

CAUSE NO. 2017-76926

ANA NATAREN, INDIVIDUALLY, AND AS NEXT	§	IN THE DISTRICT COURT
FRIEND OF A.N.V. AND G.P., MINOR CHILDREN	§	
OF FRANCISCO VILLATORO PINEDA, AND AS	§	
PERSONAL REPRESENTATIVE OF THE ESTATE	§	
OF FRANCISCO VILLATORO PINEDA, DECEASED	§	
	§	
PLAINTIFFS,	§	
	§	HARRIS COUNTY, TEXAS
VS.	§	
	§	
WCB APARTMENTS, LLC AND GREAT	§	
PROSPERITY EQUITIES, INC.,	§	
	§	
DEFENDANTS.	§	129 <sup>th</sup> JUDICIAL DISTRICT

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**PLAINTIFFS' SECOND AMENDED PETITION**

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1. A.N.V. and G.P. no longer have a father. Ana Nataren no longer has a husband and father to her two daughters. Francisco Villatoro Pineda is gone because WCB Apartments, LLC and Great Prosperity Equities, Inc. chose profits over basic safety, cut corners on security, and chose to ignore the unreasonable risk of harm to Francisco and others at the Woodcreek on the Bayou Apartments.

2. WCB Apartments, LLC and Great Prosperity Equities, Inc. – the property owner and property management company, respectively, for the Woodcreek on the Bayou Apartments – knew the property was unreasonably dangerous and posed an unreasonable risk of harm to the families and children living there. Plaintiffs Ana

Nataren, A.N.V., and G.P. bring this lawsuit asking for answers and seeking justice for the loss of the beloved husband and father, Francisco Villatoro Pineda.

I. **STATEMENT OF FACTS**

**January 3, 2017, The Worst Day of Their Lives**

3. On January 3, 2017, Ana Nataren lost her husband and the father of her children. Six-year-old A.N.V. and 11-year-old G.P. lost their dad. January 3, 2017, was not just any day for what is left of this family – it was an imprint. A deep loss. A shock. A tidal wave with ripple effects that will last a lifetime, if not generations.

4. On this Tuesday night, and for many nights before, the vehicle access gates of Woodcreek on the Bayou Apartments were broken and stuck open, allowing access to anyone. It was winter and daylight savings time was in effect. It was dark, just before 8:00 PM. There were no security guards patrolling the property. There were no security guards at the vehicle access gates controlling the entrance of unwanted people. There was no one monitoring the surveillance cameras.

5. The Pineda family had just finished eating dinner. The kids were getting ready for bed and preparing for school the next day. Francisco told his wife Ana that he'd be right back – he was just going to take the trash out to the dumpster. He walked out of their Woodcreek on the Bayou apartment for the last time.

6. Francisco crossed the large and dark parking lot with a trash bag in his hand, heading toward the back fence where the dumpsters are located. He saw a white truck

enter the parking lot and drive around. He visually kept his eyes on the truck as it made the circle around the parking lot and looked like it was heading to exit. Opportunity struck for the occupants of that truck. A man with a gun jumped out of the passenger side of the truck and ran towards Francisco who had just thrown his trash into the dark dumpster area. The dumpster area had no lighting devices erected to make the space visible in the dark. The man shot Francisco as his getaway driver eased up off the brake of the truck, getting ready to flee. The man turned back to the truck and ran, jumping into the open passenger side door. They drove out of the apartment community through the same open and broken vehicle access gates they entered through.

#### **History of WCB Apartments, LLC & Great Prosperity Equities, Inc.**

7. Vincent Chau is the majority owner of WCB Apartments, LLC's. WCB Apartments, LLC owns the Woodcreek on the Bayou Apartments, located at 7930 Corporate Drive, Houston, Texas. Mr. Chau is a real estate investor with majority ownership interest in various limited liability companies. It is the routine practice of Mr. Chau to create limited liability companies and corporations as ownership entities for his commercial and residential property investments.

8. Mr. Chau is also the majority owner of Great Prosperity Equities, Inc. Great Prosperity Equities, Inc. is the property management company created, owned, and used by Mr. Chau to manage his commercial and residential properties, including the Woodcreek on the Bayou Apartments.

9. Neither Mr. Chau, nor any of the employees of WCB Apartments, LLC and Great Prosperity Equities, Inc. have any property management certifications or licenses. Neither company maintains any written policies and procedures on the operation and management of the Woodcreek on the Bayou Apartments.

10. On July 12, 2016, WCB Apartments, LLC purchased the Woodcreek on the Bayou Apartments and Great Prosperity Equities, Inc. became the property management company of the apartment complex. WCB Apartments, LLC retained all the employees working for the property's previous owner. WCB Apartments, LLC and Great Prosperity Equities, Inc. had a contractual agreement for the management of the property. The original contract provided for a monthly management fee of \$2,000.00 (two thousand dollars) to be paid by WCB Apartments, LLC to Great Prosperity Equities, Inc. On January 1, 2017, just two days before the shooting death of Francisco, Great Prosperity Equities, Inc. doubled that monthly management fee to \$4,000.00 (four thousand dollars), without any change in the roles, responsibilities, or services provided by Great Prosperity Equities, Inc.

**The Safety Failures of WCB Apartments, LLC and Great Prosperity Equities, Inc.**

11. In areas known to attract crime, like parking lots, WCB Apartments, LLC and Great Prosperity Equities, Inc. have many, inexpensive, and uncomplicated security measures to deter and reduce the risk of crime. Increased lighting, clear visibility, visible video surveillance equipment, functioning and secured ingress and egress vehicle access gates,

and security patrol are known to significantly reduce the likelihood of crime in the common areas of apartment complexes. The costs of doing so are negligible. WCB Apartments, LLC and Great Prosperity Equities, Inc. knew or should have known these measures reduce the occurrence of crimes. WCB Apartments, LLC and Great Prosperity Equities, Inc. did not install, implement, and maintain these easy measures and breached the duty they owed Francisco and his family. WCB Apartments, LLC and Great Prosperity Equities, Inc. chose to turn a blind eye to the obvious lack of adequate and reasonable security measures needed.

12. At the time of purchasing the Woodcreek on the Bayou Apartments, neither WCB Apartments, LLC nor Great Prosperity Equities, Inc. had a lighting survey done to evaluate the quality of lighting throughout the community. There was no security evaluation or vulnerability assessment conducted to evaluate the quality of security throughout the community, nor did anyone research the crime history or crime statistics for crime occurring on the property and in the surrounding area.

13. Since the time of purchasing the Woodcreek on the Bayou Apartments, the surveillance cameras have never been actively monitored by a surveillance company and there are no policies or procedures in place to ensure monitoring by the staff at the Woodcreek on the Bayou Apartments.

14. Prior to the change in ownership, the apartment community had a functioning swimming pool for its tenants to enjoy as an amenity. Shortly after taking over

ownership and management of the Woodcreek on the Bayou Apartments, WCB Apartments, LLC and Great Prosperity Equities, Inc. chose to fill in the pool with concrete and close the pool area.

15. From July 2016 through November 2016, WCB Apartments, LLC and Great Prosperity Equities, Inc. were repeatedly notified *in writing* of **broken and open gate issues a minimum of 37 times** by the late-night security patrol guard.

16. Invoices and work orders reflect that the last time work was performed on the vehicle access gates prior to the incident was in July 2016, five and a half months before Francisco's life was taken – despite the dozens of written logs reporting broken and open gates thereafter.

17. From July 2016 through the date of incident, WCB Apartments, LLC and Great Prosperity Equities, Inc. were notified of **lighting issues a minimum of 22 times** by late-night security personnel and tenants. Building security lights for at least two buildings on the north side of the Woodcreek on the Bayou Apartments complex, where Francisco was robbed and shot, were reported as out just days before the night Francisco's life was taken. Neither WCB Apartments, LLC, nor Great Prosperity Equities, Inc. maintain any records of lighting repairs being done.

18. Security daily activity reports for December 11, 2016, through January 3, 2017 (the date of Francisco's death) conveniently do not exist and have not been provided. Mr. Chau, majority owner and designated corporate representative for WCB Apartments,

LLC and Great Prosperity Equities, Inc. was asked about the missing security reports during his depositions. Under oath, Mr. Chau testified to the following:

**Question:** Within the production, there are missing security logs for the date December 10, 2016, through January 4, 2017, essentially, the month before and through the date of incident related to this case when our clients' father and husband was killed on your property. Do you have any knowledge of any location of where the security missing security logs would be?

**Mr. Chau:** No.

[Sworn deposition of Vincent Chau, Corporate Representative of WCB Apartments, LLC; November 17, 2022; Page 179, line 24 through page 180, line 6.]

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**Question:** So, it would be fair to say that the security logs for the missing dates of December 10, 2016, through January 4, 2017 were in essence, lost or destroyed by WCB Apartments, LLC, in the event that they were not produced in this case, correct?

**Mr. Chau:** We couldn't find it, so we don't know where that is.

**Question:** It would be true sitting here today that the security logs that are missing from December 10, 2016, through January 4, 2017, including the night that our clients' husband and father was killed, are missing and/or had been destroyed, correct?

**Mr. Chau:** Yeah, they was missing.

[Sworn deposition of Vincent Chau, Corporate Representative of WCB Apartments, LLC; November 17, 2022; Page 180, lines 7 through 19.]

19. Shortly after the purchase of Woodcreek on the Bayou Apartments, WCB Apartments, LLC hired a security patrol company to provide one single patrol guard between the hours of 9:00 PM and 3:00 AM every night for the nominal cost of just \$13.50

per hour. The hours of patrol were selected by the Woodcreek on the Bayou Apartment manager with ultimate decision-making power lying with Mr. Chau. However, none of the employees of WCB Apartments, LLC or Great Prosperity Equities, Inc., including Mr. Chau, have any training or experience in security. Even as crime continued to occur at the property, the number of patrol guards remained at one guard for the entire community and the hours of patrol time stayed the same.

**WCB Apartments, LLC and Great Prosperity Equities, Inc. Chose to Do Nothing in Response to Ongoing Dangerous Crime on the Property**

20. Woodcreek on the Bayou and the immediate vicinity had a history of crimes like aggravated robbery and assault, with the use of firearms, which put Francisco at a high risk of being seriously injured or killed during a robbery/physical assault. Calls for Service and Incident Reports from Houston Police Department paint a dangerous history of repeated crime at Woodcreek on the Bayou Apartments and the immediate vicinity.

21. Even scarier – WCB Apartments, LLC’s and Great Prosperity Equities, Inc.’s own security daily activity reports reveal repeated run-ins with criminals armed with firearms, including assault rifles, on the property – all of which were ignored.

22. The unwritten practice of the patrol guard was to document the night’s activities on a “Security Daily Activity Report” and turn that report into the front office of Woodcreek on the Bayou Apartments on a daily basis. The property manager was responsible for reviewing the reports daily and then turning them into her direct supervisor, Mr. Chau.



23. The following is an overview of some of the incidents reported in the Security Daily Activity Reports and Houston Police Department Calls for Service reports:

- a. **Security Daily Activity Report of July 15, 2016:** The patrol guard advises that it is important to change all the lighting and replace with new lighting, noting it is necessary because the area is dangerous and there are weaknesses in security.
- b. **Security Daily Activity Report of July 18, 2016:** The patrol guard reports that he observed a male prowling the parking lot in a vehicle and he could not determine if the person lived in the apartment complex. He also reports that the gates are broken and open. The patrol guard makes a specific note reminding the management of the importance of the lighting, the area being well-lit for proper surveillance everywhere and that the neighborhood is extremely dark and dangerous. He advises in his report that criminals, including muggers and murderers, can hide behind the bushes without being seen. He asks the management to send letters to the tenants to notify them to stay inside for their own safety. Despite this report, WCB Apartments, LLC and Great Prosperity Equities, Inc. chose not to notify tenants of any ongoing criminal activity.
- c. **Security Daily Activity Report of July 21, 2016:** At 9:00pm, the patrol guard reports that he encountered a man who reported he was threatened with a gun when he found someone in the parking lot breaking into cars.
- d. **Security Daily Activity Report of July 24, 2016:** The patrol guard reports that at 11:00pm he was threatened with a gun by six males. Later, at 2:00am, the patrol guard reports that while in the parking lot, he was threatened with an assault rifle by gang members. The patrol guard also reports that the gates are still broken and there is no control of the cars entering the property.
- e. **Houston Police Department Call for Service of July 27, 2016:** At 3:06pm, a tenant calls to report that her car was broken into, window was broken, and items were stolen.
- f. **Security Daily Activity Report of August 7, 2016:** At 11:00pm, patrol guard notes an encounter with an intoxicated male that led to him calling for police intervention.

- g. **Houston Police Department Call for Service of August 16, 2016:** At 5:08pm, a tenant calls the police report he was robbed at gun point. The criminals stole his wallet, keys, cell phone, and car. The police responded and subsequently recovered the vehicle and arrested the two suspects. The **Security Daily Activity Report** for that day notes report of the aggravated robbery the occurred that afternoon. The patrol guard contacts the police and notes the police report incident number on the activity report.
- h. **Security Daily Activity Report of August 26, 2016:** At 9:00pm, patrol guard notes finding a man on a bike attempting to break into cars in the parking lot. The man flees the parking lot when approached.
- i. **Security Daily Activity Report of August 27, 2016:** At 9:00pm, patrol guard notes finding a man on a bike attempting to break into cars in the parking lot. The man flees the parking lot when approached.
- j. **Houston Police Department Call for Service of September 10, 2016:** At 12:17am, a tenant calls the police to report that someone threw a brick through his living room window and pointed a gun at him. The **Security Daily Activity Report** also notes the incident.
- k. **Houston Police Department Call for Service of September 14, 2016:** A tenant calls police to report that she was physically assaulted.
- l. **Houston Police Department Call for Service of September 23, 2016:** A tenant calls police to report that his apartment door had been broken and burglarized.
- m. **Houston Police Department Call for Service of October 4, 2016:** A tenant calls to report that their vehicle was stolen from the parking lot overnight.
- n. **Security Daily Activity Report of October 24, 2016:** At 12:00am, patrol guard notes he had to remove gang members from a neighboring apartment complex that were loitering in the parking lot of Woodcreek on the Bayou Apartments.
- o. **Security Daily Activity Report of November 18, 2016:** At 11:15pm, patrol guard sees a male suspect opening car doors and calls the police to report

the criminal activity. Houston Police Department respond and arrest the suspect.

- p. **Houston Police Department Call for Service of November 25, 2016:** A tenant calls to report their vehicle had been stolen.
  
  - q. **December 1<sup>st</sup>-5<sup>th</sup>, 2016, Woodcreek on the Bayou rent drop box is broken into and tenant rent checks and money orders are stolen.** Following the break-in and theft of the rent payments, WCB Apartments, LLC and Great Prosperity Equities, Inc. decide to install a surveillance camera in the front area of the apartment community office. This surveillance camera was the only new camera installed by WCB Apartments, LLC and Great Prosperity Equities, Inc. since taking over the ownership and management of the property.
24. Woodcreek on the Bayou Apartments made it attractive and easy for criminals to get in and get out without being stopped. There was never an intention to commit murder, just an intention to “hit a lick” and get out with some money. “Hit a lick” is a slang expression used to describe the act of acquiring money by way of illegal activity – such as a quick robbery. Francisco was a complete stranger to these men. He was shot during a robbery in the parking lot.
25. The robbery and shooting death of Francisco was reasonably foreseeable. The unreasonable risk posed by the poorly lit, un-surveilled, unsecured parking lot was reasonably foreseeable to WCB Apartments, LLC and Great Prosperity Equities, Inc. based on the proximity, recency, frequency, similarity, and publicity of other crimes on the property and its immediate vicinity.
26. January 3, 2017, was the worst day of Francisco, Ana, Genesis, and Ashley’s lives – and a terrible day for our community. It was the day when known, yet ignored, failures

of WCB Apartments, LLC and Great Prosperity Equities, Inc. took the life of a loving husband and father. A hardworking man that was just taking the trash out after dinner with his family on a Tuesday night.

## II. PARTIES

27. Plaintiff Ana Nataren, Plaintiff A.N.V., a minor child, and Plaintiff G.P., a minor child, reside in Harris County, Texas.

28. Plaintiff Ana Nataren, Plaintiff A.N.V., a minor child, and Plaintiff G.P., a minor child, bring this lawsuit as a survival and wrongful death action. Plaintiffs are the statutory wrongful death beneficiaries of Decedent.

29. At the time of his death, Francisco Villatoro Pineda, Decedent, was a resident of Harris County, Texas.

30. Defendant WCB Apartments, LLC is a Texas limited liability company with its principal place of business in Harris County, Texas. Defendant WCB Apartments, LLC has been served with process and has made an appearance in this case by and through counsel of record.

31. Defendant Great Prosperity Equities, Inc. is a Texas corporation with its principal place of business in Harris County, Texas. Defendant Great Prosperity Equities, Inc. has been served with process and has made an appearance in this case by and through counsel of record.

## III. DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

32. Plaintiffs intend to conduct discovery under Level 3 of the Texas Rule of Civil Procedure 190.4.

33. As required by Texas rules of Civil Procedure 47(c), Plaintiffs' counsel states that Plaintiffs seek monetary relief more than \$1,000,000.00; however, the amount of monetary relief awarded will ultimately be determined by a jury.

#### **IV. JURISDICTION & VENUE**

34. This Court has jurisdiction over the subject matter of Plaintiffs' claims because the amount in controversy is within its jurisdictional limits.

35. Venue is proper in this Court because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Harris County, Texas. TEX. CIV. PRAC. & REM. §15.002(a). Moreover, Defendant's principal place of business is in Harris County, Texas. TEX. CIV. PRAC. & REM. §15.002(c).

#### **V. CAUSES OF ACTION AGAINST DEFENDANTS**

##### **Count One – Negligence**

36. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

37. Defendants had a duty to exercise ordinary care to protect against an unreasonable for foreseeable risk of harm from the criminal acts of third parties, as Defendants retained control over the security and safety of the Property. *See Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 756 (Tex. 1998).

38. Defendants breached their duty by:
- a. Failing to equip its apartment complex with adequate deterrent measures and equipment at the time of the incident;
  - b. Failing to provide adequate security at the Property;
  - c. Failing to maintain the premises by failing to ensure the Property's security entrance gates were properly working and effective;
  - d. Failing to maintain the premises by failing to ensure the Property was properly illuminated;
  - e. Failing to exercise reasonable care in the placement of the community dumpster such that it was not located in an unlit area, far from the presence of any deterring equipment or persons;
  - f. Failing to warn Plaintiffs of the presence of dangerous persons on the Property;
  - g. Failing to devise and implement an adequate safety and security plan and measures;

39. At the time of Francisco's murder, there was a non-operational security access gate. There was inadequate and/or no lighting. The parking lots and apartment complex in general was scarce of lighting and/or security measures. Defendants did not have a security officer on duty or patrolling the premises. During the months preceding the

murder of Francisco, there had been numerous violent crimes at the premises and the surrounding area/neighborhoods.

40. Defendants had (i) inadequate security and/or negligent security, (ii) inadequate lighting, (iii) inadequate security mechanisms and/or products, and (iv) inadequate lighting in the parking lots and public areas of the Property. Defendants were aware of the pattern of crime in and around the Property, yet Defendants failed to use reasonable measures designed to deter and/or prevent crime.

41. Defendants' negligence by way of each of these acts and/or omissions, whether taken singularly or in any combination, was a proximate cause of Plaintiffs' injuries and damages.

### **Count Two – Premises Liability**

42. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

43. Defendants, as owners and possessors, managers and operators of the Property, had a duty to exercise ordinary care to all invitees to keep the premises in a reasonably safe condition.

44. Plaintiffs and Francisco were residents of the Property and therefore invitees of Defendants.

45. Defendants' duties included protecting invitees from unreasonable risk of harm, warning invitees of the risks so they may avoid them, and avoiding injury to invitees caused willfully, wantonly, or through gross negligence.

46. Based on the extensive history of violence and other criminal activity on the premises, particularly at night, Defendants knew or should have known there was an unreasonable risk of harm to all invitees during the night hours. Defendants knew or should have known that they lacked adequate security, and that by such act or omission posed an extreme danger and risk of harm to its invitees.

47. Defendants failed to maintain the Property's security access gate and allowed said gate to remain unfixed and open for an unreasonable amount of time. Defendants knew or should have known there was an unreasonable risk of harm to all invitees.

48. Defendants breached their duty of ordinary care by:

- a. Failing to adequately warn of the threat of violence and criminal activity;
- b. Failing to take reasonable security precautions to make the premises safe from the risk of violence and criminal activity by hiring security personnel;
- c. Failing to maintain the security access gate;
- d. Failing to provide adequately illumination of the property;
- e. Failing to use reasonable care in placing community dumpsters in unlit locations at unsafe distances from buildings and people;



- f. Failing to warn Plaintiffs and Decedent of the presence of dangerous persons on the Property; and
- g. Creating an environment which attracts criminals who seek to prey upon residents.

49. Defendants owed a duty to invitees to use ordinary care to protect those who may be harmed by criminal acts of third parties as Defendants knew or had reason to know of an unreasonable and foreseeable risk of harm. *See Trammel Crow Cent. Tex., Ltd. v. Gutierrez*, 267 S.W.3d 9, 12 (Tex. 2008).

50. The criminal activity that took place on January 3, 2017, was foreseeable based on factors including: previous crime, proximity of the crimes, recentness of the crimes, frequency of the crimes, similarity of the crimes, and publicity of the crimes. *Id* at 15. As an invitee, Francisco was a foreseeable victim. Defendants had significant knowledge of how dangerous the Property was, including the history of violent crimes and other criminal activity, yet did nothing to provide warning or protection of the Property to protect its invitees, including Francisco.

51. As a direct result of the acts and/or omissions of Defendants, Plaintiffs have sustained damages. As a direct result of Defendants' failure to exercise ordinary care in keeping their premises in a reasonably safe condition, Francisco was murdered in cold blood in the course of a violent robbery. The conduct of Defendants therefore constitutes

premises liability, which is the proximate cause of actual damages to Plaintiffs in an amount within the jurisdictional limits of this Court, for which Plaintiff seeks judgment.

### **Count Three – Gross Negligence**

52. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

53. Defendants' acts and/or omissions amount to gross negligence because when viewed objectively from Defendants' standpoint at the time in question, such acts and/or omissions involved an extreme degree of risk, considering the probability and magnitude of potential harm, of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference and/or malice with regard to the rights, safety, or welfare of Francisco and Plaintiffs.

54. Plaintiffs seek exemplary damages, in addition to economic and noneconomic damages, in an amount within the jurisdictional limits of this Court.

55. By reason of such conduct, Plaintiffs are entitled to and therefore assert a claim for punitive or exemplary damages in an amount sufficient to punish and deter Defendants and others of like manner for such conduct in the future.

56. Defendants' gross negligence by way of each of these acts and/or omissions, whether taken singularly or in any combination, was the proximate cause of Plaintiffs' injuries and damages.

## **VI. WRONGFUL DEATH & SURVIVAL STATUTES**

57. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

58. Plaintiffs sue in every capacity and for every element of damages to which they are entitled by reason of the matters made the basis of this suit, including damages under the Wrongful Death Act (Tex. Civ. Prac. & Rem. Code Ann. 71.002, et seq.) and the Survival Statutes (Tex. Civ. Prac. & Rem. Code Ann. 71.021) of the State of Texas.

59. This suit is brought under the applicable statutes of the State of Texas by the designated beneficiaries under the statute for the death of Francisco Villatoro Pineda.

60. Plaintiffs are the wife and children of Francisco Villatoro Pineda. Francisco Villatoro Pineda's causes of action survived to and in favor of his estate and heirs.

61. The estate of Francisco Villatoro Pineda is entitled to recover damages for:

- a. Francisco Villatoro Pineda's conscious physical pain and suffering suffered prior to his death;
- b. His conscious mental anguish suffered prior to his death;
- c. Reasonable and necessary medical expenses incurred from moment of injury to his death;
- d. Funeral and burial expenses for Francisco Villatoro Pineda.

62. In addition, the estate of Francisco Villatoro Pineda is entitled to exemplary damages based on Defendants' actions and inactions.

## **VII. CONDITIONS PRECEDENT**

63. Plaintiffs will show that all conditions precedent to their right to recover have been performed or have occurred.

**VIII. MISNOMER/ALTER EGO**

64. In the event that any parties are misnamed or not included herein, it is Plaintiffs' contention that such was a "misidentification," "misnomer," and/or such parties are/were "alter egos" of parties named herein. Alternatively, Plaintiffs contend that such "corporate veils" should be pierced to hold such parties properly included in the interest of justice.

65. Pursuant to Rule 28 of the Texas Rules of Civil Procedure, Plaintiffs demand that upon answers to this petition, Defendants answer in their correct legal name.

**IX. RESPONDEAT SUPERIOR, VICARIOUS LIABILITY, AGENCY, AND/OR OSTENSIBLE AGENCY**

66. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

67. Whenever in this Petition it is alleged that Defendants did any act or thing, it is meant that each of Defendants' officers, agents, servants, employees, or representatives did such act and/or that at the time such act was done, it was done with the full authorization or ratification of the Defendants, or was done in the normal and routine course and scope of employment of each of Defendants' officers, agents, servants, employees, or representatives.

68. At all times material to this action, Defendants' employees were acting in the course and scope of their employment, agency, or contract with Defendants during the incident in question and/or during the acts or omissions that led up to the incident in question. Accordingly, Defendants may be held responsible for its' employees' negligence under the doctrine of respondeat superior.

69. Defendants are legally responsible to Plaintiffs for the negligent conduct of their respective employees, agents, servants, and representatives under the legal doctrines of respondeat superior, agency and/or ostensible agency because Defendants' employees were acting within the course and scope of their respective agency, servitude and employment. As a result, Defendants are vicariously liable for all negligence of its employees, agents, servants, and representatives.

**X. DAMAGES**

70. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

71. Plaintiffs pray that upon final determination of these causes of action, they receive judgment against Defendants, including but not limited to the awarding of the following:

- a) Wrongful Death Damages: for each Plaintiff's actual damages and respective claims, including but not limited to, pecuniary loss, both past and future; loss of companionship and society, both past and future; physical, mental and

- emotional pain, torment, anguish and suffering, both past and future; loss of enjoyment of life, loss of consortium, loss of household services, loss of support and services, physical and mental impairment, mental and physical disability, depression, lost wages, wage impairment, and lost earning capacity; all in an amount in excess of the minimum jurisdictional limits of this Court;
- b) Survival Damages: for all damages Decedent incurred from moment of injury to death, for Decedent's conscious physical pain and suffering suffered prior to his death, Decedent's conscious mental anguish suffered before he died, reasonable and necessary medical expenses incurred by Decedent, funeral and burial expenses, and exemplary damages.
  - c) Exemplary Damages: for Defendants' conduct as herein alleged, including but not limited to, gross negligence, Defendants' reckless disregard for the safety and welfare of the Decedent and remaining Plaintiffs, in an amount in excess of the minimum jurisdictional limits of this Court;
  - d) Reasonable and necessary medical expenses in the past, for treatment which was necessary and for which the amount was reasonable for the types of services Plaintiffs have sought;
  - e) Reasonable and necessary medical care expenses that, in reasonable probability, Plaintiffs will sustain in the future;
  - f) Physical pain and suffering, past and future;

- g) Mental anguish, past and future; and
  - h) Damages for loss of consortium, grief, bereavement, loss of inheritance, loss of future financial contributions, loss of services, loss of advice, care and counsel, loss of society and companionship;
  - i) Damages for funeral and burial expenses;
  - j) Lost wages and lost earning capacity, past and future;
  - k) Pre and post judgment interest and court costs.
72. All of the damages described above will reasonably persist well into the future.
73. Plaintiffs state for notice purposes that by this pleading they are claiming any and all damages to which they are entitled under Texas law.

#### **XI. EXEMPLARY DAMAGES**

74. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
75. Plaintiffs would further show that the acts and/or omission of Defendants complained of herein were committed knowingly, willfully, intentionally, with actual awareness, and with the specific and predetermined intention of enriching said Defendants at the expense of Plaintiffs.
76. The grossly negligent conduct of Defendants, as described herein, constitutes conduct for which the law allows the imposition of exemplary damages. Accordingly,

Plaintiffs seek the award of exemplary damages against Defendants pursuant to Chapter 41 of the Texas Civil Practices and Remedies Code.

**XII. PRESERVING EVIDENCE**

77. Plaintiffs hereby request and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting there from, including statements, photographs, videotapes, audiotapes, surveillance or security tapes or information, business or medical records, incident reports, tenant files, periodic reports, financial statements, bills, telephone call slips or records, estimates, invoices, checks, measurements, correspondence, facsimiles, email, voicemail, text messages, any evidence involving the incident in question, and any electronic images or information related to the referenced incident or damages. Failure to maintain such items will constitute "spoliation" of the evidence.

**XIII. U.S. LIFE TABLES**

78. Notice is hereby given that Plaintiffs intend to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

**XIV. RULE 193.7 NOTICE**

79. Plaintiffs give notice to Defendants that they intend to use all discovery responses as evidence at trial in accordance with such right and privileges established by Texas Rules of Civil Procedure 193.7.



**XV. REQUEST FOR JURY TRIAL**

80. Plaintiffs respectfully request that the trial of this cause is by jury and have paid the requisite fee with the filing of their Original Petition.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, for these reasons, Plaintiffs pray that Defendants be cited to appear and answer and that on final trial Plaintiffs have and recover:

- a) Actual damages a sum in excess of the minimum jurisdictional limits of the Court;
- b) Pre-judgment interest;
- c) Post-judgment interest;
- d) Costs of court, including discretionary costs; and
- e) All such other relief, at law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

By: /s/Russell T. Button  
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### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was provided to all parties and/or their counsel of record below by electronic service, e-mail, mail, and/or facsimile in accordance with the Texas Rules of Civil Procedure on this 2nd day of June, 2023.

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Russell Button on behalf of Russell Button

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