

CAUSE NO. 2023-78470

CARLOS RAFAEL HANDY, AND
MARIBEL HANDY

VS.

HOUSTON METHODIST HOSPITAL, TMH
PHYSICIAN ORGANIZATION, SHELLAISE
DALISAY ALTRE, RN, BETHUNE
EUSEBIO ESCALANTE, MD, HOUSTON
RADIOLOGY ASSOCIATED, THE
BELCHMAN GROUP, LLC D/B/A AMITY
HOME HEALTH, AND PEARL FORTUNE
GALVEZ, RN

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

189TH JUDICIAL DISTRICT

**ORIGINAL ANSWER AND JURY DEMAND OF DEFENDANTS
HOUSTON METHODIST HOSPITAL,
TMH PHYSICIAN ORGANIZATION, AND
SHELLAISE DALISAY ALTRE, RN**

Houston Methodist Hospital, TMH Physician Organization, and Shellaise Dalisay Altre, RN (“Defendants”) file this Original Answer and Jury Demand to Plaintiffs’ Original Petition.

I.

Pursuant to TEX. R. CIV. P. 92, Defendants enter a general denial of the matters Plaintiffs have pleaded and respectfully request the Court to require 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.

II.

1. Defendants, pleading to the Court only, avail themselves of the limitation of civil liability set forth in TEX. CIV. PRAC. & REM. CODE §§ 74.301 and 74.302. Plaintiffs’ claim is a health care liability claim as defined by TEX. CIV. PRAC. & REM. CODE § 74.001(a)(13).

2. Pleading alternatively, and to the Court only, Defendants avail themselves of the limitation on civil liability set forth in TEX. CIV. PRAC. & REM. CODE § 41.0105. In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimants.

3. In the event that Plaintiffs settle all or part of their claims against any other person (including without limitation any currently named co-defendant, any co-defendant to be named later or any other party not named in Plaintiffs' Original Petition and any amendments or supplements thereto), Defendants demand that the trier of fact as to each cause of action asserted shall determine a percentage of responsibility, stated in whole numbers, for each settling person, and for each other person causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by grossly negligent act or omission, by other conduct or activity that violates an applicable legal standard or by any combination of these. Further, if the claimants have settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimants by a credit equal to one of the elected alternatives elected under either § 33.012(c)(1) or (2).

4. Alternatively, if Plaintiffs settle their claims against one or more persons, Defendants are entitled to a settlement credit under the one satisfaction rule.

5. This action is subject to the proportionate responsibility provisions of TEX. CIV. PRAC. & REM. CODE Chapter 33, including (without limitation) the requirement of § 33.003 thereof that the trier of fact determine the relative responsibility of each claimant, defendant, settling person and responsible third-party that may be joined in the suit. In addition, Defendants may not be held jointly and severally liable for any amount of damages claimed herein unless the percentage of responsibility of Defendants, when compared with that of Plaintiff, each settling party, and each and every responsible third party, is greater than 50%.

6. Defendants reserve the right to make a written election of credit for settlements under TEX. CIV. PRAC. & REM. CODE § 33.012(c).

7. In the unlikely event that Defendants are found liable to Plaintiffs, Defendants affirmatively plead that they are entitled to a credit or offset for any and all sums Plaintiffs have received or may hereafter receive by way of any and all settlements arising from Plaintiffs' claims and causes of action. As allowed by TEX. R. CIV. P. 48, Defendants alternatively assert their right to a proportionate reduction of any damages found against them based upon the percentage of negligence attributable to any settling tortfeasor under Texas law.

8. Plaintiffs are not entitled to recover medical bills, expenses and services that were never charged to Plaintiffs and thus were never paid or incurred by Plaintiffs.

9. Plaintiffs' claims for pre-judgment interest are improper and unenforceable because, in a typical Texas jury charge, the jury is asked what sum of money, if paid now in cash, would fairly and reasonably compensate the Plaintiffs for their damages. Because the damages were incurred at some time prior to trial, but the jury is asked to assess the damages in present day dollars as of the date of trial, the jury has already presumptively factored in the time value of the money from the date of the verdict. That is true because the jury's award is defined to include, by clear and unmistakable implication, the accrued interest on the damage amount up through the date of trial.

Thus:

- (a) in awarding pre-judgment interest on top of the jury award, the court would be awarding the Plaintiffs a double recovery on their damages, if any;
- (b) the award of pre-judgment interest as a double recovery to the Plaintiffs for their alleged damages violates the Eighth Amendment to the Constitution of the United States (as applied through the Fourteenth Amendment), as a potentially excessive fine; and
- (c) the award of pre-judgment interest as a double recovery to the Plaintiffs for their alleged damages constitutes a taking of property from the Defendants without due process of law or in due course of law, in violation of the equal rights of Defendants

and in contravention of the protections of same as contained in the Fourteenth Amendment to the Constitution of the United States, as well as the Texas Constitution.

10. If Plaintiffs seek recovery for loss of earnings, loss of earning capacity, or loss of contributions of pecuniary value, the loss must be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law. *See* TEX. CIV. PRAC. & REM. CODE § 18.091(a). Furthermore, the jury should be instructed as to whether any recovery for compensatory damages sought is subject to federal or state income taxes. *See* TEX. CIV. PRAC. & REM. CODE § 18.091(b).

11. Plaintiffs' alleged injuries resulted from a superseding and intervening cause or a new and independent cause not presently known to Defendants and not reasonably foreseeable by Defendants which became the immediate cause of Plaintiffs' alleged injuries and/or the sole cause of the Plaintiffs' alleged injuries.

12. Defendants plead the immunities and protection of 42 U.S.C. § 11101-11152 (Supp. 1987) for all professional review actions taken, to the extent that such actions or the result thereof are the subject-matter of the claims being made in this case.

13. Defendants plead the immunities and protections of TEX. OCC. CODE § 160.007 *et seq.* and TEX. HEALTH & SAFETY CODE ANN. § 161.032 for all peer review and medical committee actions taken, to the extent that such actions or the result thereof are the subject matter of the claims being made in this case.

14. Defendants are entitled to an instruction regarding negligence as set forth in TEX. CIV. PRAC. & REM. CODE § 74.303(e).

15. Any injuries, damages or liabilities complained of by Plaintiffs herein are the result in whole or in part of pre-existing conditions, injuries, diseases and disabilities or subsequent conditions, injuries, diseases or disabilities of Plaintiffs and are not the result of any act or omission

by Defendants.

16. Plaintiffs' claims are barred, in whole or in part, because there was only a 50% or less chance of avoiding the alleged injury independent of Plaintiffs' allegations against Defendants.

17. In the unlikely event of a judgment against Defendants in this case, Defendants invoke the protections of TEX. CIV. PRAC. & REM. CODE §§ 74.503 – 74.506 and demand that (i) medical, health care or custodial services awarded in this health care liability claim be paid in periodic payments rather than by a lump-sum payment and that (ii) future damages other than medical, health care, or custodial services awarded in this health care liability claim be paid in whole or in part in periodic payments rather than by a lump sum payment.

18. With respect to Plaintiffs' request for punitive damages, Defendants invoke their rights under the due process clause of the Fifth Amendment of the United States Constitution as applied to the states through the Fourteenth Amendment of the United States Constitution. Defendants affirmatively plead that Plaintiffs' pleadings of punitive and/or exemplary damages violate the due process clauses of the Fifth and Fourteenth Amendments inasmuch as:

- (a) Punitive and/or exemplary damages can be assessed in an amount left to the discretion of the jury and judge;
- (b) In assessing such penalty or exemplary awards, a plaintiff needs only prove the theory of gross negligence on a "preponderance of the evidence" standard and not "beyond a reasonable doubt" standard as should be required in assessing a punishment award;
- (c) The defendant, who is subject to the award, does not have the right to refuse to testify against itself, but must in fact take the stand and/or give deposition testimony or subject itself to the consequences of a default judgment; and
- (d) The assessment of such a punishment and/or exemplary award is not based upon a clearly defined statutory enactment setting forth a specific *mens rea* requirement and/or the prerequisites of a criminal fine and in effect, allows the assessment of such awards even though there are not specified standards, limits or other statutory requirements set forth that define the *mens rea* and scope and limit of such awards. Therefore, the awards are unduly vague and do not meet the requirements of due process.

19. Plaintiffs' request for punitive damages should be denied because it violates the due process protections guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, the provisions of the Eighth Amendment to the Constitution of the United States, and the Constitution of the State of Texas, Art. 1, §§ 13 and 19 and Art. 3, 10, 11, 12, 13, 14, 15 and 19.

20. Plaintiffs' claims for punitive damages violate Defendants' rights under each of the following constitutional provisions:

- (a) the Commerce Clause of Article I, Section 8 of the UNITED STATES CONSTITUTION;
- (b) the Contracts Clause of Article I, Section 10 of the UNITED STATES CONSTITUTION;
- (c) the prohibition against *ex post facto* laws embodied in Article I, Section 10 of the UNITED STATES CONSTITUTION;
- (d) the Supremacy Clause of Article VI of the UNITED STATES CONSTITUTION;
- (e) the Free Speech Clause of the First Amendment of the UNITED STATES CONSTITUTION;
- (f) the Due Process Clause of the Fifth and Fourteenth Amendments of the UNITED STATES CONSTITUTION;
- (g) the Takings Clause of the Fifth Amendment of the UNITED STATES CONSTITUTION;
- (h) the Right to Counsel of the Sixth Amendment of the UNITED STATES CONSTITUTION;
- (i) the Excessive Fines Clause of Eighth Amendment of the UNITED STATES CONSTITUTION;
- (j) the Right to Trial by Jury contained in the Seventh Amendment of the UNITED STATES CONSTITUTION;
- (k) the Equal Protection Clause of the Fourteenth Amendment;

as well as the Constitution of the State of Texas.

21. Because of the lack of clear standards, the imposition of punitive damages against Defendants is unconstitutionally vague and/or over broad.

22. No act or omission of Defendants was malicious, willful, wanton, reckless or grossly negligent and, therefore, any award of punitive damages is barred.

23. With respect to Plaintiffs' demand for punitive damages, Defendants specifically incorporate by reference any and all standards or limitations regarding the determination and enforceability of punitive damage awards which arose in the decision of *BMW of North America v. Gore*, 116 S. Ct. 1589 (1996).

24. Pleading further, alternatively, Defendants plead the defense of unconstitutionality, in that any award of punitive or exemplary damages would constitute the imposition of a criminal penalty without the safeguards guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States, and similar provisions of the Texas Constitution, including Article I, Sections 3, 10, 13, 14 and 19. Furthermore, the imposition of such punitive or exemplary damages constitutes an excessive fine under the Eighth Amendment, denies equal protection of the laws under the Fourteenth Amendment, and violates the due process of clause of the Fifth and Fourteenth Amendments. Defendants plead that any claim by Plaintiffs for punitive damages should be stricken as unconstitutional and that any award of punitive or exemplary damages should be set aside because, among other reasons:

- (a) It is a violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution and Article I, Sections 3 and 19 of the Texas Constitution, to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases.
- (b) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

- (c) Texas law and the Texas punitive damage scheme, both facially and as applied in this case, provide no constitutionally adequate or meaningful standards to guide a jury or the court in determining whether, and if so in what amount, to award punitive damages; there is no sufficiently clear definition of the conduct or mental state that makes punitive damages permissible, and no sufficiently clear standard for determining the appropriate size of an award. Texas law and the Texas punitive damage scheme leave the determination whether to award and, if so, the amount of punitive damages to the arbitrary discretion of the trier of fact without providing adequate or meaningful guidelines for or limits to the exercise of that discretion, thereby violating the due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution as well as Article I, Sections 3 and 19 of the Texas Constitution.
- (d) Defendants had no notice of or means of ascertaining whether, or if so in what amount, they might be subject to a penalty for the conduct alleged by in Plaintiffs this case. That lack of notice was compounded by the absence of any adequate or meaningful standards as to the kind of conduct that might subject Defendants to punitive damages or as to the potential amount of such an award.
- (e) Under Texas law and the Texas punitive damage scheme, the jury is not instructed on the limits on punitive damages imposed by the purposes for which such damages are assessed. The procedures pursuant to which punitive damages are awarded fail to adequately inform the fact finder as to reasonable limits, consistent with the purposes of punitive damages, on the amount of the award against the Defendant, giving the fact finder discretion without adequate standards or guidelines within which to exercise that discretion with respect to the amount of any punitive damages award, thereby violating the due process clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 19 of the Texas Constitution.
- (f) The procedures by which punitive damages are assessed and measured provide the Defendants with no adequate notice (either with respect to the possibility of the imposition of punitive damages or with respect to the potential amount of any punitive damages award) and no standards by which it could modify its conduct to avoid the imposition of punitive damages, thereby violating the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution, as well as Article I, Section 19 of the Texas Constitution.
- (g) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and permit arbitrary awards and discrimination against a defendant on various grounds, including (but not limited to) its residence and its status, particularly, (but not limited to) its corporate status, and other invidiously discriminatory characteristics, thereby violating the equal protection clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the Texas Constitution.

- (h) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the due process clause of the Fifth and Fourteenth Amendments and of the equal protection clause of the Fourteenth Amendment of the United States Constitution, as well as violate Article I, Sections 13 and 19 of the Texas Constitution.
- (i) Under Texas law and the Texas punitive damage scheme, there is no limit on the number of times Defendants could be held accountable for punitive damages based on the same conduct as that alleged in this case. The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines, particularly (but not limited to) the likelihood that punitive damages may be assessed multiple times for the same conduct, in violation of the Eighth Amendment of the United States Constitution and in violation of Article I, Section 13 of the Texas Constitution (as well as in violation of the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 19 of the Texas Constitution).
- (j) The limitations imposed by statute on the authority of the appellate courts of Texas, particularly, but not limited to, the limitations contained in Article V, Section 6 of the Texas Constitution and in Section 22.225 of the Texas Government Code, do not provide for adequate appellate review of a punitive damage award or the amount thereof, and do not provide objective standards for such review, thereby violating the United States Constitution, as well as the Texas Constitution.
- (k) The award of punitive damages to Plaintiffs in this action would constitute a deprivation of property without due process of law which violates the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 19 of the Texas Constitution.
- (l) Texas law concerning punitive damages does not provide adequate procedural safeguards for the imposition of a punitive damages awards and does not provide adequate post-trial or appellate review of punitive damages awards or objective standards for such review, and thus any award of punitive damages in this case would violate the due process clause of the Fifth and Fourteenth Amendments of the United State Constitution and Article I, Section 19 of the Texas Constitution.
- (m) No provision of Texas law or the Texas punitive damage scheme provides adequate procedural safeguards consistent with the criteria set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S.1 (1990), and *Matthews v. Eldridge*, 424 U.S. 319 (1976), for the imposition of a punitive award.
- (n) To the extent that Chapter 41 of the Texas Civil Practice and Remedies Code could be construed as authorizing an award of punitive damages under the circumstances of this case, Chapter 41 violates the above-listed provisions of the United States and Texas Constitutions. This is because, without limitation, in the admission of evidence, the standards provided the trier of fact (including jury instructions), and

post-trial and appellate review, Texas law and the Texas punitive damage scheme, including Sections 41.001 through 41.013 of the Texas Civil Practice & Remedies Code, place undue emphasis on a defendant's wealth as a basis for making and enhancing a punitive damage award, and do not require that the award not be based on any desire to redistribute wealth.

- (o) The net effect of Texas' punitive damage system is to impose punitive damages in an arbitrary and discriminatory manner. The lack of adequate guidelines or review and undue emphasis on Defendants' wealth inevitably lead to variations in result without any rational basis for differentiation, and without serving any legitimate governmental purpose or interest. As a result, the federal and state constitutional mandates for equal protection found in the Fourteenth Amendment to the United States Constitution and Article 1, Section 3 of the Texas Constitution are violated. Insofar as the lodestone of the Texas punitive damage system is in the depth of the Defendants' pockets, that invidious discrimination is itself an affront to the federal and state constitutions' equal protection mandates.
- (p) No act or omission was malicious, reckless, knowing, or intentional and, therefore, any award of punitive damages is barred.
- (q) Pursuant to *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), the amount of punitive damages to be awarded is not an issue of fact and should not be decided by the jury.

25. Plaintiffs' claims for punitive or exemplary damages are subject to the limitations and requirements of Chapter 41 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, including without limitation the cap on exemplary damages set out in § 41.008(b).

III.

Defendants hereby demand a jury trial and request that this matter be placed on the jury docket. The jury fee has been paid.

WHEREFORE, PREMISES CONSIDERED, Defendants Houston Methodist Hospital, TMH Physician Organization, and Shellaise Dalisay Altre, RN pray that Plaintiffs take nothing against them and that Defendants recover their costs. Defendants also pray for such other and further relief to which they may show themselves justly entitled, both at law and in equity.

Respectfully submitted,

DE LA ROSA LAW FIRM

/s/ **Oscar L. De la Rosa**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all counsel of record by electronic service and/or email on this the 27th day of November 2023.

/s/ **Oscar L. De la Rosa**

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