

1 JAMES GEAGAN, ESQ., (SBN 68922)
2 LAW OFFICES OF JAMES GEAGAN
3 846 Broadway
4 Sonoma, CA 95476

5 Telephone: (707) 939-9593
6 Facsimile: (707) 996-2460

7 Attorney for Plaintiffs
8 Joseph Hargett and Carol Hargett

ENDORSED
FILED
ALAMEDA COUNTY

NOV 18 2010

CLERK OF THE SUPERIOR COURT
By S. McMullen Deputy

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
10 UNLIMITED JURISDICTION

RG10547255

11 CAROL HARGETT, individually, and as)
12 Special Administrator of the Estate of)
13 Michelle Hargett-Beebe, deceased, and)
14 JOSEPH HARGETT,)

15 Plaintiffs

16 v.

17 VITAS HEALTHCARE)
18 CORPORATION, CHEMED, a)
19 Corporation, JEFFREY A. MANDEL,)
20 M.D., BINDU CHOPRA, M.D., SUSAN)
21 LONDERVILLE, M.D., MARIETTA)
22 ABALOS-GALITO, M.D. and DOES 1)
23 through 100, Inclusive,)

24 Defendants.

Case No.

COMPLAINT FOR DAMAGES
(violation of Welfare & Institutions
Code §15600 et seq.; Intentional
Infliction of Emotional Distress;
Negligent Infliction of Emotional
Distress)

BY FAX

25 COMES NOW PLAINTIFFS Carol Hargett, individually, and as Special Administrator
26 of the Estate of Michelle-Hargett-Beebe, deceased, and Joseph Hargett, and complain of
27 defendants and for causes of action allege:
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1 **First Cause of Action for Violation of Welfare & Institutions Code §15600**
2 **et seq for Reckless Neglect of a Dependant Adult Brought by Plaintiff**
3 **Carol Hargett as Special Administrator of the Estate of**
4 **Michelle Hargett-Beebee Against All Defendants**

5 1. The true names and capacities, whether individual, corporate, associate, or otherwise,
6 of defendants named herein as DOES 1 through 100, inclusive, are unknown to plaintiffs at this
7 time, and plaintiffs therefore sue said defendants by such fictitious names. Plaintiffs will seek
8 leave to amend this Complaint to allege their true names and capacities when the same have
9 been ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the
10 defendants designated herein as a DOE is responsible in some manner or is otherwise legally
11 liable to plaintiffs for the events and occurrences herein alleged.

12 2. At all times herein mentioned and in doing the things herein alleged, each of the
13 defendants, including those sued by fictitious names, acted as the agents, servants, employees,
14 and/or representatives of each of their co-defendants, acted within the course and scope of said
15 agency, employment, and/or representation, and acted with the knowledge, consent, approval,
16 and/or ratification of their co-defendants.

17 3. On or about November 12, 2010 by order of the Superior Court of the County of
18 Santa Clara, Carol Hargett was appointed Special Administrator of the Estate of Michelle
19 Hargett-Beebee. Attached hereto as Exhibit 1 is a true and correct copy of said Order and
20 Letters of Special Administration.

21 4. At all times herein mentioned, some of the named defendants resided in the City of
22 Berkeley, County of Alameda, State of California.

23 5. At all times herein mentioned, defendant Vitas Healthcare Corporation was a
24 corporation doing business in the State of California and in the business of providing hospice
25 services for the terminally ill on a for-profit basis.

26 6. At all times herein mentioned, Chemed Corporation was a corporation doing business
27 in the State of California through its two wholly-owned subsidiaries, Roto-Rooter and
28 defendant Vitas Healthcare Corporation.

1 7. At all times herein mentioned, Michelle Hargett-Beebee, deceased, was a dependant
2 adult within the meaning of California Welfare & Institutions Code §15600 *et seq.*

3 8. At all times mentioned herein, defendants Jeffrey A. Mandel, M.D., Bindu Chopra,
4 M.D., Susan Londerville, M.D., and Marietta Abalos-Galito, M.D. and Does 1 through 10 were
5 physicians licensed to practice in the State of California and were affiliated with defendant
6 Vitas Hospice Services, LLC. Said defendants also were care custodians of Michelle Hargett-
7 Beebee at all times mentioned herein in that they undertook to act as her treating physicians.

8 9. On or about and prior to November 18, 2009, Michelle Hargett-Beebee was age 43
9 and the mother of three children. She was diagnosed as suffering from terminal pancreatic
10 cancer and was certified as having less than six months to live.

11 10. On or about November 18, 2009, defendant Chemed, a corporation, by and through
12 its wholly owned subsidiary, defendant Vitas Healthcare Corporation, and Does 11 through 50,
13 undertook, as care custodians of Michelle Hargett-Beebee, to provide hospice services to
14 Michelle Hargett-Beebee in her home.

15 11. Plaintiffs Carol Hargett and Joseph Hargett are the parents of Michelle Hargett-
16 Beebee and undertook to care for their daughter at her home during her terminal illness,
17 including the period on and after November 18, 2009.

18 12. In exchange for payment for services, defendants Chemed Corporation, its wholly
19 owned subsidiary, defendant Vitas Healthcare Corporation, and Does 11 through 50, were
20 under a duty to provide hospice services to Michelle Hargett-Beebee in accordance with the
21 then prevailing standard for hospice care. Principal among those duties was to advise Michelle
22 Hargett-Beebee of all available and accepted options for pain and symptom management,
23 treatment, and relief, and after presenting to the patient and her caregivers all of said available
24 options, to provide pain and symptom management, treatment and relief in accordance with the
25 decision of the patient or her authorized representatives as to which option or options were to
26 be delivered.

1 13. Defendant Jeffrey A. Mandel, M.D., Bindu Chopra, M.D., Susan Londerville, M.D.,
2 Marietta Abalos-Galito, M.D. and Does 1 through 10, inclusive, were physicians who, on or
3 about November 18, 2009, undertook to care for Michelle Hargett-Beebee during her terminal
4 illness from pancreatic cancer. Said physicians were recommended by defendant Vitas
5 Healthcare Corporation and were represented by Vitas as being skilled in the care of the
6 terminally ill, including, but not limited to, the provision of pain and symptom management,
7 treatment and alleviation of pain, inter alia, through the use and prescription of certain
8 medications.

9 14. At all times herein mentioned, defendants Jeffrey A. Mandel, M.D., Bindu Chopra,
10 M.D., Susan Londerville, M.D., Marietta Abalos-Galito, M.D. and Does 1 through 100,
11 inclusive, were under a duty to ensure that their patient, Michelle Hargett-Beebee and her
12 authorized representatives were presented with complete information as to all accepted and
13 recognized treatments for the alleviation of pain and other distressing symptoms associated
14 with terminal cancer and to ensure that the chosen options were provided by her health care
15 providers. Said physicians were under a duty to carry out the wishes of their patient and her
16 authorized representatives with regard to the management of their patient's pain. This duty is
17 grounded in the doctrine of informed consent and is reinforced by the statutory enactment of
18 the Right To Know End of Life Options Act, California Health and Safety Code §442.5.

19 15. At all times mentioned herein, defendants, and each of them knew, or were under an
20 obligation to know, that pancreatic cancer is a particularly painful form of cancer which in
21 most cases causes progressively worse pain and other distressing symptoms over time and
22 which requires careful, attentive and personalized pain management responsive to the specific
23 experience and symptoms of each patient.

24 16. In expressing her attitude toward dying to defendants, Michelle Hargett-Beebee
25 expressed acceptance of her terminal diagnosis, but stated specifically that she feared dying in

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1 pain. Her parents Carol Hargett and Joseph Hargett promised her that they would see that she
2 did not die in pain, but would be able to die in peace and with dignity.

3 17. At all times herein mentioned, defendants, and each of them, had a duty to advise,
4 counsel, assess, diagnose, treat and prescribe for Michelle Hargett-Beebee so as to provide her
5 with effective continuous, around-the-clock relief of pain. If all proper and appropriate care
6 with regard to pain management did not produce relief of pain acceptable to the patient and her
7 authorized representatives, defendants were then under a duty to inform Michelle Hargett-
8 Beebee and her authorized representatives of the option of palliative sedation as a valid choice
9 for relief of pain and other distressing symptoms.

10 18. At all times herein mentioned defendants Chemed Corporation and Vitas Healthcare
11 Corporation, as the provider of hospice services to more patients in the United States than any
12 other entity, were under a duty to their patients and their patients' families to provide caregivers
13 who were properly trained with regard to pain and symptom management for the terminally ill.
14 Specifically, said defendants were under a duty to assure that all caregivers were trained in the
15 various available options as to pain and symptom management, were trained as to the degree of
16 pain relief that could be expected and could be achieved consistent with the patient's wishes,
17 were trained in how to respond to questions and inquiries from patients and their families as to
18 what additional options for pain and symptoms management were available, were trained in
19 advocating with patients' physicians for additional pain management interventions if, upon
20 assessment, achievable goals for pain relief were not achieved, and were trained in proper
21 assessment of the effectiveness of the pain management being provided to patients. Further,
22 defendants Vitas and Chemed had a duty to provide their patients, including Michelle Hargett-
23 Beebee, with caregivers possessing the professional and licensing qualifications to provide care
24 at the level required by their patients.

25 19. Michelle Hargett-Beebee was under the care of defendants from November 18,
26 2009 through time of her death on December 7, 2009. During said time, defendants
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1 consistently and repeatedly failed to provide the medical and hospice services required by
2 Michelle Hargett-Beebee and breached the duties set forth in the preceding paragraph. In
3 particular, said defendant denied her information about treatment options that would have
4 relieved her suffering and failed to provide adequate pain and symptom relief. On all but a few
5 occasions during the 20 days she was under the care of defendants, Michelle Hargett-Beebee
6 was assessed as experiencing pain levels demonstrating that her pain was not under control.
7 On those occasions pain levels were elicited on multiple occasions as being of an intensity of 6,
8 7, 8, 9 and 10 on the 1 to 10 pain scale with "10" being the worst pain imaginable. In addition,
9 it was necessary for Michelle to resort to taking many doses of breakthrough medication, which
10 should have alerted Vitas/Chemed employees that consistent around-the-clock pain control was
11 not being achieved and that Michelle Hargett-Beebee was experiencing repeated episodes of
12 intense and severe pain.

13 20. At the times mentioned herein, due to uniformly inadequate training and
14 qualifications of employees at Vitas and Chemed, and due to the failure to confirm the
15 competency of Vitas/Chemed employees to assess and report to physicians regarding the
16 adequacy of pain management measures in place, the required notification of pain out of
17 control was not made to physicians with the frequency and intensity required by the level of
18 Michelle Hargett-Beebee's pain and by prevailing standards of pain management and comfort
19 care. Vitas employees repeatedly noted that the pain management was only partially
20 successful, but such an assessment did not result in physicians being notified each time such an
21 assessment was made.

22 21. The lack of training and expertise of Vitas employees on to up-to-date and then
23 current principles of pain and symptom management resulted in the failure to deliver necessary
24 information regarding end of life care options to Michelle Hargett-Beebee and her parents and
25 resulted in incomplete and inaccurate information being transmitted to them when they inquired
26 as to whether additional measures were available to control Michelle Hargett-Beebee's pain
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1 and symptoms. Such training deficits and deficits in knowledge and expertise resulted in the
2 patient and her parents not being informed about options that medication could be significantly
3 increased in dosage and frequency of administration, that different and additional pain
4 medications could be added if necessary, and that palliative sedation was an option if the
5 patient's pain and/or other distressing symptoms could not be controlled by other means.
6 Michelle Hargett-Beebe and her parents repeatedly asked for information and advice from
7 defendants about available options to alleviate Michelle's pain and suffering. On at least one
8 occasion when Michelle Hargett-Beebe was in continuous severe pain and actively dying, her
9 father inquired of an employee of Vitas/Chemed if there was not more that could be done or
10 whether his daughter could be put to sleep for relief. The employees responded that all that
11 could be done for Michelle Hargett-Beebe was being done. Said response was erroneous in
12 that at that time the pain management order for Michelle Hargett-Beebe consisted of an
13 inadequate dose of methadone every eight hours with a prescription for roxanol for
14 breakthrough pain. In fact, multiple additional options for pain and symptom management
15 were well accepted by the medical community at that time, but due to either a lack of training
16 and knowledge on the part of the Vitas/Chemed employees or a decision by Vitas/Chemed not
17 to disclose known options, they were not mentioned to the patient or her family.

18 22. Defendants Vitas Healthcare Corporation, Chemed and Does 1 through 10,
19 inclusive, knew that if they did not provide well-trained, competent and knowledgeable
20 employees for the care of their terminally-ill patients that the probable outcome would be
21 unnecessary pain, suffering, anxiety and anguish to many of their patients, including Michelle
22 Hargett-Beebe because, inter alia, those patients would not receive pain management
23 treatment in accordance with then prevailing standards. In fact, as a legal result of the reckless
24 indifference and neglect of defendants Vitas/Chemed and Does 1 through 10, Michelle Hargett-
25 Beebe suffered severe, unbearable and unnecessary pain and other distressing symptoms
26 throughout the period during which she was under said defendants' care, while in the active
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1 process of dying and up to and including the moment of her death.

2 23. The failure to consistently and adequately control Michelle Hargett-Beebee's pain
3 and symptoms from terminal cancer was substantially caused by the reckless indifference of the
4 defendant physicians. When said physicians accepted the responsibility to care for Michelle
5 Hargett-Beebee, they undertook the responsibility to be possessed of the knowledge of then
6 prevailing principles of palliative medicine and took responsibility for assuring that all options
7 for comfort care and pain control necessary to permit a dignified death were disclosed to and
8 made available to their patient. Said physicians were required to develop an individualized
9 treatment plan based upon the particular features of the patient's condition, including, but not
10 limited to, her diagnosis, the type of her cancer, the probable future course of her pain, her
11 response to pain control medications then in place, and her particular wishes with respect to
12 pain and symptom management after receiving necessary information on the options available.
13 They had the further duty to consistently assess her pain, evaluate her response to pain
14 medication orders then in place and to adjust and increase pain medication as often as
15 necessary to achieve consistent around-the-clock relief of pain in accordance with their
16 patients' desires and wishes.

17 24. At all times herein mentioned, defendants Jeffrey A. Mandel, M.D., Bindu Chopra,
18 M.D., Susan Londerville, M.D., Marietta Abalos-Galito, M.D. and Does 11 through 50,
19 inclusive, consistently failed to carry out the duties described in the preceding paragraph and
20 did not provide adequate information nor deliver comfort care and pain management treatment
21 with the attention and intensity required by the condition of their patient, Michelle Hargett-
22 Beebee. The pain medication prescribed was insufficient to bring Michelle Hargett-Beebee's
23 pain under control and keep it controlled, was adjusted at insufficient intervals and was
24 increased in increments which were unjustifiably meager. Said defendants consistently failed
25 to aggressively issue orders for the treatment of Michelle Hargett-Beebee's pain, failed to
26 respond with appropriate orders to reports that Michelle Hargett-Beebee's pain was not being
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1 consistently controlled, and failed to gather the necessary information about their patient so that
2 prescription and adjustment of pain medication might be ordered in an appropriate and timely
3 manner.

4 25. Defendants Vitas/Chemed and Does 1 through 10, inclusive, recklessly failed to
5 assure that physicians recommended to Vitas' patients by Vitas for care and treatment during
6 their terminal illness under Vitas/Chemed's hospice care were possessed of the skill,
7 knowledge, and competence required of physicians responsible for making palliative care and
8 pain management treatment plans and orders. In recommending defendants Jeffrey A. Mandel,
9 M.D., Bindu Chopra, M.D., Susan Londerville, M.D. and Marietta Abalos-Galito, M.D. to
10 Michelle Hargett-Beebee and her family to act as Michelle Hargett-Beebee's treating
11 physicians during her terminal illness, Vitas/Chemed acted with reckless indifference in that
12 they knew or should have known that such physicians would probably not deliver necessary
13 care to Michelle Hargett-Beebee with the attention, intensity and quality her condition required.

14 26. In deciding to engage in the business of providing hospice services, comfort care,
15 pain management services and palliative care services for profit, defendants and each of them,
16 knowingly accepted a profound responsibility, that of caring for patients and interacting with
17 patients' families as the patient approached death. They knew that the dying process often
18 involves pain and other distressing symptoms, that pain symptom management is often the most
19 important component of comfort care and that a death marred by uncontrolled pain and
20 suffering causes severe existential suffering for both patients and their families. Knowing
21 these facts, defendants, and each of them, consistently failed to provide palliative care, pain
22 management and hospice services of a type required by the well-known and accepted standards
23 and principles of such care.

24 27. As a legal result of the reckless neglect and reckless indifference to the comfort and
25 welfare of Michelle Hargett-Beebee, Michelle Hargett-Beebee suffered severely in the last 20
26 days of her life, as more fully described in paragraph 19. More particularly, as it was apparent
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1 that Michelle Hargett-Beebee was in the last stage of dying, she suffered excruciating pain and
2 other distressing symptoms as evidenced by restlessness, loud moaning, and facial grimacing.
3 Only when Michelle Hargett-Beebee died in the early morning hours of December 7, 2010 did
4 her awareness of her pain and suffering cease. Such a death marked by unrelieved pain and
5 suffering was avoidable and unnecessary and was caused by the reckless neglect and reckless
6 indifference of defendants, and each them.

7 28. The conduct of defendants, and each of them, constitutes reckless neglect of a
8 dependent adult within the meaning of Welfare & Institutions Code §15600 et seq. Plaintiff
9 Carol Hargett, as Special Administrator of the Estate of Michelle Hargett-Beebee and as her
10 Successor in Interest, is entitled to the recovery of enhanced remedies under said statute,
11 including, but not limited to, general damages compensating for the pain, suffering, anguish,
12 fear and anxiety suffered by Michelle Hargett-Beebee as a legal result of such reckless neglect.
13 Said plaintiff is further entitled to recovery of her attorneys fees and costs as an element of said
14 enhanced remedies.

15 29. The aforementioned conduct and omissions of defendants amounts to reckless
16 indifference to the suffering of a person under their care when it was in their power to alleviate
17 such suffering and is the legal and moral equivalent of denying proper pain medication and
18 information about alternative pain treatment options to a dying patient known to be in need of
19 them. Such conduct constitutes fraud, malice and oppression and justifies the imposition of
20 punitive damages.

21 Wherefore, plaintiff prays for judgment against defendants, and each of them, as
22 hereinbelow set forth.

23 **Second Cause of Action Brought by Plaintiffs Carol Hargett**
24 **and Joseph Hargett Against All Defendants for**
Intentional Infliction of Emotional Distress

25 As And For A Further, Separate and Distinct Count, plaintiffs Carol Hargett and Joseph
26 Hargett complain of defendants, and each of them, and for cause of action allege:

1 30. Plaintiffs hereby incorporate the allegations of the First Cause of Action and make
2 them part of this, the Second Cause of Action, as though fully set out herein.

3 31. At all times herein mentioned, defendants, and each of them, knew that plaintiffs
4 Carol Hargett and Joseph Hargett were spending substantial time every day caring for and
5 comforting their daughter as she approached death. Said defendants knew that plaintiffs were
6 relying on them to prevent unnecessary suffering for their daughter so that she might die as
7 peacefully and comfortably as possible. Defendants, and each of them, sought information,
8 directly and indirectly from plaintiffs as to the condition of their daughter and gave plaintiffs
9 instructions as to signs and symptoms to observe, how and when to administer pain medication,
10 and how to otherwise care for their daughter.

11 32. Knowing the reliance plaintiffs placed in them and knowing that plaintiffs would
12 themselves suffer severe emotional distress if they were to be unable to bring comfort to their
13 daughter and instead witness her dying in pain, defendants, nevertheless, engaged in the pattern
14 of neglect described elsewhere herein giving little or no thought to the probable effects of their
15 conduct. Defendants engaged in said neglect in reckless disregard of the probability that
16 plaintiffs would suffer severe emotional distress as a result and knowing that plaintiffs were
17 particularly vulnerable to emotional distress. Such conduct is outrageous in that it is of a type,
18 kind and severity that would not be tolerated by reasonable members of the community.

19 33. By reason of the foregoing, plaintiffs Carol Hargett and Joseph Hargett suffered
20 severe emotional distress which continues to this time. Said plaintiffs are, therefore, entitled to
21 an award of general damages in an amount according to proof.

22 Wherefore, plaintiffs pray for judgment against defendants as hereinbelow set forth.

23 **Third Cause of Action Brought by Plaintiffs Carol Hargett**
24 **and Joseph Hargett Against Vitas Healthcare Corporation, Chemed,**
25 **A Corporation, and Does 1 through 10, inclusive for Negligent**
26 **Infliction of Emotional Distress (Direct Victim)**

27 As And For A Further, Separate, Distinct and Third Count, plaintiffs Carol Hargett and
28 Joseph Hargett complain of defendants, Vitas Healthcare Corporation, Chemed, a Corporation,

1 and Does 1 through 10, Inclusive and for cause of action allege:

2 34. Plaintiffs hereby incorporate the allegations of the preceding causes of action into
3 this, the Third Cause of Action, as though fully set out herein.

4 35. Defendant Vitas/Chemed at the outset of the agreement to provide hospice services
5 to Michelle Hargett-Beebee represented directly to plaintiffs that said defendants would also
6 provide advice, comfort and support to plaintiffs themselves as part of the services for which
7 defendants would be paid. Said defendants further represented that they were competent,
8 qualified and staffed so as to provide hospice, palliative care, and pain management equal to or
9 exceeding the quality of other providers of such services. Plaintiffs did rely on such
10 representations of defendants and did seek and receive certain advice, and counsel and
11 assistance directly from said defendants. Thus, there existed a direct and special relationship
12 between plaintiffs, on the one hand and defendants, Vitas/Chemed on the other.

13 36. Defendants so negligently failed to provide the aforementioned proper and
14 appropriate care for Michelle Hargett-Beebee that such neglect caused severe emotional
15 distress to plaintiffs, which emotional distress was legally foreseeable to defendants, and each
16 of them, by virtue of the special relationship which existed between them and the plaintiffs.

17 37. By reason of the premises, plaintiffs Carol Hargett and Joseph Hargett suffered
18 severe emotional distress and are, therefore, entitled to an award of general damages in an
19 amount according to proof.

20 Wherefore, plaintiffs pray for judgment against defendants as hereinbelow set forth.

21 **Fourth Cause of Action Brought by Plaintiffs Carol Hargett and**
22 **Joseph Hargett Against All Defendants for Negligent**
Infliction of Emotional Distress (Bystander)

23 As And For A Further, Separate, Distinct and Fourth Count, plaintiffs Carol Hargett and
24 Joseph Hargett complain of defendants, and each of them, and for cause of action allege:

25 38. Plaintiffs hereby incorporate the allegations of the preceding causes of action and
26 make them a part of this, the Fourth Cause of Action, as through fully set out herein.

1 39. At all times herein mentioned, defendants, and each of them, knew that plaintiffs
2 were daily caregivers to their daughter as she was dying from terminal cancer. Said defendants
3 further knew that plaintiffs themselves were often the persons who were responsible for
4 administering the pain medications prescribed to their daughter. Plaintiffs, in reliance on
5 assurances and representations made by employees of defendants Vitas/Chemed that palliative
6 care interventions were available that would ensure a peaceful death for their daughter,
7 promised their daughter that all would be done to make sure that she would not die in pain.

8 40. While carrying out the instructions and orders for the care of their daughter which
9 were issued by defendants, and each of them, plaintiffs contemporaneously witnessed their
10 daughter experiencing severe pain and suffering with intense frequency during the 20 days of
11 hospice care. Plaintiffs did not complain to defendants because they were assured by
12 employees of defendants Vitas/Chemed that all that was possible for relief of pain and other
13 distressing symptoms was being done for their daughter. Plaintiffs believed and relied on those
14 representations, which were not true. Despite said reliance, as plaintiffs contemporaneously
15 witnessed their daughter suffering severe pain on repeated days, they themselves suffered
16 severe emotional distress as a result.

17 41. As Michelle Hargett-Beebe entered the active phase of dying, her pain began to
18 escalate in severity and frequency. Her parents, plaintiffs herein, did all they could with the
19 information they had been provided to keep their daughter pain free and free of other
20 distressing symptoms. However, due to the inadequacy of the information they had been
21 provided by defendants and the inadequacy of the pain management medications which had
22 been prescribed, their daughter remained in severe and intolerable pain as she approached her
23 death and remained acutely conscious and aware of that pain, as was clearly perceptible to her
24 parents. As her parents realized that they could not give her the peaceful death they had
25 promised and that defendants would not be providing further interventions to accomplish that
26 goal, plaintiffs suffered profound emotional distress and agony. They continue to suffer
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1 emotional distress to this day as a result of the traumatic memory of their helplessness and
2 inability to bring comfort to their daughter as they had promised her they would. The
3 emotional distress suffered by plaintiffs is permanent.

4 Wherefore plaintiffs pray for judgment against defendants as follows:

5 (1) On the First Cause of Action:

- 6 (a) general damages according to proof;
- 7 (b) attorneys fees and costs;
- 8 (c) punitive damages according to proof;
- 9 (d) such other remedies and relief as the Court may deem just;

10 (2) On the Second Cause of Action:

- 11 (a) general damages according to proof;
- 12 (b) punitive damages according to proof;
- 13 (c) costs of suit herein incurred;
- 14 (d) such other and further relief as the Court may deem just;


15 (3) On the Third Cause of Action:

- 16 (a) general damages according to proof;
- 17 (b) costs of suit herein incurred;
- 18 (c) such other and further relief as the Court may deem just;

19 (4) On the Fourth Cause of Action

- 20 (a) general damages according to proof;
- 21 (b) costs of suit herein incurred;
- 22 (c) such other and further relief as the Court may deem just.

23
24 Dated: Nov. 18, 2010


James Geagan
Attorney for Plaintiffs Carol
Hargett and Joseph Hargett

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):

TELEPHONE AND FAX NOS.:

(707)939-9593

(707)996-2460

JAMES GEAGAN, Esq.
SBN: 68922
846 Broadway
Sonoma, CA 95476

FOR COURT USE ONLY

(ENDORSED)
FILED

2010 NOV 12 AM 2:15

David H. Hansen, Clerk of Superior Court
County of Santa Clara, California

By: _____
Clerk

ATTORNEY FOR (Name): CAROL K. HARGETT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

STREET ADDRESS: 191 North First Street

MAILING ADDRESS: 191 North First Street

CITY AND ZIP CODE: San Jose, CA 95113-1090

BRANCH NAME: Downtown Courthouse

ESTATE OF (Name): MICHELLE RAGAI HARGETT BEEBEE

Ex-Parte

DECEDENT

ORDER FOR PROBATE

- ORDER Executor
- APPOINTING Administrator with Will Annexed
- Administrator Special Administrator
- Order Authorizing Independent Administration of Estate
 - with full authority with limited authority

CASE NUMBER:

1-10-PR167981

WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.

1. Date of hearing: ~~11-12-10~~ Ex-Parte Time: Ex-Parte

Dept./Room: 3

Judge: Thomas Hansen

THE COURT FINDS

- 2. a. All notices required by law have been given.
- b. Decedent died on (date): December 7, 2009
 - (1) a resident of the California county named above.
 - (2) a nonresident of California and left an estate in the county named above.
- c. Decedent died
 - (1) intestate
 - (2) testate
 and decedent's will dated: November 5, 2009 and each codicil dated: _____
 was admitted to probate by Minute Order on (date): _____

THE COURT ORDERS

3. (Name): CAROL HARGETT

is appointed personal representative:

- a. executor of the decedent's will
- b. administrator with will annexed
- c. administrator
- d. special administrator
 - (1) with general powers
 - (2) with special powers as specified in Attachment 3d(2)
 - (3) without notice of hearing
 - (4) letters will expire on (date): appointment of Executor December 27, 2010

and letters shall issue on qualification.

- 4. a. Full Authority is granted to administer the estate under the Independent Administration of Estates Act.
 - b. Limited authority is granted to administer the estate under the Independent Administration of Estates Act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
 - 5. a. Bond is not required.
 - b. Bond is fixed at: \$ _____ to be furnished by an authorized surety company or as otherwise provided by law.
 - c. Deposits of: \$ _____ are ordered to be placed in a blocked account at (specify institution and location): _____ and receipts shall be filed. No withdrawals shall be made without a court order. Additional orders in Attachment 5c.
 - d. The personal representative is not authorized to take possession of money or any other property without a specific court order.
6. (Name): _____ is appointed probate referee.

Date: 11/12/10

JUDGE OF THE SUPERIOR COURT

7. Number of pages attached: one

SIGNATURE FOLLOWS LAST ATTACHMENT

Estate of MICHELLE RAGAI HARGETT BEEBEE
Order for Special Administration
Santa Clara Co. Sup. Ct. No. 1-10-PR167981

ATTACHMENT 3d(2)
POWER OF SPECIAL ADMINISTRATOR

CAROL K. HARGETT, as Special Administrator herein, is granted the following:

1. The power to initiate a lawsuit in Alameda County Superior Court on behalf of Decedent's estate in connection with inadequate services provided by Defendants to said pending action.

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state, bar number, and address):

TELEPHONE AND FAX NOS.:

(707)939-9593

(707)996-2460

JAMES GEAGAN, Esq.
SBN: 68922
846 Broadway
Sonoma, CA 95476

CERTIFIED
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2010 NOV 12 PM 2:16

ATTORNEY FOR (Name): CAROL K. HARGETT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

STREET ADDRESS: 191 North First Street

MAILING ADDRESS: 191 North First Street

CITY AND ZIP CODE: San Jose, CA 95113-1090

BRANCH NAME: Downtown Courthouse

Deputy Clerk
R. Delgado

ESTATE OF (Name):

MICHELLE RAGAI HARGETT BEEBEE

Ex-Parte

DECEDENT

LETTERS

TESTAMENTARY

OF ADMINISTRATION

OF ADMINISTRATION WITH WILL ANNEXED

SPECIAL ADMINISTRATION

CASE NUMBER:

1-10-PR167981

LETTERS

- The last will of the decedent named above having been proved, the court appoints (name):
 - executor.
 - administrator with will annexed.
- The court appoints (name): CAROL K. HARGETT
 - administrator of the decedent's estate.
 - special administrator of decedent's estate
 - with the special powers specified in the Order for Probate.
 - with the powers of a general administrator.
 - letters will expire on (date): December 27, 2010
~~appointment of Executor~~
- The personal representative is authorized to administer the estate under the Independent Administration of Estates Act with full authority with limited authority (no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
- The personal representative is not authorized to take possession of money or any other property without a specific court order.

AFFIRMATION

- PUBLIC ADMINISTRATOR: No affirmation required (Prob. Code, § 7621(c)).
- INDIVIDUAL: I solemnly affirm that I will perform the duties of personal representative according to law.
- INSTITUTIONAL FIDUCIARY (name):

I solemnly affirm that the institution will perform the duties of personal representative according to law. I make this affirmation for myself as an individual and on behalf of the institution as an officer. (Name and title):

- Executed on (date): November 12, 2010
at (place): Los Gatos, California.

(SIGNATURE)

CAROL K. HARGETT

CERTIFICATION

I certify that this document is a correct copy of the original on file in my office and the letters issued the personal representative appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

WITNESS, clerk of the court, with seal of the court affixed.

(SEAL)



Date: NOV 12 2010

Clerk, by DAVID H. YAMASAKI
Chief Executive Officer/Clerk

R. Delgado
(DEPUTY)
R. Delgado

(SEAL)



Date: NOV 12 2010

Clerk, by DAVID H. YAMASAKI
Chief Executive Officer/Clerk

R. Delgado
(DEPUTY)
R. Delgado