

2017-41526 / Court: 055

CAUSE NO. \_\_\_\_\_

**JO ANNE CAIN**  
**a/k/a Jo Anne Valdez Cain**

**Plaintiff,**

**V.**

**MEMORIAL HERMANN**  
**HEALTH SYSTEM and**  
**PRECHECK, INC.**

**Defendants**

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**IN THE DISTRICT COURT**

\_\_\_\_\_ **JUDICIAL DISTRICT**

**HARRIS COUNTY, TEXAS**

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JO ANNE CAIN a/k/a Jo Anne Valdez Cain, Plaintiff, and files Plaintiff's Original Petition complaining of Memorial Hermann Health System, also d/b/a Memorial Hermann Northeast Hospital and PreCheck, Inc., and would respectfully show the Court the following:

**I. Discovery Level**

1. Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure 190.2.

**II. Parties**

2. Plaintiff is an individual residing in Harris County, Texas.

3. Defendant, Memorial Hermann Health System (hereinafter also referred to as "Memorial Hermann" or "MHHS"), which was also doing business as Memorial Hermann Northeast Hospital, is a Texas nonprofit corporation doing business in the State of Texas. This Defendant may be served with the petition and citation by personally serving its registered agent

for service, Ann Seymore, 929 Gessner Road, Suite 2582, Houston, Texas 77024. Plaintiff requests issuance of citation so that service may be accomplished by personal service.

4. Defendant, PreCheck, Inc. (hereinafter also “PreCheck”) is a corporation organized and existing under the laws of Texas, and doing business in the State of Texas. This Defendant may be served with the petition and citation by personally serving its registered agent for service, Michael J. Lindsay, 710 North 11<sup>th</sup> Street, Beaumont, Texas 77702. Plaintiff requests issuance of citation so that service may be accomplished by personal service.

### **III. Jurisdiction and Venue**

5. The Court has personal jurisdiction over Defendants because Defendants conduct business in the State of Texas and/or have their principal place of business in Texas. This Court has subject matter jurisdiction over the controversy because the incident which is the subject of this suit occurred in Harris County and the damages are within the jurisdictional limits of the Court. Venue is permissible in Harris County because it is the county in which one or all of the Defendants maintain a business operation and office, and/or is the county where all or a substantial amount of facts made the basis of this lawsuit occurred.

### **IV. Factual Background**

6. On or about June 25, 2017, Plaintiff was a patient at the Memorial Hermann Northeast Hospital, one of the hospitals owned, operated and controlled by MHHS. While she was a patient in the hospital, Brandon J. Faunce, a nurse employed by MHHS, gave Plaintiff a white pill which rendered the Plaintiff unable to move or talk. However, she remained conscious. As she lay helpless in the hospital bed, Brandon J. Faunce sexually assaulted Plaintiff.

7. Prior to the hiring of Brandon J. Faunce, MHHS contracted the services of PreCheck in order to prepare a background and employment investigation and verification of Faunce. PreCheck was supposed to conduct a criminal background check on Faunce. PreCheck did not report any prior criminal charges against Faunce, despite having a prior arrest for a sexual assault in Harris County, and at least one other assaultive incident in his past.

#### **V. Negligence of MHHS**

8. Defendant MHHS is the party charged with the management, oversight, administration, hiring, training and supervision of its employees and its business premises. This includes the supervision, management, oversight, training and hiring of its employees, including the decision to hire Faunce.

9. MHHS failed to take adequate measures in its decision to hire Brandon Faunce, who had a previously criminal record, including a previous arrest for sexual assault in Harris County. MHHS failed to adequately investigate the background and criminal history of Faunce, which resulted in their decision to hire an employee with a history of sexual offense(s) against women. MHHS failed to conduct a local criminal background check with the Harris County District Clerk.

10. During his employment, MHHS failed to properly supervise Faunce, which provided him with the opportunity to commit the sexual assault against Plaintiff.

11. MHHS failed to implement policy, procedures and take other measures to ensure the safety of Plaintiff and protect her from any unwanted sexual advances. MHHS failed to properly train, manage, supervise and hire personnel to ensure the safety of Cain and prevent the sexual assault. These acts and omissions by MHHS provided the opportunity and was the proximate cause of the sexual assault of Plaintiff.

## **VI. Negligence of PreCheck**

12. PreCheck is in the business of conducting background checks and employment verification for persons and entities in the healthcare industry. PreCheck conducts the background checks in order to serve the healthcare entity and in order to protect patients of the healthcare entity. PreCheck was aware that it is hired by healthcare entities in order to perform background checks to assist in employment decisions and in order to protect patients from the healthcare entity hiring a potentially dangerous, unqualified or careless person. Included in the background check is an investigation into the criminal history of the potential employee, including a local criminal history check. Pursuant to the request by MHHS, PreCheck voluntarily took on the responsibility to conduct the employment background check (including criminal history check) of Brandon Faunce. However, PreCheck failed to discover and report to MHHS that Brandon Faunce had a previous arrest in Harris County for sexual assault. PreCheck failed to conduct a local criminal background check with the Harris County District Clerk. PreCheck did not discovery nor report any other incidences of criminal misconduct or bad character by Faunce.

13. Defendants' acts and/or omissions proximately caused injuries to Plaintiff.

## **VII. Vicarious Liability**

14. MHHS and PreCheck are vicariously liable for the negligent acts committed by its employee, agent, and/or members under the legal theory of Respondeat Superior. At the time of the negligent acts and omissions, the employees were acting within the scope of employment and

as an agent of either MHHS or PreCheck. Employees of MHHS and PreCheck were negligent in their acts and/or omissions.

### **VIII. Gross Negligence of Defendants**

15. Defendants, MHHS and PreCheck, committed acts and/or omissions that constitute a wanton and reckless disregard for the safety of Plaintiff, and singularly or in concert, constitutes a proximate cause of the resulting injuries and damages to Plaintiff, as described below. When viewed objectively from the standpoint of Defendants at the time of its occurrence, Defendants' conduct and mental states involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. In addition, Defendants were actually, subjectively aware of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others; therefore, Plaintiff sues Defendants for exemplary damages in the amount determined by the trier of fact.

### **IX. Damages of Plaintiff**

16. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff was caused to suffer personal injuries, and to incur the following damages:

- A. Reasonable medical and mental health care and expenses in the past. These expenses were incurred by Plaintiffs, for the necessary care and treatment of the injuries resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services;
- B. Reasonable and necessary medical and mental health care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;

- E. Loss of earnings in the past;
- F. Loss of earning capacity which will, in all probability, be incurred in the future;
- G. Mental anguish in the past;
- H. Mental anguish in the future; and
- I. Loss of enjoyment of life, both in the past and future.

17. Plaintiff also pleads for exemplary damages in an amount within the jurisdictional limits of this court.

18. Plaintiffs seek damages that are within the jurisdictional limits of the court. As required by Rule 47, Plaintiff seeks monetary relief over \$1,000,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, exemplary damages and attorney fees. Plaintiffs reserve the right to amend their claims for the amount of monetary relief.

#### **X. Claim for Pre-Judgment and Post-Judgment Interest**

19. Plaintiff is entitled to recover pre- and post-judgment interest on all damages that have accrued as of the date of judgment at the highest interest rate.

#### **XI. Jury Demand**

20. Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Plaintiff demands a trial by jury, and pursuant to Tex. Gov't. Code Ann. §51.604, Plaintiff has paid the proper jury fee with the filing of this petition.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, it is prayed that upon final hearing Plaintiff recovers from Defendants the full amount of damages as set out above, for actual damages, exemplary damages, costs of suit, pre- and post-judgment interest at the highest legal rate in an amount in excess of the minimal jurisdictional limits of this Court, and any and other such

further relief, both general and specific, either in law or in equity, to which she may show herself to be justly entitled.

Respectfully submitted,

**HARKRIDER LAW FIRM**



By: \_\_\_\_\_

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**ATTORNEY FOR PLAINTIFF**