

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery in this matter under Level 3 of TEXAS RULES OF CIVIL PROCEDURE (“TRCP”) and affirmatively pleads that this suit does not fall under the expedited-actions process of TEXAS RULE OF CIVIL PROCEDURE 169. Plaintiff requests that the Court enter a Level 3 Scheduling Order pursuant to TRCP 190.4.

JURY DEMAND

2. Pursuant to Rules 216 and 217 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests a jury trial of this matter. Plaintiff has tendered the proper jury fee with the filing of this Original Petition.

RULE 47 STATEMENT OF MONETARY RELIEF SOUGHT

3. Plaintiff prefers to have the jury determine the fair amount of compensation for Plaintiff’s damages, and put the decision regarding the amount of compensation to be awarded in the jury’s hands. Rule 47 of the TEXAS RULES OF CIVIL PROCEDURE, however, requires Plaintiff to provide a statement regarding the amount of monetary relief sought. Accordingly, Plaintiff states that monetary relief of over \$1,000,000, in an amount to be determined by the jury, is being sought.

PARTIES

4. Plaintiff FLORENCE DODSON files suit individually, and on behalf of the Estate of her son, Maurice Dotson.

5. Defendant Regency IHS of West Oaks, LLC d/b/a West Oaks Nursing and Rehabilitation Center is a foreign limited liability company with its principle place of business in

Texas. Defendant operates and manages the long term care facility at 3200 W. Slaughter Lane, Austin, Texas, 78748, and may be served through its registered agent:

The Registered Agent Company
815 Brazos, Suite 500
Austin, Texas 78701.

VENUE AND JURISDICTION

6. Venue is proper in this Court pursuant to §15.001 *et seq.* of the TEXAS CIVIL PRACTICE & REMEDIES CODE because all or a substantial part of the acts or omissions giving rise to Plaintiff's cause of action occurred in Travis County, Texas. Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

FACTUAL BACKGROUND

7. Plaintiff's claims arise out of the tragic and unnecessary death of her son, Maurice Dotson, an employee of Regency, which operates and manages West Oaks Nursing Home and Rehabilitation Center. In early 2020, the highly contagious COVID-19 virus (SARS-CoV-2) was discovered in the United States and spread across the country. Despite an alarming pandemic, Defendant failed to properly prepare, respond, and provide its employees with personal protection equipment as required by the Texas Health and Human Services Commission (HHSC), Occupational Safety and Health Administration (OSHA), Centers for Medicare & Medicaid Services (CMS), and Centers for Disease Control (CDC).

8. During March of 2020, Maurice Dotson was required to perform his job of caring for patients without proper PPE despite the serious risk of harm to himself, patients, and other employees. On April 3, 2020, Mr. Dotson felt so sick that he presented to St. David's South Austin Medical Center ER. He was discharged home but his health continued to deteriorate.

During the early morning hours of April 8, 2020, Mr. Dotson called 911 to request an ambulance. He was taken by EMS back to St. David's South Austin Medical Center where he was admitted. After nine more days of suffering from severe respiratory distress, Mr. Dotson died of *COVID-19 pneumonia* on April 17, 2020, without any friends or family allowed at his bedside due to COVID-19 visitor restrictions in effect at hospitals.

9. Reports have indicated that, on or about March 26, 2020, Texas Health and Human Services conducted a surprise inspection of West Oaks Nursing and Rehabilitation Center and Defendant was cited for several PPE violations.

10. At <https://www.regencyhealthcare.com/locations/west-oaks-nursing-and-rehabilitation-center>, Regency (falsely) advertises that it is “up to date with all of the latest healthcare trends and skills” and “[e]nsuring quality of life for our residents and our employees is our mission” as well as to “achieve the best quality of life attainable.”

CAUSES OF ACTION AGAINST DEFENDANT

11. Regency is liable *via* negligence, negligence *per se*, negligent hiring, and gross negligence. Regency owed a duty to its employees to provide a safe working environment. Defendant breached that duty by numerous acts and/or omissions including but not limited to failing to provide proper PPE during a global pandemic, which was a proximate cause of Mr. Dotson's exposure to COVID-19, and death.

12. Regency's numerous negligent acts or omissions include but are not limited to:
- a. failing to act with ordinary care;
 - b. failing to recognize the likelihood and appreciate the danger of COVID-19 virus at the long term care facility it operated and managed;

- c. failing to develop and implement policies and procedures regarding how to respond to the presence of the COVID-19 virus in the facility's high risk patient population;
- d. failing to ensure that its staff were trained on policies and procedures regarding how to prevent, recognize, appreciate, contain and minimize the COVID-19 virus in the facility and high risk patient population;
- e. failing to train and supervise nurse aides regarding the use of proper PPE when caring for patients, including how to don and doff PPE;
- f. failing to ensure that its staff, including nurse aides, had appropriate and necessary PPE to care for patients, especially those with COVID-19;
- g. failing to notify the appropriate authorities of the outbreak in the facility and hire qualified professionals to train staff and/or provide care for patients with COVID-19; and
- h. failing to protect Maurice Dotson, patients and other staff from foreseeable harm.

13. Regency's numerous negligent acts or omissions are a proximate cause of Plaintiff's damages.

14. Defendant controlled and managed West Oaks Nursing and Rehabilitation Center, and was responsible for the safety of its employees.

15. As a nonsubscriber to the TEXAS WORKERS' COMPENSATION ACT, Defendant is deprived of certain common law defenses including, but not limited to, asserting any comparative fault of Plaintiff, or that the Plaintiff assumed the risk of injury or death.

16. Defendant breached Occupational Safety and Health Administration standards including, but not limited to, 1910.132, 1910.134, and 1910.138; and violated regulations of the Texas Health and Human Services Commission and Centers for Medicare & Medicaid Services.

17. At all relevant times, the employees or agents of Regency whose conduct is implicated herein were in the course and scope of their employment or acting as agents of Regency such that Regency is liable for the conduct of those employees or agents.

18. The conduct of Regency as set forth above constitutes gross negligence as defined by law. Regency was consciously aware of an extreme degree of risk to its patient and healthcare workers such as Maurice Dotson and those similarly situated, but it nevertheless proceeded in failing to act to protect them in complete disregard for the rights, safety and welfare of Mr. Dotson and those similarly situated. For this gross negligence, Plaintiff specifically pleads for the recovery of exemplary damages as set forth herein.

INJURIES AND DAMAGES

Survival Damages for Maurice Dotson, Deceased

19. As a result of Defendant's negligent acts and/or omissions, Maurice Dotson sustained mental anguish, physical pain and suffering before he died. His Estate is entitled to recover for his damages, including but not limited to, mental anguish, pain and suffering, as well as medical expenses, funeral bills and expenses, pursuant to the Texas Survival Statute, as codified in Chapter 71 of the TEXAS CIVIL PRACTICE & REMEDIES CODE.

Wrongful Death Damages for Florence Dodson

20. As a result of Defendant's negligent acts and/or omissions causing the death of her son Maurice Dotson, Plaintiff Florence Dodson is heartbroken and has suffered damages in the past, and will continue to suffer damages in the future, including but not limited to, mental anguish, grief, bereavement, loss of financial contributions, loss of services, loss of advice, care and counsel, loss of society and companionship, and seeks to recovery for past and future damages pursuant to the Texas Wrongful Death Act, as codified in Chapter 71 of the TEXAS CIVIL PRACTICE & REMEDIES CODE.

Exemplary Damages

21. Plaintiffs are entitled to exemplary damages from Defendant under Chapter 41 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, because Defendant's acts and/or omissions, when viewed objectively from the standpoint of Defendant at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant had actual, subjective awareness of the risk involved but, nevertheless, proceeded with conscious indifference to the rights, safety and welfare of Maurice Dotson, other employees and patients. Such conduct amounts to gross negligence or malice, as those terms are defined by law, so as to give rise to an award of exemplary or punitive damages, for which Plaintiff now pleads against Regency. Additionally, by reason of such conduct, Plaintiff is entitled to and therefore asserts a claim for punitive and exemplary damages in an amount sufficient to punish and deter Regency, and other managers/operators of long term care facilities like them, from such conduct in the future.

22. Defendant is liable for exemplary damages based upon the actions or inactions of its employees and agents because Defendant authorized, approved or ratified the actions, inactions and/or the manner of the acts. Further, the employees or agents with managerial or decision-making capacity were unfit, and Defendant acted with gross negligence or malice in employing or retaining those employees and agents who were acting in the course and scope of their employment.

23. Each of the grossly negligent, malicious and/or fraudulent acts of Regency independently give rise to an award of exemplary or punitive damages, for which Plaintiff pleads against Regency in an amount sufficient to punish and deter Regency, and other managers/operators of long term care facilities like them, from such conduct in the future.

PREJUDGMENT AND POST-JUDGMENT INTEREST

24. Plaintiff claims interest in accordance with TEXAS FINANCE CODE §304.001 *et seq.*, and any other applicable law.

REQUEST FOR DISCLOSURE

25. Under TEXAS RULES OF CIVIL PROCEDURE 194, Plaintiff requests that Defendant disclose and produce to Plaintiff's counsel, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRESERVATION OF EVIDENCE

26. The Defendant is hereby given notice that any document or other material, including electronically stored information that may be evidence or relevant to any issue in this case is to be preserved in its present form until this litigation is concluded.

NOTICE PURSUANT TO TRCP 193.7

27. Plaintiff provides notice to Defendant pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE that Plaintiff may utilize as evidence during the trial of this lawsuit all documents exchanged by the parties in written discovery in this case.

PRAYER

28. Plaintiff requests that Defendant be cited to appear and answer, and that this case be tried, after which Plaintiff recovers:

- a. Judgment against Defendants for a sum within the jurisdictional limits of this Court for the damages outlined above;
- b. Pre-judgment and post-judgment interest at the maximum amount allowed by law;
- c. Costs of suit; and
- d. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

CRAIN BROGDON ROGERS, LLP

s/ Quentin Brogdon

Quentin Brogdon

State Bar No. 03054200

Robert D. Crain

State Bar No. 00790525

3400 Carlisle Street, Suite 200

Dallas, Texas 75204

Phone: (214) 522-9404

Fax: (214) 969-5522

qbrogdon@cbrlawfirm.com

rcrain@cbrlawfirm.com

KEARNEY LAW FIRM, PLLC

Kathleen M. Kearney

State Bar No. 24053298

Adelfa B. Callejo Building

4310 N. Central Expressway, Suite 110

Dallas, Texas 75206

Phone: (214) 810-1867

Fax: (844) 810-6458

Kathleen@NurseAttorneyKearney.com

ATTORNEYS FOR PLAINTIFF