

FOR IMMEDIATE RELEASE

COLLEGE STATION, TEXAS - Today, May 6, 2020, a lawsuit was filed against The Waterford at College Station for the death of Joe Boothe. Fay Boothe, the wife of Joe Boothe, has hired Gaines West of West, Webb, Allbritton & Gentry, P.C. to represent her. West said, "this is one of the clearest cases of gross neglect he has ever seen. Boothe died because he was neglected and left alone to suffer. The Waterford, which was inundated with COVID-19 issues, and resulting deaths, can no longer hide what they failed to do for the Boothe family, and for many more." The lawsuit is pending in district court in Brazos County, Texas.

For 38 years, West, Webb, Allbritton & Gentry has served clients throughout Texas. The firm is a full-service firm and its attorneys practice law in a broad array of areas. West, Webb's principal office is in College Station, and it also has offices in Austin, and Waco. To learn more about West, Webb, please visit <https://westwebblaw.com>.

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I. DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3, pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff Margaret Fay Boothe is the surviving wife of decedent, Joe R. Boothe, and a resident of the State of Texas. She brings this suit individually, on behalf of all wrongful death beneficiaries, and on behalf of the Estate of Joe R. Boothe, deceased, pursuant to Section 71.021 of the Texas Civil Practice and Remedies Code. There is no administration of Joe R. Booth's Estate pending and none is necessary.

3. Defendant The Waterford at College Station, in its assumed or common name, is sued pursuant to Rule 28 of the Texas Rules of Civil Procedure which provides that any partnership, unincorporated association, private corporation, or individual doing business under an assumed name may sue and be sued in its partnership, assumed, or common name. Said Defendant may be served by serving its acting administrator/executive director at its place of business, 1103 Rock Prairie Road, College Station, Texas 77845, or wherever s/he may be found.

4. Defendant Capital Senior Living, Inc. is a Texas corporation with its principal place of business in Dallas County and owned, operated, and/or managed The Waterford at College Station at times pertinent to this lawsuit. Process may be served on its Registered Agent: David Brickman, 14160 Dallas Parkway, Suite 300, Dallas, Texas 75254.

5. Defendant Waterford Senior Living, Inc. is a Texas corporation with its principal place of business in Dallas County, Texas and owned, operated, and/or managed The Waterford at College Station at times pertinent to this lawsuit. Process may be served on its Registered Agent: CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

6. Defendant Capital Senior Management 1, Inc. is a Texas corporation with its principal place of business in Dallas County, Texas and owned, operated, and/or managed The Waterford at College Station at times pertinent to this lawsuit. Process may be served on its Registered Agent: David Brickman, 14160 Dallas Parkway, Suite 300, Dallas, Texas 75240.

7. Defendant Capital Senior Management 2, Inc. is a Texas corporation with its principal place of business in Dallas County, Texas and owned, operated, and/or managed The Waterford at College Station at times pertinent to this lawsuit. Process may be served on its Registered Agent: David Brickman, 14160 Dallas Parkway, Suite 300, Dallas, Texas 75240.

8. Defendant Capital Senior Living Properties, Inc. is a Texas corporation with its principal place of business in Dallas County, Texas and owned, operated, and/or managed The Waterford at College Station at times pertinent to this lawsuit. Process may be served on its Registered Agent: David Brickman, 14160 Dallas Parkway, Suite 300, Dallas, Texas 75240.

9. Defendant Capital Senior Living Properties 2, Inc. is a Texas corporation with its principal place of business in Dallas County, Texas and owned, operated, and/or managed The Waterford at College Station at times pertinent to this lawsuit. Process may be served on its Registered Agent: David Brickman, 14160 Dallas Parkway, Suite 300, Dallas, Texas 75254.

10. Defendant Capital Senior Management S, Inc. is a Texas corporation with its principal place of business in Dallas County, Texas and owned, operated, and/or managed The Waterford at College Station at times pertinent to this lawsuit. Process may be served on its Registered Agent: CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

11. On information and belief, each Defendant engaged in relevant business activities and services in Texas and acted as the agent, partner, joint venture, representative, or employee of the other Defendants, and each Defendant was acting within the course and scope of such agency,

partnership, joint venture, or employment. Furthermore, the Defendants were all acting with the express or implied knowledge, consent, authorization, approval, or ratification of their co-defendants.

12. In the alternative, Defendant Capital Senior Living, Inc. is the primary entity engaged in managing The Waterford at College Station, and its related entities, i.e., the other Defendants, constitute the alter ego of Defendant Capital Senior Living, Inc. Defendant Capital Senior Living, Inc. and the other Defendants share a unity of control and ownership interests, and, upon information and belief, Defendant Capital Senior Living, Inc. has distributed assets to the other Defendants for the purpose of defrauding Plaintiff. Moreover, under the facts and circumstances of this case, it would be unjust to treat Defendants as separate entities.

III. JURISDICTION AND VENUE

13. Venue is proper in Brazos County pursuant to Texas Civil Practice & Remedies Code § 15.001 *et seq.* because all or a substantial part of the events or omissions giving rise to the claims occurred in Brazos County.

14. The amount in controversy is within the minimum jurisdictional limits of this Court. The Court also possesses subject matter jurisdiction over all causes of action and claims for relief stated herein.

IV. FACTS

15. The Waterford at College Station (“The Waterford”) is owned, operated, controlled, and/or maintained by Defendants. The Waterford was home to one of the worst known outbreaks of COVID-19 in Texas. Mr. Joe R. Boothe (“Mr. Boothe”) was a resident of The Waterford and received inadequate and substandard care which resulted in personal injuries, pain and suffering, and his untimely death.

16. Defendants self-style their operation at The Waterford as an assisted living and memory care community with several services including 24-hour staffing; medication management; bathing, dressing and grooming assistance; and 24-hour access to licensed nurses. Defendants tout their services as “exceptional” and purport to enrich the lives of their residents through a team of “dedicated” professionals providing quality care at The Waterford. Despite those representations, the administrator, nurses, aids, and other staff at The Waterford left Mr. Boothe in isolation without proper care, causing him to suffer from infection, dehydration, and malnutrition. The injuries he received during his residency at The Waterford caused Mr. Boothe great pain and suffering and his ultimate and premature death on April 5, 2020.

17. COVID-19 is a respiratory illness that was declared a world-wide pandemic. On January 21, 2020, the first case of COVID-19 was identified in the United States. COVID-19 can spread rapidly in long-term residential care facilities and persons with chronic underlying medical conditions are at greater risk for COVID-19. On March 13, 2020, Texas Governor Greg Abbott declared a statewide emergency and proclaimed a Disaster Declaration in all 254 counties in the State of Texas. Despite the known threat of COVID-19 in facilities such as The Waterford and Governor Abbott’s Disaster Declaration, Defendants failed to implement the proper infection control protocols necessary to protect their residents. In late March 2020, Defendants wantonly failed to recognize, recklessly disregarded, or attempted to cover up the severity of the spread of the COVID-19 virus at The Waterford even after residents and staff began to exhibit known COVID-19 symptoms. Instead of confronting the spread of COVID-19, Defendants claimed that there was simply a “stomach bug” going around the facility. It was in response to the purported stomach bug that the facility began to restrict its residents to their rooms in isolation. This misinformation was relayed to Mr. Boothe’s family, and such misinformation, as well as the

withholding of more crucial information, denied Mr. Boothe's family the opportunity to remove or transfer Mr. Boothe from The Waterford

18. The Waterford failed to take appropriate precautions to prevent the spread of infectious diseases, opted not to test employees or residents for the virus, and waited too late to act, until after it had become clear to the public that Mr. Boothe and other residents had contracted COVID-19 and died of neglect.

19. Despite the fact that Mr. Boothe contracted COVID-19, Defendants' employees described his symptoms as mild. However, Defendants' employees used the virus as an excuse to neglect to provide appropriate care and ignore Mr. Boothe's complaints as symptoms of the virus. Defendants used "isolation" as blanket permission to withhold ordinary and appropriate care to Mr. Boothe and other residents who relied on their care. Defendants isolated Mr. Boothe and failed and refused to afford him the care and medical attention he so rightly deserved. Defendants' utterly disregarded Mr. Boothe's health and life. Rather than provide adequate care or access to Mr. Boothe, or transfer to another appropriate healthcare provider, Defendants decided to keep Mr. Boothe in their custody to retain his revenue and avoid exposing their failures and incompetence to Mr. Boothe's family and the public.

20. Only the outcry from the family of other residents eventually forced Defendants to increase transparency by selectively notifying some families that seven residents had died (with the death toll now higher than that), 13 out of 31 employees had been infected with COVID-19, and 68% of the residents of The Waterford testing positive for COVID-19.¹ Unfortunately for Mr. Boothe and his family, Defendants admissions came too late. While Defendants focused on the

¹ Lomi Kriel & Vianna Davila, *Texas still won't say which nursing homes have COVID-19 cases. Families are demanding answers.*, TEX. TRIBUNE (Apr. 30, 2020 1:00 P.M.), https://www.texastribune.org/2020/04/30/coronavirus-nursing-homes-families/?utm_campaign=trib-social&utm_content=1588269647&utm_medium=social&utm_source=twitter.

futile objective of limiting negative publicity and covering their proverbial backside, Defendants failed to take reasonable precautions to prevent the spread of the virus and failed to specifically provide appropriate essential care to Mr. Boothe. Both before and after Mr. Boothe contracted the disease, Defendants neglected to provide appropriate essential care to Mr. Boothe, which caused his untimely and unnecessary death. Defendants intentionally kept Mr. Boothe's family in the dark and away from him while causing Mr. Boothe to languish and suffer alone, and to wither away, all without appropriate care or intervention.

V. CAUSE OF ACTION – NEGLIGENCE

21. Plaintiff repeats and re-alleges each of the allegations in the preceding paragraphs as if fully set forth herein.

22. Defendants are healthcare providers who accepted a duty to act as a reasonably prudent healthcare provider would under the same or similar circumstances when Defendants accepted Mr. Boothe as a resident patient, entering into a medical provider-patient relationship on August 19, 2019. Defendants breached the applicable standards of care required for the care and treatment of Mr. Boothe. Defendants' care constituted negligence as that term is defined by Texas law. The negligence of Defendants proximately caused the injuries and damages made the basis of this lawsuit.

23. Plaintiff's injuries and damages were proximately caused by the negligence of Defendants in failing to fulfill a laundry list of their well-established duties as Mr. Boothe's healthcare provider:

- a. Failing to provide medical care to Mr. Boothe according to the acceptable standard of care for a healthcare facility in the state of Texas;

- b. Failing to use ordinary care to do that which healthcare personnel of ordinary prudence would have done under the same or similar circumstances;
- c. Failing to provide a safe, clean, comfortable, and homelike environment for Mr. Boothe;
- d. Failing to provide care to Mr. Boothe in a manner that would promote maintenance or enhancement of his quality of life;
- e. Failing to provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with a comprehensive assessment and plan of care;
- f. Failing to have adequate policies, procedures and/or protocols in place, as well as enforcement of same, that are specific, clear, and followed with respect to preventing the spread of infectious diseases, treatment of sick patients, and other essential care of patient residents at Waterford;
- g. Failing to timely and appropriately monitor and record the health conditions of Mr. Boothe, including deterioration of the same, and properly documenting and conveying changes to a responsible physician for appropriate intervention;
- h. Failing to utilize a systematic approach by nursing staff to provide required nursing care to patients such as Mr. Boothe;
- i. Failing to perform adequate nursing assessments of Mr. Boothe's complete status;
- j. Failing to perform adequate documentation of nursing assessments;
- k. Failing to communicate nursing assessments to a responsible physician;

- l. Failing to communicate changes in the patient's condition to a physician in a timely manner;
- m. Failing the nursing duty to intervene on behalf of Mr. Boothe;
- n. Failing to implement proper infection control;
- o. Failing to maintain a clean and sanitary environment to prevent the spread of infection to Mr. Boothe;
- p. Failing to appropriately train, orient, and supervise nurses, aids, and other staff assigned to care for Mr. Boothe.
- q. Failing to appropriately train, orient, and supervise nurses, aids, and other staff to prevent the spread of infectious diseases;
- r. Failing to implement appropriate sanitation requirements to prevent the spread of infectious diseases;
- s. Failing to provide appropriate personal protective equipment (PPE) to nurses, aids, and other staff to prevent the spread of infection diseases;
- t. Failing to require nurses, aids, and other staff to wear PPE;
- u. Failing to timely isolate staff and residents who showed symptoms of COVID-19;
- v. Failing to take reasonable measures to prepare for a potential spread of infectious disease within The Waterford;
- w. Failing to notify Mr. Boothe and his family about the risk of infection as a result of other patient residents and staff becoming infected with COVID-19;

- x. Failing to fully inform Mr. Boothe and his family about Mr. Boothe's care and treatment, and of any changes in that care or treatment that may affect Mr. Boothe's well-being.
- y. Failing to provide appropriate essential care to Mr. Boothe while in isolation;
- z. Failing to provide Mr. Boothe with a dignified existence, self-determination, and communication with and access to persons and services outside the facility;
- aa. Failing to prevent abuse, neglect, and exploitation of Mr. Boothe;

24. Each or all the negligent acts or omissions of Defendants set forth above was a proximate cause of Plaintiff's injuries and damages as set forth below.

VI. CAUSE OF ACTION – NEGLIGENCE PER SE

25. Plaintiff repeats and re-alleges each of the allegations in the preceding paragraphs as if fully set forth herein.

26. In addition to Defendants' blatant disregard for a multitude of basic safety and healthcare standards, Defendants committed negligence *per se* and are liable for breach of the state law duties to ensure that Mr. Boothe would receive "all care necessary for [him] to have the highest possible level of health,"² and to ensure that he would "be free from abuse, neglect, and exploitation."³ Furthermore, Defendants failed to "establish and maintain an infection prevention and control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections."⁴

² 40 Tex. Admin. Code § 19.401(c).

³ *Id.*

⁴ 40 Tex. Admin. Code § 19.1601.

27. Mr. Boothe belonged to the class of individuals that this regulatory regime was intended to protect, and these state regulations were designed to prevent the very harm that Mr. Boothe suffered.

28. As a proximate result of Defendants' breaches of these state law duties, Mr. Boothe suffered from severe dehydration and died.

VII. CAUSE OF ACTION – GROSS NEGLIGENCE

29. Plaintiff repeats and re-alleges each of the allegations in the preceding paragraphs as if fully set forth herein.

30. Because of Defendants' reckless conduct, Mr. Boothe died while a patient resident at The Waterford.

31. Defendants knew they owed the duties recounted above and incorporated in this cause of action, including the duties to prevent the spread of infectious diseases to Mr. Boothe by implementing an infection prevention and control program designed to provide a safe, sanitary, and comfortable environment, to maintain Mr. Boothe's nutritional status, provide Mr. Boothe with adequate fluids to maintain proper hydration, to fully assess Mr. Boothe's status, to intervene on Mr. Boothe's behalf, and to fully inform Mr. Boothe and his family about status and treatment plan.

32. Objectively speaking, Mr. Boothe faced an extreme risk of death as a result of Defendants' failures to prevent the spread of infectious diseases and to provide him with appropriate essential nursing care that was expected of Defendants.

33. Subjectively, from Defendants' perspective, Defendants were aware of the extreme risk of severe harm to Mr. Boothe if they failed to fulfill their duties and obligations to Mr. Booth. Furthermore, the specific risk of the spread of COVID-19 was publicly broadcast throughout the

world, including through the Governor's Disaster Declaration, such that Defendants knew, or should have known, the risk to Mr. Boothe and its residents, who were always considered to be members of a high risk population. Despite that awareness, Defendants willfully and recklessly disregarded the risk to Mr. Boothe and failed to take reasonable precautions to prevent the spread of infectious diseases at The Waterford. Moreover, despite Defendants' awareness of the high risk of severe harm and death to Mr. Boothe, Defendants failed to perform appropriate nursing care and failed to provide adequate fluids to maintain proper hydration. Defendants also deliberately misinformed Mr. Boothe and his family about Mr. Boothe's conditions and about the conditions at The Waterford.

34. As a result of Defendants' willful, wanton, and reckless disregard of Mr. Boothe's safety, Mr. Boothe suffered through severe malnutrition and dehydration, Mr. Boothe lost his life, and Plaintiff suffered damages. Each or all the grossly negligent acts or omissions of Defendants set forth above was a proximate cause of Plaintiff's injuries and damages as set forth below.

VIII. VICARIOUS LIABILITY

35. Defendants are vicariously liable for the negligence of Defendants' employees and personnel employed or supervised by Defendants, including all staff, departments, borrowed employees, borrowed servants, physicians, nurses, aids, technicians, or other personnel who are Defendants' actual employees, agents, apparent agents, ostensible agents, or agents by estoppel. Furthermore, Plaintiff alleges that Defendants are responsible for Mr. Boothe's suffering and death under the doctrines of *respondeat superior*, corporate negligence, agency, and as a result of violations of non-delegable duties.

IX. DAMAGES

36. As a direct and proximate result of the negligent acts and/or omissions of the Defendants as set out above, Plaintiff suffered damages as follows:

37. Plaintiff Margaret Fay Boothe, individually, has sustained and will continue to sustain, is entitled to recover, and hereby seeks to recover all wrongful death damages recoverable under Texas law, including without limitation damages for pecuniary loss, both past and future, for the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value, excluding loss of inheritance, that Plaintiff would have received from her husband, Joe R. Boothe had he lived. Plaintiff Boothe suffered loss of companionship and society, both past and future, for the loss of the positive benefits flowing from the love, comfort, companionship, and society that Plaintiff Boothe would have received from her husband, Joe R. Boothe, had he lived. Plaintiff Boothe suffered mental anguish, both past and future, for the emotional pain, torment, and suffering experienced by Plaintiff Boothe because of the death of her husband, Joe R. Boothe, had he lived, and for the way Joe R. Boothe died, neglected and alone at The Waterford. Loss of inheritance for the loss of the value of the assets that Decedent Joe R. Boothe would have added to the estate and left at natural death to Plaintiff Boothe.

38. Plaintiff Margaret Fay Boothe, as representative of the Estate of Joe R. Boothe, is entitled to recover, and hereby seeks to recover, all survival damages recoverable under Texas law or the law of any other state that might apply, including, without limitation, damages for reasonable funeral and burial expenses of the Estate of Joe R. Boothe and for the conscious, emotional and physical pain, torment, anguish and suffering experienced or sustained by Joe R. Boothe prior to his death.

39. Plaintiff is further entitled to recover all pre-judgment and post judgment at the highest interest rate allowed by law.

40. All of the above damages are within the jurisdictional limits of this Court, for which Plaintiff now pleads, jointly and severally, against the Defendants.

X. RULE 47 NOTICE

41. Plaintiff requests that the jury determine what is fair and reasonable compensation for her damages. However, because Rule 47 of the Texas Rules of Civil Procedure *requires* Plaintiff to provide a statement regarding the amount of monetary relief sought, Plaintiff states that she seeks monetary relief over \$1,000,000, in an amount to be determined by the jury.

XI. STATUTORY NOTICE

42. Plaintiff will show that in accordance with Section 74.051 of the Texas Civil Practice and Remedies Code, Defendants herein have been placed on notice, or contemporaneously with the filing of this lawsuit are being sent notice, of those portions of Plaintiff's claims that are governed by Chapter 74 of the Texas Civil Practice and Remedies Code. Plaintiff reserves the right, however, to assert that some Defendants and/or some of the claims asserted herein do not fall within the purview of Chapter 74.

XII. JURY DEMAND

43. Plaintiff demands trial by jury and tenders the jury fee with this filing.

XIII. NOTICE OF INTENT TO USE DOCUMENTS

44. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives notice to all parties that it intends to use as evidence, at the time of trial, any and all documents produced in response to written discovery served by Plaintiff, and any documents exchanged and

provided between the parties, including, but not limited to, correspondence, pleadings, records, and discovery responses.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Court award her judgment against Defendants for damages in an amount within the jurisdictional limits of this Court, and that Plaintiff recovers such amounts as she may be entitled to receive under the law and the facts, together with pre-judgment interest; that Plaintiff receives interest on the judgment from the date it is rendered; that Plaintiff recovers all costs of court expended herein; and that Plaintiff has such other and further relief, general and special, in law and in equity, to which she may be entitled.

Respectfully submitted,

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