

CAUSE NO. _____

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|----------------------------------|---|--------------------------|
| CHARLES CUPP, Individually | § | IN THE DISTRICT COURT OF |
| and on behalf of the Estate of | § | |
| ANETA J. CUPP, Deceased | § | |
| | § | |
| v. | § | |
| | § | HARRIS COUNTY, TEXAS |
| ARC POST OAK, LP D/B/A BROOKDALE | § | |
| GALLERIA, BROOKDALE SENIOR | § | |
| LIVING COMMUNITIES INC., AND | § | |
| BROOKDALE LIVING COMMUNITIES- | § | |
| GC TEXAS INC. | § | _____ JUDICIAL DISTRICT |

PLAINTIFF’S ORIGINAL PETITION

COME NOW Plaintiff, Charles Cupp (“Cupp”), Individually and on behalf of the Estate of Aneta J. Cupp (“Aneta Cupp”) and file this Original Petition against Defendants ARC Post Oak, LP d/b/a Brookdale Galleria, Brookdale Senior Living Communities, Inc., and Brookdale Living Communities-GC Texas Inc. (collectively “Brookdale Galleria”), and show the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure and affirmatively plead that this suit is NOT governed by the expedited-actions process in Texas Rule of Civil Procedure 169.

CLAIM FOR RELIEF

2. Plaintiffs seek monetary relief over \$1,000,000.

PARTIES

3. Plaintiff Charles Cupp brings this suit individually and on behalf of the Estate of Aneta J. Cupp, decedent. Plaintiff resides in Harris County, Texas. Decedent, at the time of death, resided in Harris County, Texas.

4. Defendant ARC Post Oak, LP d/b/a Brookdale Galleria is a Texas corporation and is authorized to do business in the State of Texas. This Defendant may be served with process by serving its registered agent: Corporation Service Company b/b/a CSC-Lawyers Incorporating Service Company at 211 East 7th Street, Suite 620, Austin, Texas 78701. ***Service is requested at this time.***

5. Defendant Brookdale Senior Living Communities, Inc., is a Texas corporation and is authorized to do business in the State of Texas. This Defendant may be served with process by serving its registered agent: Corporation Service Company b/b/a CSC-Lawyers Incorporating Service Company at 211 East 7th Street, Suite 620, Austin, Texas 78701. ***Service is requested at this time.***

6. Defendant Brookdale Living Communities-GC Texas Inc. is a Texas corporation and is authorized to do business in the State of Texas. This Defendant may be served with process by serving its registered agent: Corporation Service Company b/b/a CSC-Lawyers Incorporating Service Company at 211 East 7th Street, Suite 620, Austin, Texas 78701. ***Service is requested at this time.***

STATUTORY NOTICE PROVIDED

7. Plaintiffs provided Defendant with notice of this claim pursuant to Tex. Civ. Prac. & Rem. Code §§ 74.051 and 74.052. All conditions precedent to this suit have been performed or have occurred prior to filing this lawsuit.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this controversy because the damages exceed the minimum jurisdictional limits of the Court. Venue is proper in Harris County under the general rule as all or a substantial part of the events or omissions giving rise to this action occurred in this county.

STATEMENT OF FACTS

9. All facts are based on information and belief.

10. Prior to her death, Aneta Cupp was under the care of Brookdale Galleria. While under the care of Brookdale Galleria, she required suctioning and an employee of Brookdale Galleria attempted to suction her mouth. When the Brookdale Galleria could not get the suctioning tubing into her mouth and throat, she forced the tube into her mouth and throat. This overly aggressive and improper suctioning resulted in heavy bleeding from the mouth and throat of Aneta Cupp and contributed to her death.

11. Aneta Cupp died, in part, as a result of Brookdale Galleria's negligence. Brookdale Galleria's action failed to comply with the appropriate standard of care.

CAUSES OF ACTION

12. For each cause of action following, Plaintiff hereby adopts, restates and realleges each and every paragraph of the Statement of Facts as if fully and completely set forth herein. Plaintiff asserts the following causes of action:

NEGLIGENCE

13. As set forth above, Brookdale Galleria did not exercise the degree of skill and care ordinarily exercised by reasonable, competent, similarly situated medical professionals would under the same or similar circumstances. Brookdale Galleria, among other things, aggressively suctioned Aneta Cupp resulting in heavy bleeding and loss of blood. As a direct and proximate result of Brookdale Galleria negligence as described above, Aneta Cupp died.

GROSS NEGLIGENCE

14. The acts and/or omissions of Brookdale Galleria, described above, when viewed from the standpoint of Brookdale Galleria at the time of the act or omission, involved an extreme degree of risk, considering the probability of harm to Plaintiff and others. Brookdale Galleria had

actual, subjective awareness of the risks involved in the above-described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others. Therefore, for such gross negligence on the part of Brookdale Galleria, Plaintiff sue for exemplary damages in an amount to be determined at trial.

DAMAGES

15. Plaintiff hereby adopts, restates and realleges each and every paragraph above as if fully set forth herein.

16. Charles Cupp (“Cupp”) is a beneficiary under the Wrongful Death and Survival Act of the State of Texas for the death of Aneta Cupp. Cupp has sustained damages for loss of society, companionship, pecuniary loss, loss of consortium, and mental anguish as a result of the death of Aneta Cupp.

17. Cupp seeks damages for Aneta Cupp’s conscious pain and suffering and pain and mental anguish as a result of the facts alleged herein.

18. Cupp seeks all damages for the Estate of Aneta Cupp for the reasonable and necessary medical care and expenses of Aneta Cupp’s last medical care before she was pronounced dead, and for the costs associated with his funeral and burial.

19. Cupp seeks to recover pre-judgment and post-judgment interest at the statutory rate or at such other rate as is set by this Court.

20. Cupp seeks exemplary damages.

21. Cupp seeks to recover pre-judgment and post-judgment interest at the statutory rate or at such other rate as is set by this Court.

22. Cupp seeks all damages she is entitled to under the law.

JURY DEMAND

23. Pursuant to the provisions of Rule 216 of the Texas Rules of Civil Procedure, Plaintiffs formally make this demand and application for a jury trial in this lawsuit.

NOTICE OF REQUIRED DISCLOSURES

24. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, the parties are required to disclose, without awaiting a discovery request, the information and material described in each section of Rule 194.2(b). Such disclosures must be made at or within 30 days after the filing of the first answer unless otherwise agreed by the parties. Pursuant to Rule 194.3, copies of documents and other tangible things ordinarily must be served with your response.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays Defendants be cited to appear and answer herein, and that upon final trial, Plaintiff recover of Defendants all of the damages set forth above, costs of court, pre-judgment and post-judgment interest, expenses, and such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

RUSTY HARDIN & ASSOCIATES, LLP

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