuant to Pennsylvania Orphans' Court Rule 2.7(b) (formerly Dauphin County Orphans' Court Rule 6.10.1), objections to an account must be filed in writing with the Register or Clerk ***no later than the close of business on June 23, 2020.***

1. ROHRBACH, DAVID MATTHEW,
Deceased, First and Final Account of Mark
Allen Rohrbach, Administrator.

May 18, 2020

Jean Marfizo King
Register of Wills & Clerk of the Orphans' Court
m22-29

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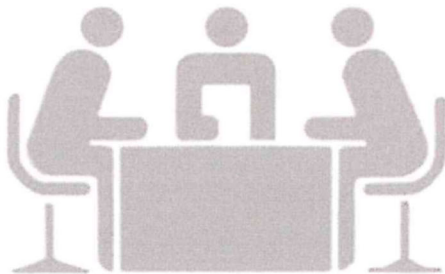


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