

CAUSE NO. 2023-43044

SARAH DAVIDSON and
KAREN FRANCIS
Plaintiffs,

v.

HCA HEALTHCARE, INC., HCA
HOUSTON HEALTHCARE, KPH-
CONSOLIDATION, INC. D/B/A HCA
HOUSTON HEALTHCARE KINGWOOD
D/B/A KINGWOOD MEDICAL CENTER
Defendants.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

113th JUDICIAL DISTRICT

**DEFENDANTS HCA HEALTHCARE, INC.'S, HCA HOUSTON HEALTHCARE'S, AND
KPH CONSOLIDATION, INC. D/B/A HCA HOUSTON HEALTHCARE KINGWOOD'S
ORIGINAL ANSWER AND JURY DEMAND**

Defendants, **HCA HEALTHCARE, INC., HCA HOUSTON HEALTHCARE,** and
KPH CONSOLIDATION, INC. D/B/A HCA HOUSTON HEALTHCARE KINGWOOD
(hereinafter referred to as "Defendants"), file their Original Answer and Jury Demand and
respectfully show the Court as follows:

GENERAL DENIAL

1. As authorized by Rule 92 of the Texas Rules of Civil Procedure, Defendants enter
a general denial of matters pled by Plaintiffs and request that the Court requires Plaintiffs to prove
their charges and allegations by a preponderance of the evidence, as required by the Constitution
and laws of the State of Texas.

DISCOVERY

2. Defendants request that discovery in this case be conducted under Level 3 of the
Texas Rules of Civil Procedure.

DEFENSES

3. Defendants plead that the incident in issue was caused, in whole or in part, by persons, entities, instrumentalities or factors beyond the control of Defendants and for whom Defendants are not legally responsible.

4. Defendants plead that any injuries, damages, or liability complained of by Plaintiffs herein are the result, in whole or in part, of pre-existing conditions and disabilities, and/or the result of intervening new and independent causes and are not the result of any act or omission on the part of Defendants.

5. Defendants plead that the matters complained of by Plaintiffs were, as to Defendants, wholly and completely unavoidable, and incurred without any negligence on the part of Defendants.

6. Under the facts, the Court should instruct the jury on sole proximate cause, sole producing cause, and new and independent cause.

7. Plaintiffs' claims and causes of action, if any, against Defendants are barred, in whole or in part, because they failed to mitigate damages.

8. Defendants assert the defense of comparative responsibility and ask the Jury to determine the percentage of responsibility of each person or entity, whether or not joined in this lawsuit, for the injuries and damages about which Plaintiffs complain.

9. Pursuant to the provisions of the Texas Civil Practice & Remedies Code, Defendants' liability, if any, in this matter is limited, and Defendants request that the appropriate limitations be imposed by this Court upon any verdict rendered in this cause.

10. Defendants assert the right to contribution and/or indemnity under the laws of the State of Texas, from any other person or entity, regardless of whether a party, who is found to have caused or contributed to the injuries and/or damages as alleged by Plaintiffs.

11. Defendants specifically plead and incorporate by reference all applicable caps and limitations upon any award of damages, including, but not limited to, economic, noneconomic, compensatory, and punitive damages, which are provided by law, including but not limited to, the provisions of the Texas Civil Practice and Remedies Code.

12. Defendants further allege that Plaintiffs' recovery of noneconomic damages is limited; specifically, Defendants say that the limit of civil liability or noneconomic damages of any healthcare provider defendants, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$250,000 for each claimant. TEX. CIV. PRAC. & REM. CODE § 74.301.

13. Defendants affirmatively plead that this matter is a health care liability claim, and as a matter of law, governed by Chapter 74 of the Texas Civil Practice & Remedies Code. Further, Defendants avail themselves of the applicable limitations and protections set forth by Chapter 74 of the Texas Civil Practice & Remedies Code.

14. Defendants invoke their right to reduction of any verdict that may be rendered in this cause by credit for payments made by other persons or by percentage reduction to which Defendants would be entitled.

15. To the extent Plaintiffs seek recovery for medical bills, expenses, and services that were provided to Plaintiffs, but which were never charged to Plaintiffs or were charged to Plaintiffs but thereafter written off with no expectation of payment, therefore never paid or incurred by Plaintiffs, Defendants contend that Plaintiffs are not entitled to recover these amounts. Defendants say that they are entitled to credit for any offset or discount from fees for services; specifically, Defendants say that Plaintiffs may only recover medical or healthcare expenses that the patient actually paid or that were incurred by or on the patient's behalf. TEX. CIV. PRAC. & REM. CODE § 41.0105.

16. In the unlikely event Plaintiffs are adjudged to be entitled to any damages in this matter, which Defendants deny, Plaintiffs are not entitled to recover prejudgment interest on any future damages. Defendants would show that, as a matter of law, interest on damages yet to accrue is not compensatory and is, consequently, a penalty which would be imposed even absent a finding of gross negligence, or rather, for a lesser level or degree of culpability for which a penalty is not authorized by law. *See* TEX. FIN. CODE § 304.1045.

17. Defendants hereby invoke the provisions of Texas Civil Practice & Remedies Code § 74.503 in the event there is an award of future damages, and the Court determines the present value equals or exceeds \$100,000.00. *See* TEX. CIV. PRAC. & REM. CODE §§ 74.502, 74.503.

18. Pleading in the alternative, should such be necessary, Defendants affirmatively allege that, in the unlikely event that the jury awards Plaintiffs' exemplary or punitive damages, the damages are subject to the limitations contained in sections 41.007, 41.008, 41.010, 41.011 and 41.012 of the Texas Civil Practice and Remedies Code.

19. Pleading further and in the alternative, Defendants contend that with respect to all claims seeking punitive or exemplary damages, Defendants would show that such damages are inappropriate and impermissible under the law due to the following:

- a. Punitive or exemplary damages are criminal, or quasi-criminal in nature, and Plaintiff should be required to prove the basis of such damages beyond a reasonable doubt and the failure to require the same is a denial of due process under law and a denial of equal protection of the law as prescribed under the United States Constitution and the Constitution of the State of Texas.
- b. An award of punitive or exemplary damages would constitute a taking of property without due process of law as guaranteed by the United States Constitution and the Constitution of the State of Texas.
- c. It is a denial of due process of law and of equal protection of the law under the United States Constitution and the Constitution of the State of Texas to permit a corporation to be vicariously liable for punitive or exemplary damages which were awarded on the basis of alleged acts or omissions of employees, agents, representatives, of the corporation under the doctrine of

respondeat superior or any other vicarious liability doctrine.

- d. Punitive and/or exemplary damages constitute an unjust enrichment by reason of the unconstitutional taking of property without due process of law as provided under the United States Constitution and the Constitution of the State of Texas.
- e. Under Texas law, the measure of damages for punitive and exemplary damages is so vague and ambiguous on its face as well as in its application, that it denies Defendants due process of law and equal protection of the law as provided under the United States Constitution and the Constitution of the State of Texas.
- f. Under Texas law, the measure of damages for punitive and exemplary damages is so vague and ambiguous that it prevents courts and juries from consistently applying the law, and therefore, further prevents effective judicial review of any such punitive damages awards.
- g. Under Texas law, the measure of damages for punitive and exemplary damages is so vague and ambiguous that the basis of such damages cannot be clearly and readily ascertained in advance so as guide the behavior of individuals in their actions, thus constituting an EX-POST FACTO law specifically prohibited by the United States Constitution and the Constitution in the State of Texas.
- h. An award of punitive and exemplary damages violates the excessive fines clause of the Eighth Amendment as applied to the Fourteenth Amendment of the United States Constitution.
- i. The Defendants who are subject to the award do not have the right to refuse to testify against him/her/itself but must in fact take the stand and/or give deposition testimony or subject him/her/itself to the consequences of a default judgment.

DEMAND FOR JURY TRIAL

20. Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Defendants respectfully demand trial by jury; the requisite fee for same has been paid.

PLEADINGS AND AMENDMENT THEREOF

21. Please take notice that pursuant to Texas Rules of Civil Procedure 84 and 85, to the extent that defenses, other than the General Denial, pleaded in this Original Answer are in conflict, they are pleaded in the alternative.

22. Defendants respectfully reserve the right to file an amended Answer in this case in the manner authorized by Texas Rules of Civil Procedure 63 and 66.

RULE 193.7 NOTICE

23. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendants hereby gives actual notice to Plaintiffs that any and all documents produced in response to written discovery may be used as evidence in this case; and, that any such materials may be used as evidence against the party producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the document and/or materials produced in discovery.

NOTICE OF INTENTION TO TAKE DEPOSITIONS

24. Defendants put Plaintiffs on notice of its intent to take depositions of Plaintiffs, Plaintiffs' witnesses, and from their appearance herein makes such request to Plaintiffs.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants **HCA HEALTHCARE, INC., HCA HOUSTON HEALTHCARE, and KPH CONSOLIDATION, INC. D/B/A HCA HOUSTON HEALTHCARE KINGWOOD**, pray that, upon final hearing, judgment be entered that Plaintiffs take nothing and that Defendants be dismissed with their costs and any other relief to which they are entitled.

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Respectfully submitted,

SERPE ANDREWS, PLLC

By: /s/ Nicole G. Andrews

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CONSOLIDATION, INC. D/B/A HCA
HOUSTON HEALTHCARE KINGWOOD**

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record pursuant to the Texas Rules of Civil Procedure on the 5th day of September 2023.

/s/ Nicole G. Andrews

Nicole G. Andrews

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Filing Code Description: Answer/ Response / Waiver

Filing Description: DEFENDANTS HCA HEALTHCARE, INC.S, HCA HOUSTON HEALTHCARES, AND KPH CONSOLIDATION, INC. D/B/A HCA HOUSTON HEALTHCARE KINGWOODS ORIGINAL ANSWER AND JURY DEMAND

Status as of 9/5/2023 8:50 AM CST

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