

CAUSE NO. DC-20-11269

LISA COLLINS,

PLAINTIFF,

V.

APPALOOSA HEALTHCARE, INC.
D/B/A CRESTWOOD HEALTH AND
REHABILITATION CENTER,
THE ENSIGN GROUP, INC.,
AND DAVID MARTINEZ,

DEFENDANTS.

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

___ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
REQUEST FOR DISCLOSURE**

Plaintiff LISA COLLINS files this Original Petition and Request for Disclosure, complaining of APPALOOSA HEALTHCARE, INC. doing business as CRESTWOOD HEALTH AND REHABILITATION CENTER (“Crestwood”), THE ENSIGN GROUP, INC., and DAVID MARTINEZ (“Defendants”), and for cause of action, states the following:

SUMMARY

Nurses are the backbone of the U.S. healthcare system. But too many employers continue to put profits over the safety and well-being of front-line employees. Registered Nurse Lisa Collins was working at Crestwood Health and Rehabilitation Center in early May 2020 when she was unknowingly exposed to a new resident with COVID-19 who had not been tested for the virus before admission, in violation of applicable standards of care and Crestwood’s own policy. Not long after, Nurse Collins developed a fever but was coerced into continuing to work. Crestwood’s Assistant Director of Nursing even threatened to report Nurse Collins to the Board of Nursing if she stayed home. Nurse Collins was working at Crestwood the day her fever skyrocketed to 103 Fahrenheit. But instead of sending her home, Crestwood’s Director of Nursing instructed Nurse Collins to remove her personal protective equipment and stand in front of a fan to cool off. Nurse Collins refused to return to work the following day and was forced to resign. Within a few days, Nurse Collins was admitted to a local ICU where she spent three weeks on a ventilator fighting for her life before undergoing months of inpatient rehabilitation. While Nurse Collins is grateful to be alive, she is severely injured and will likely suffer for the rest of her life as a victim of the decision to put profits over the safety of residents and employees.

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 LISA COLLINS is a resident of Wills Point, Texas, and may be contacted through her attorneys.

5. Defendant APPALOOSA HEALTHCARE, INC. is a foreign corporation doing business in Texas. Defendant operates and manages Crestwood Health & Rehabilitation Center at 1448 Houston Street, Wills Point, Texas 75169, and may be served through its registered agent: Cogeny Global, Inc., 1601 Elm St., Suite 4360, Dallas, Texas 75201.

6. Defendant THE ENSIGN GROUP, INC. is a foreign corporation doing business in Texas. Defendant provides staff, administrators, services and/or supervises operation/management of Crestwood Health & Rehabilitation Center, and may be served through its registered agent: Cogency Global, Inc., 1601 Elm St., Suite 4360, Dallas, Texas 75201.

7. Defendant DAVID MARTINEZ is an individual who may be served at his residence: 1339 FM 16, Canton, Texas 75103, or wherever he may be found.

VENUE AND JURISDICTION

8. Venue is proper in this Court pursuant to §15.001 *et seq.* of the TEXAS CIVIL PRACTICE & REMEDIES CODE. Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

FACTUAL BACKGROUND

9. Plaintiff's claims arise out of severe injuries sustained in the course and scope of her employment as a Registered Nurse at Crestwood Health and Rehabilitation Center.

10. In early 2020, the highly contagious COVID-19 virus (SARS-CoV-2) spread across the United States. Despite the alarming pandemic, Defendants failed to properly prepare and respond appropriately.

11. During early May 2020, Plaintiff was unknowingly exposed to a new resident with COVID-19. Nurse Collins understood the newly-admitted resident had tested negative for COVID-19 when, in fact, that resident had not been tested, in violation of applicable standards of care and Crestwood's own policy. Defendant David Martinez who served as Crestwood's admissions coordinator failed to ensure that the new resident was properly screened for COVID-19 before admission to Crestwood.

12. Not long after the exposure, Nurse Collins developed a fever but Crestwood coerced her into continuing to work. Crestwood's Assistant Director of Nursing even threatened to report Nurse Collins to the Board of Nursing for "patient abandonment" if she stayed home.

13. Nurse Collins was working at Crestwood the day her fever skyrocketed to 103 Fahrenheit so she contacted Crestwood's Director of Nursing. Instead of sending her home, as required by applicable standards of care and Crestwood's own policy, the Director of Nursing instructed Nurse Collins to remove her personal protective equipment (PPE) and stand in front of a fan to cool off. Crestwood's Director of Nursing did not offer to fill in for Nurse Collins or have another Registered Nurse cover the rest of her shift.

14. Nurse Collins refused to return to work at Crestwood the following day and was forced to resign.

15. A few days later, Nurse Collins was admitted to a local ICU where she spent three weeks on a ventilator fighting for her life before undergoing months of inpatient rehabilitation. Nurse Collins has yet to return home. It is evident Nurse Collins has been severely injured and will suffer from the long-term effects of COVID-19 for the rest of her life.

16. In a public statement during June 2020, Crestwood's Executive Director said: "Our residents are tested for the presence of COVID-19 before they are admitted. If any member of our staff develops signs and symptoms consistent with COVID-19, including an elevated temperature, they will be sent home immediately. Our employees are exceptionally valuable members of the Crestwood community – without them, we cannot do what we do. We work daily to provide our team with a positive and rewarding work environment, and are grateful for the commitment of the staff to the residents, to one another, and to the ministry of post-acute care." But the newly-admitted resident to whom Nurse Collins was exposed, and contracted COVID-19, was not tested

before admittance to Crestwood. Furthermore, when Nurse Collins had elevated temperatures, Crestwood coerced her into continuing to work instead of sending her home immediately.

17. According to Crestwood, as of August 4, 2020, at least six residents and four employees have tested positive for COVID-19. See <https://crestwoodhealth.com/covid-19-diagnosis-update-080420/>

CAUSES OF ACTION AGAINST DEFENDANTS

18. Defendants are liable *via* negligence, negligence *per se*, negligent hiring, and gross negligence. Each Defendant owed a duty to employees to provide a safe working environment. Each Defendant breached that duty by numerous acts or omissions.

19. Defendants' 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 the COVID-19 virus;
 - c. failing to develop, implement, and/or enforce proper policies and procedures regarding how to prevent and respond to the presence of the COVID-19 virus in residents and staff;
 - d. failing to properly train and teach staff evidence-based best practices for preventing, identifying, and minimizing the spread of the COVID-19 virus among residents and staff;
 - e. failing to properly train admission coordinators, nursing supervisors, directors of nursing, and/or executive directors on how to prevent, or minimize, the spread of the COVID-19 virus;
 - f. failing to hire qualified and competent admissions coordinators, nursing supervisors, directors of nursing, and/or executive directors;
 - g. failing to utilize proper evidence-based infection control policies and procedures;
 - h. failing to test residents for the COVID-19 virus before admission to the facility;
 - i. failing to immediately send home staff who develop any sign and/or symptom of the COVID-19 virus, including elevated temperature;
 - j. failing to protect Nurse Collins, other staff, and residents from foreseeable harm.

20. Defendants' negligent acts or omissions are a proximate cause of Plaintiff's injuries and damages.

21. Defendants controlled and managed Crestwood Health and Rehabilitation Center, and were responsible for the safety and well-being of employees.

22. Defendants violated applicable standards of care including but not limited to those established by the Occupational Safety and Health Administration (OSHA), Texas Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), and/or Centers for Disease Control and Prevention (CDC).

23. Defendants are nonsubscribers to the TEXAS WORKERS' COMPENSATION ACT so Defendants are 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.

24. At all relevant times, any employees or agents of APPALOOSA HEALTHCARE, INC. and/or THE ENSIGN GROUP, INC whose conduct is implicated herein were in the course and scope of their employment or acting as agents of APPALOOSA HEALTHCARE, INC. and/or THE ENSIGN GROUP, INC such that APPALOOSA HEALTHCARE, INC. and/or THE ENSIGN GROUP, INC are liable for the conduct of those employees or agents.

25. The conduct of Defendants as set forth above constitutes gross negligence as defined by law. Defendants were consciously aware of an extreme degree of risk to the residents and staff like Nurse Collins and those similarly situated, but nevertheless proceeded in failing to act to protect them in complete disregard for the rights, safety and welfare of Nurse Collins and those similarly situated. For this gross negligence, Plaintiff specifically pleads for the recovery of exemplary damages as set forth herein.

PERSONAL INJURIES AND DAMAGES

26. As a result of Defendants' acts or omissions, Plaintiff has suffered severe injuries.

Consequently, she seeks the following damages:

- a. Medical Expenses: Plaintiff has sustained severe bodily injuries for which she has incurred medical expenses in the past, and will continue to incur medical expenses in the future.
- b. Pain & Suffering: Plaintiff has endured physical pain and suffering in the past, and will continue to endure pain and suffering in the future.
- c. Mental Anguish: Plaintiff has endured mental anguish in the past, and will continue to endure mental anguish in the future.
- d. Loss of Earning Capacity: Plaintiff has suffered a loss of earnings in the past, and will continue to suffer a loss of earning capacity in the future.
- e. Physical Impairment: Plaintiff has endured physical impairment in the past, and will continue to suffer physical impairment in the future.

27. In all reasonable probability, Plaintiff will continue to suffer from these injuries for the rest of her life, and Plaintiff seeks compensation for such future damages.

EXEMPLARY DAMAGES

28. Plaintiff is entitled to exemplary damages from Defendants under Chapter 41 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, because Defendants' acts or omissions, when viewed objectively from the standpoint of Defendants at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risk involved but, nevertheless, proceeded with conscious indifference to the rights, safety and welfare of Nurse Collins, other employees and

residents. 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 Defendants. 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 Defendants, and other individuals/entities like them, from such conduct in the future.

29. Defendants are liable for exemplary damages based upon the actions or inactions of its employees and agents because Defendants 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 Defendants 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.

30. Each of the grossly negligent, malicious and/or fraudulent acts of Defendants independently gives rise to an award of exemplary or punitive damages, for which Plaintiff pleads against Defendants in an amount sufficient to punish and deter Defendants, and other individuals/entities like them, from such conduct in the future.

PREJUDGMENT AND POST-JUDGMENT INTEREST

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

REQUEST FOR DISCLOSURE

32. Under TEXAS RULES OF CIVIL PROCEDURE 194, Plaintiff requests that Defendants 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

33. The Defendants are 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

34. Plaintiff provides notice to Defendants 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

35. Plaintiff requests that Defendants 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 Plaintiff may be justly entitled.

Respectfully submitted,

CRAIN BROGDON ROGERS, LLP

/s/ Quentin Brogdon

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