

2.02 Plaintiff Yazmin Herrera is an individual residing in Midland County, Texas. In compliance with Tex. Civ. Prac. & Rem. Code § 30.014, Plaintiff states that the last three digits of her social security number are 888.

2.03 Defendant Hai Ngoc Nguyen, M.D. (hereinafter referred to as “Defendant Nguyen” and/or “Dr. Nguyen”) is an individual residing in Montgomery County, Texas and a physician licensed to practice medicine in the State of Texas. Defendant Nguyen may be served with process at his residential address of 106 E Bracebridge Cir, Spring, Texas 77380 or wherever he may be found.

2.04 Defendant Houston Northwest Radiology Association, P.A. (hereinafter referred to as “Defendant HNRA” and/or “HNRA”) is a domestic professional association organized under the laws of and authorized to do business in the State of Texas. Defendant HNRA may be served with process through its registered agent, Hai N. Nguyen, 800 Peakwood, Suite 5E, Houston, Texas 77090.

2.05 As to all Defendants that are entities (partnerships, unincorporated associations, incorporated associations, or other entities), or individuals doing business under an assumed name, Plaintiffs bring this suit in said Defendants’ partnership, assumed or common name under Tex. R. Civ. P. 28. Pursuant to Tex. R. Civ. P. 28, Plaintiffs reserve the right to substitute the true name of said Defendants at a later time.

2.06 Whenever in this Petition it is alleged a defendant did or failed to do any act or thing, it is meant that such defendant’s governing body, directors, officers, agents, servants, employees, and/or representatives did or failed to do such act or thing and that at the time such conduct occurred with authorization and/or ratification of such defendant and/or was done in the normal and routine course and scope of employment or agency of such defendant’s governing body, directors, officers, agents, servants, employees, and/or representatives.

III.
JURISDICTION AND VENUE

3.01 Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.002, venue is proper in Harris County, Texas because Harris County is and was the county of the principal office of Defendant HNRA.

3.02 Jurisdiction is proper pursuant to Tex. R. Civ. P. 47 because the damages sought are within the jurisdictional limits of this Court.

IV.
STATUTORY NOTICES

4.01 On or before April 4, 2022, pursuant to Tex. Civ. Prac. & Rem. Code § 74.051, Plaintiffs timely provided notice to Defendants that Plaintiffs intended to assert a health care liability claim arising out of the medical services rendered to Plaintiff Antonio Jaimez. Plaintiffs also provided the medical authorizations required by Tex. Civ. Prac. & Rem. Code § 74.052.

V.
DUTIES

5.01 At all times material hereto, Defendant Hai Ngoc Nguyen, M.D. was a physician licensed to practice medicine in the State of Texas, who represented to Plaintiffs and the public at large that he was a duly licensed, competent medical doctor. At all times material hereto, Defendant Nguyen was under a duty to act with ordinary and reasonable care and to use an accepted level of professional expertise in his practice as a radiologist in Houston, Harris County, Texas and/or Odessa, Midland County, Texas, or similar medical community, regarding the treatment of Plaintiff Antonio Jaimez.

5.02 At all times material hereto, a physician-patient relationship existed between Defendant Nguyen and Plaintiff Antonio Jaimez.

5.03 At all times material hereto, Defendant Houston Northwest Radiology Association, P.A. was a professional association organized and operating under the laws of the State of Texas and represented to Plaintiffs and the public at large that it would provide competent medical services to the public at large by and through its members, associates, employees, representatives, agents, and/or ostensible agents, including but not limited to Defendant Nguyen, and its other health care providers.

5.04 At all times material hereto, a health care provider-patient relationship existed between Defendant HNRA and Plaintiff Antonio Jaimez.

VI. STATEMENT OF FACTS

6.01 On October 11, 2020 at approximately 4:23 PM, Plaintiff Antonio Jaimez (hereinafter “Plaintiff” and/or “Mr. Jaimez”), a 43-year-old male, presented to SignatureCare Odessa – Emergency Center with complaints of a severe headache with nausea and vomiting which had gradually worsened over the past two to three days. Troilus Plante, MD, emergency room physician, indicated that Mr. Jaimez had a history of the same issue in the past. The headache was described as throbbing, not relieved with medication, and causing 9 out of 10 pain. Mr. Jaimez was also noted to be hypertensive. “Diagnostic Considerations” included CNS tumor, hemorrhage, migraine headache, and muscular contraction headache. Dr. Plante ordered IV pain medication, labs, and CT/CTA of the brain. CT and CT angiography of the brain were performed and reported as normal by Hai Nguyen, M.D.

6.02 On reassessment at 5:57 PM, Dr. Plante indicated that Mr. Jaimez’s pain had resolved and that he felt better. The evaluation was noted to be “unremarkable” and that his symptoms were “most likely migraine.” Impression in the ER was Migraine without Aura. He was discharged in stable condition at approximately 6:51 PM.

6.03 On May 18, 2021, Mr. Jaimez was found unconscious by his family and was transported to Medical Center Hospital at approximately 8:00 PM for possible stroke, after complaining of a headache and left-sided numbness and then collapsing. On exam his Glasgow Coma Scale was 6/15, his pupils were unequal and non-reactive, and he was also in sinus bradycardia. Vomiting was also noted. A head CT revealed a right parietal lobe hemorrhage and subdural hematoma. Mr. Jaimez was emergently transferred to Covenant Medical Center for neurosurgical care. He underwent endovascular embolization followed by open surgical treatment of bilateral dural arteriovenous fistulae (dAVF), and emergency craniotomy for evacuation of subdural and parenchymal hematomas. Mr. Jaimez developed left homonymous hemianopsia and was discharged on May 26, 2021, with orders for neurosurgical follow-up care and treatment, which continues through the present. Subsequent CT scanning demonstrated a permanent area of encephalomalacia (brain death) due to sustaining the large parietal hematoma. Mr. Jaimez also suffers from and will continue to suffer from neurologic deficits as a result of the catastrophic hemorrhage from the dAVF that occurred in May 2021.

VII. **ALTERNATIVE CLAIMS FOR RELIEF AUTHORIZED**

7.01 Plaintiffs intend to exercise their right to plead multiple causes of action in *Plaintiffs' Original Petition* and invokes the right of disparate pleadings as set forth in Tex. R. Civ. P. 48. Where, in this pleading or any supplemental pleadings the statement of claims vary, they are to be construed as alternative claims for relief. No claim for relief shall be construed as waived or abandoned where it is otherwise contradicted in whole or in part in another portion of Plaintiffs' pleading.

VIII.
CAUSES OF ACTION

A. Defendant Hai Ngoc Nguyen, M.D.

8.01 Defendant Nguyen, in the course of rendering medical care and treatment, failed to use ordinary care in providing care and treatment to Plaintiff and did not exercise the care, skill, and diligence ordinarily used by the average physician in the same field of practice, acting in the same or similar circumstances, and as such, committed acts and/or omissions which constitute negligence, as that term is defined by law, including, but not limited to:

- (a) Failure to use ordinary care in the administration of health care;
- (b) Failure to protect and/or prevent Plaintiff from sustaining injury during the administration of health care;
- (c) Failure to obtain and/or appreciate patient's medical history prior to proceeding with the interpretation of the radiological study;
- (d) Failure to appropriately review, interpret, and report radiological findings;
- (e) Failure to appropriately communicate radiological findings;
- (f) Otherwise being negligent in the care and treatment of Plaintiff; and
- (g) Other acts and omissions anticipated to be discovered.

8.02 The above-described acts and/or omissions by Defendant Nguyen were singularly and/or severally the proximate cause of the occurrence in question and resulted in the damages and injuries incurred by Plaintiffs.

B. Defendant Houston Northwest Radiology Association, P.A.

8.03 Defendant HNRA, by and through its agents, employees, and/or borrowed servants, including Defendant Nguyen and its other health care providers, failed to use ordinary care in providing treatment to Plaintiff that a reasonable health care entity, physician, and/or health care provider of the same or similar level of certification would have employed under the same or

similar circumstances, and as such, committed acts and/or omissions which constitute negligence, as that term is defined by law, including, but not limited to:

- (a) Failure to use ordinary care in the administration of health care;
- (b) Failure to protect and/or prevent Plaintiff from sustaining injury during the administration of health care;
- (c) Failure to obtain and/or appreciate patient's medical history prior to proceeding with the interpretation of the radiological study;
- (d) Failure to appropriately review, interpret, and report radiological findings;
- (e) Failure to appropriately communicate radiological findings;
- (f) Otherwise being negligent in the care and treatment of Plaintiff; and
- (g) Other acts and omissions anticipated to be discovered.

8.04 Defendant HNRA, additionally and/or in the alternative, is independently liable for its own acts and/or omissions which constituted negligence as that term is defined by law including but not limited to the following acts and/or omissions:

- (a) Failure to formulate, implement, and/or enforce appropriate policies and procedures;
- (b) Failure to appropriately and adequately train, orient, educate, credential, and instruct staff;
- (c) Failure to supervise;
- (d) Failure to appropriately ensure the competency of staff;
- (e) Otherwise being negligent in the care and treatment of Plaintiff; and
- (f) Other acts and omissions anticipated to be discovered.

8.05 Defendant HNRA is vicariously liable for the acts and omissions of its physicians and other health care providers (including Defendant Nguyen) under the provisions of vicarious liability, borrowed servants, *respondeat superior*, ostensible agency, apparent agency, actual

agency, and/or other agency principles, as well as through the theories of joint enterprise and/or joint venture.

8.06 The above-described acts and/or omissions by Defendant HNRA were singularly and/or severally the proximate cause of the occurrence in question and resulted in the damages and injuries incurred by Plaintiffs.

IX.
GROSS NEGLIGENCE

9.01 The above acts and/or omissions by each defendant amount to gross negligence because, when viewed objectively from Defendants' standpoint at the time in question, such acts and/or omissions involved an extreme degree of risk, considering the probability and magnitude of potential harm, of which each Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference and/or malice with regard to the rights, safety, or welfare of others.

9.02 The gross negligence of Defendants was a proximate cause of the injuries and damages suffered by Plaintiffs. Plaintiffs hereby plead that the Court enter punitive damages against each defendant in such amount as the jury shall affix.

X.
DAMAGES

10.01 In accordance with Tex. R. Civ. P. 47, Plaintiffs state that they seeks monetary relief over \$1,000,000 and a demand for judgment for all the other relief to which they are justly entitled.

10.02 As a direct and proximate result of the negligent acts and/or omissions of Defendants as set out above, Plaintiff Antonio Jaimez has suffered in the past and will probably suffer in the future the following elements of actual damages:

- (a) Reasonable and necessary medical expenses;

- (b) Physical pain and suffering;
- (c) Mental anguish;
- (d) Disfigurement;
- (e) Physical impairment;
- (f) Loss of enjoyment of life;
- (g) Loss of earnings;
- (h) Loss of earning capacity.

10.03 Further, Plaintiffs would show that Plaintiff Antonio Jaimez will suffer loss of society and companionship. All of the above have resulted in damages which are within the jurisdictional limits of this Court, for which Plaintiffs now plead, jointly and severally, against Defendants.

10.04 As a direct and proximate result of the negligent acts and/or omissions of the Defendants as set out above, Plaintiff-Spouse Yazmin Herrera has suffered in the past and will probably suffer in the future the following elements of actual damages:

- (a) Reasonable and necessary medical expenses;
- (b) Loss of consortium; and
- (c) Loss of household services.

10.05 Further, Plaintiffs would show that Plaintiff-Spouse Yazmin Herrera will suffer loss of society and companionship. Plaintiffs sue the defendants herein, jointly and severally, for the full amount of the actual damages incurred by Plaintiff-Spouse Yazmin Herrera.

10.06 Plaintiffs would show further that each and every negligent act and/or omission of Defendants, as set out in detail above, when viewed objectively from the standpoint of the act or at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others in such that Defendants had subjective awareness of the

risks involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs.

10.07 The negligent acts and/or omissions of Defendants as set forth above demonstrate such an entire want of care as to indicate that the acts and/or omissions were the result of actual conscious indifference to the rights, safety, and welfare of Plaintiffs, and as such, constitute gross negligence and/or malice as those terms are defined by the laws of the State of Texas and require an award of exemplary damages against Defendants. By reason of such conduct, Plaintiffs are entitled to and therefore asserts a claim for punitive or exemplary damages to which they are justly entitled.

10.08 Plaintiffs sue Defendants for the full amount of actual damages.

10.09 All of the above have resulted in damages which are within the jurisdictional limits of this Court, for which Plaintiffs now plead against Defendants.

XI.
PREJUDGMENT AND POST-JUDGMENT INTEREST

11.01 Plaintiffs plead for pre-judgment interest at the highest rate allowed by law and interest on the judgment at the highest legal rate from the date of judgment until collected.

XII.
CHAPTER 74 DAMAGE CAPS UNCONSTITUTIONAL

12.01 To the extent that Defendants intend to attempt to rely upon Tex. Civ. Prac. & Rem. Code Ann. §§ 74.301, 74.302, or 74.303 to limit Plaintiff's recovery of non-economic damages, Plaintiff contends that the limitations imposed by those statutory provisions are unconstitutional in that they violate the right to jury trial guaranteed by the United States and Texas Constitutions.

XIII.
TEXAS CIVIL PRACTICE AND REMEDIES CODE § 74.351
EXPERT REPORT REQUIREMENT

13.01 Pursuant to Texas Civil Practice and Remedies Code § 74.351, the following expert reports and curriculum vitas are attached hereto, and are being served simultaneously with this Original Petition:

- (a) Expert report of Kendall Jones, M.D., attached hereto as Exhibit 1;
- (b) Curriculum vitae of Kendall Jones, M.D., attached hereto as Exhibit 2;
- (c) Expert report of Harold Pikus, M.D., attached hereto as Exhibit 3; and
- (d) Curriculum vitae of Harold Pikus, M.D., attached hereto as Exhibit 4.

13.02 To the extent Defendants may attempt to rely upon Tex. Civ. Prac. & Rem Code Ann. § 74.351 to try to obtain a dismissal of this case and contend that Plaintiffs' initial report(s) thereunder failed to address all theories of liability asserted in this petition, Plaintiffs contend the restrictions on discovery and the expert report requirement imposed by Tex. Civ. Prac. & Rem. Code Ann. § 74.351 are unconstitutional because they deny Plaintiffs due process to the extent they require a report but do not allow Plaintiffs the right to conduct the discovery necessary to prepare the report.¹

XIV.
NOTICE OF SELF-AUTHENTICATION OF DOCUMENTS

14.01 Pursuant to Tex. R. Civ. P. 193.7, Plaintiffs hereby give written notice of the intent to self-authenticate all documents produced by any defendant in discovery and that such documents may be used against the party producing same at any pre-trial proceedings or hearing and at the time of any trial, post-trial matter, or appeal regarding this case.

¹ See *Societe Internationale v. Rogers*, 357 U.S. 197, 209–210 (1958) (holding that a statute that authorizes dismissal of an action because of the noncompliance with a procedural rule with which the party cannot comply renders the statute unconstitutional on due process grounds).

XV.
SPOILIATION OF DOCUMENTS & EVIDENCE

15.01 Defendants are hereby given notice that any document or other material, including electronically stored information, that may be relevant to any issue in this case is to be preserved in its present form until this litigation is concluded. Plaintiffs allege that, to the extent Defendants have intentionally and/or negligently destroyed any other evidence pertinent to this case, Plaintiffs request that the Court issue proper sanctions, including an instruction to the jury presuming all things are against Defendants.

XVI.
LIFE EXPECTANCY

16.01 Plaintiffs intend to utilize the United States Life Expectancy Tables promulgated by the United States Health and Human Service to help the jury in their assessment of damages at the time of trial and respectfully requests that the Court take judicial notice of the same.

XVII.
REQUEST FOR JURY TRIAL

17.01 Plaintiffs request a jury trial on all issues herein and have tendered the requisite fee.

XVIII.
RULE 194 DISCLOSURES

18.01 Pursuant to Tex. R. Civ. P. 194, Plaintiffs hereby request the required disclosure of those items contained in 194.2(b) for all Defendants named herein. Defendants are required to provide their Initial Disclosures at or within thirty (30) days after the filing of the first answer.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that the Court enter judgement against Defendants, awarding the Plaintiffs as follows:

- (a) Actual damages alleged herein, in an amount in excess of the minimal limits of the Court against the named Defendants;
- (b) Punitive damages as alleged by the plaintiff against Defendants;
- (c) Costs of court;
- (d) Prejudgment interest at the highest rate allowed by law from the earliest time allowed by law;
- (e) Interest on the judgment at the highest legal rate from the date of judgment until collected; and
- (f) All such other and further, relief at law and in equity, to which the Plaintiffs are justly entitled.

Respectfully submitted,

VAN WEY, METZLER & WILLIAMS, P.L.L.C.

/s/ Ben Trujillo

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