

CAUSE NO. _____

FREDERICK LANE AND MARTHA LEBBY, INDIVIDUALLY AND AS NEXT FRIEND OF S.L. and H.L., Minor Child,	§	IN THE DISTRICT COURT OF
<i>Plaintiffs,</i>	§	
V.	§	
GLOBIX PALMS, LLC D/B/A THE PALMS AT CYPRESS STATION and DORNELL JENKINS,	§	HARRIS COUNTY, TEXAS
<i>Defendants.</i>	§	
	§	JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs, Frederick Lane and Martha Lebby, both Individually and as Next Friends of minor children S.L. and H.L. (hereinafter “Plaintiffs”), file this Petition complaining of Defendant Globix Palms, LLC D/B/A The Palms at Cypress Station (hereinafter “Globix”) and Defendant Dornell Jenkins (collectively referred to as “Defendants”), and in support thereof, would respectfully show the Court as follows:

I.
DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiffs file this petition under a Level 3 Discovery Control Plan.

II.
PARTIES

2. Plaintiffs Frederick Lane and Martha Lebby, both Individually and as Next Friend of S.L. and H.L., currently reside in Harris County, Texas.

3. Defendant, Globix Palms, LLC D/B/A The Palms at Cypress Station (“Globix”), is a Texas Limited Liability Company with its principal place of business in Harris County, Texas.

Globix may be served with process through its registered agent, Zulfiqar N. Prasla, 800 Bonaventure Way, Suite 154, Sugar Land, Texas 77479.

4. Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Globix Palms, LLC D/B/A The Palms at Cypress Station” with regard to the events described in this Petition. Plaintiffs expressly invoke the right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion of any party or of the Court.

5. Defendant, Dornell Jenkins (“Defendant Jenkins”), is an individual residing in Harris, County and is currently incarcerated. He last known address is 990 Cypress Station Drive, #2808, Houston, Texas 77090.

III.
JURISDICTION

6. This Court has jurisdiction of the subject matter of this lawsuit and the amount in controversy is above the minimum jurisdictional limits of this Court. Plaintiffs are seeking monetary relief over \$1,000,000.

IV.
VENUE

7. Venue is proper in Harris County, Texas pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because it is the county in which all or a substantial part of the events or omissions giving rise to this claim occurred. The incident in question occurred at The Palms at Cypress Station apartment complex located at 990 Cypress Station Dr, Houston, Texas in Harris County, Texas. Therefore, venue is proper.

**V.
FACTS**

8. Plaintiffs Martha Lebby and Frederick Lane are a married couple and the biological parents of, Minor Plaintiffs, S.L. and H.L.

9. Plaintiffs collectively resided in apartment number 804 of The Palms at Cypress Station apartment complex located at 990 Cypress Station Dr., Houston, Texas 77090 in Harris County, Texas (“Apartment Complex”).

10. Defendant Globix owned, operated and maintained the Apartment Complex at issue.

11. On April 26, 2021, Minor Plaintiff H.L. was sitting in her car seat inside her parents’ car at the apartment complex in question. Her older sister, five-year-old Minor Plaintiff S.L. was also in the car, along with her mother, Plaintiff Martha Lebby.

12. Suddenly gunshots rang out from a nearby altercation occurring in the Apartment Complex parking lot. As a result, three-year-old Minor Plaintiff H.L. was hit in the head by a bullet.

13. The bullet that hit Minor Plaintiff H.L. was fired by Defendant Jenkins.

14. This was not an isolated incident at the Apartment Complex at issue. In fact, the Apartment Complex has long history of violence and crime of this nature. In the three years prior to the incident there were close to 2,500 911 calls made to the police regarding incidents at the Apartment Complex.

15. A lack of basic security, including but not limited to gates that do not lock or close and a failure to conduct resident background checks has led to over 130 incidents in the past three years alone, including 41 assaults, 33 violent crimes with a deathly weapon, and 85 police calls for gunfire.

16. Defendant Globix advertised the Apartment Complex as including "security" features such as "controlled access" and "gated" as a "perfect new home" and "the best choice for your lifestyle", all of which it clearly was not.

VI.
CAUSES OF ACTION AGAINST DEFENDANT GLOBIX

A. PREMISES LIABILITY—NEGLIGENCE AND GROSS NEGLIGENCE

17. On the date in question, Plaintiffs were invitees of Globix as paying tenants of the apartment community.

18. Globix owed Plaintiffs the duty to protect and warn of criminal acts of third parties. Globix knew of these risks in their apartment community, reflected in the number of crimes—including burglaries, assaults and gun violence—occurring in the immediate vicinity of the apartment community in the three years preceding the assault of Minor Plaintiff here.

19. Globix breached its duty owed to Plaintiffs by failing to use ordinary care to take reasonable and adequate precautions, provide reasonable safety or to provide an adequate warning to Plaintiffs of an unreasonable risk of harm that Globix as an ordinary apartment owner in the area knew or should have known about. Globix failed to exercise that degree of care that a reasonable and prudent apartment owner would have under the same or similar circumstances, and certainly did not meet the standard for an apartment owner touting the complex as a "perfect new home" and "the best choice for your lifestyle" in its solicitation of tenants.

20. Specifically, Plaintiffs will show that Globix failed to exercise the degree of care of reasonable and prudent apartment owner as to its invitee tenants in the following respects, which proximately caused Minor Plaintiff's injuries and Plaintiffs' damages:

- a. Failure to screen or conduct background checks of known felons on the premises who posed an unreasonable risk of harm;

- b. Despite advertising security features such as “Gated” and “Controlled Access” Globix failed to maintain gates and entrances to the Apartment Complex, allowing anyone entry;
- c. Failure to warn or give proper notice to Plaintiffs or other residents of the risk of criminal acts of third parties;
- d. Failure to enact adequate security or safety policies or procedures, to protect Plaintiffs and other residents, from a known potential risk of harm;
- e. Failure to provide any security or safety precautions, or alternatively adequate security or safety precautions, to reasonably protect or warn Plaintiffs or other tenants, from a known unreasonable risk of harm and/or inherently dangerous conditions;
- f. Failure to adequately hire security or safety personnel, despite knowledge of the foreseeable risk of harm from criminal third parties; and
- g. Failure to secure or make reasonably access points to the complex, or to warn residents of entry of non-residents.

21. Globix’s failure to take reasonable steps to protect against criminal acts of third parties, even allowing felons who posed a risk of harm onto their premises, proximately caused Plaintiffs significant damages, including past and future severe emotional distress, pain and suffering, medical and therapeutic expenses and economic damages.

22. Further, the assault was not some sole or new independent cause of Plaintiffs’ damages, as this harm was reasonably foreseeable, and it was a fundamental obligation of Globix as the premises owner and landlord to take reasonable steps to prevent this horrendous act, which could have been avoided here, and which was a non-delegable duty.

23. Globix was also grossly negligent in its acts and omissions, which viewed objectively from the standpoint of Defendant Globix at the time of the occurrence, involved an extreme risk of harm, considering the probability of the risk and the magnitude of the harm risks. Further, Globix had an

actual subjective awareness of this risk of harm, and nevertheless proceeded to act with conscious indifference to the rights, safety and welfare of Plaintiffs.

24. Accordingly, in addition to the actual past and future damages of pain and suffering, medical and therapeutic expenses, emotional distress and economic damages proximately caused by Globix here, Defendant should also be subject to liability for punitive damages to the maximum extent permitted by the law.

B. DECEPTIVE TRADE PRACTICES ACT

25. Plaintiffs were "consumers" under Section 17.45(d) of the Texas Deceptive Trade Practices Act. Defendant is liable for the following violations of the Texas Deceptive Trade Practices Act:

- a. under Section 17.46(b)(5) representing that services have sponsorship, characteristics or benefits that they do not have;
- b. under Section 17.46(b)(7) representing that services are of a particular standard or quality that they are not, including but not limited to advertising the complex as a "perfect new home" and "the best choice for your lifestyle";
- c. under Section 17.46(b)(24) failing to disclose information regarding the services provided that was known at the time and that such failure to disclose was intended to induce the consumer into the transaction without which it would not otherwise have entered into;
- d. under Section 17.50(a)(2) breach of an express or implied warranty including but not limited to advertisements offering "security" features such as "controlled access" and "gated" which were not provided; and
- e. under Section 17.50(a)(3) engaging in an unconscionable court or action or conduct.

26. Defendant Globix's conduct, which was done knowingly, was a producing cause of Plaintiffs' damages, including past and future pain and suffering, medical and therapeutic expenses, emotional distress and economic damages, for which Defendant GLOBIX is liable.

27. Because Defendant Globix's conduct was committed knowingly, Globix is liable for additional damages under Tex. Bus. & Com. Code 17.50(b)(I).

28. Attorney's fees. Defendant Globix is liable for reasonable and necessary attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code 38.001 and Tex. Bus. & Com. Code 17.50(d).

VII.

CAUSE OF ACTION AGAINST DEFENDANT DORNELL JENKINS

A. AGGRAVATED ASSAULT

29. Plaintiffs Frederick Lane and Martha Lebby, both Individually and as Next Friend of minor child H.L. bring a claim for assault against Defendant Jenkins. Defendant is liable as a result of his conduct when he recklessly caused bodily injury to Minor Plaintiff H.L. with the use of a weapon, when a stray bullet that he fired hit her in the head. Defendant Jenkins acted recklessly when he was aware of and consciously disregarded the substantial and unjustifiable risk that harm will result from his conduct. Further, Defendant Jenkins' actions resulted in serious injury to Minor Plaintiff H.L.

VIII.

BYSTANDER CLAIM

30. As bystanders to the incident, Plaintiff Martha Lebby, Individually and as Next Friend of minor child S.L. bring claims against Defendants for Bystander Injury. Both Plaintiffs witnessed the injury of Minor Plaintiff H.L. when (i) Defendants negligence resulted in the infliction of serious injury on Minor Plaintiff H.L.; (ii) Plaintiffs Martha Lebby and Minor Plaintiff S.L. were located near the scene of the incident, in the same car with Minor Plaintiff H.L. at the time of the injury; (iii) Plaintiff Martha Lebby and Minor Plaintiff S.L. suffered shock as a result of the direct emotional impact from a sensory and contemporaneous observance of the accident; and (iv) the bystanders and Minor Plaintiff H.L. were related, as Plaintiff Martha Lebby is the biological mother of Minor Plaintiff H.L. and Minor Plaintiff S.L. is the older sister of Minor Plaintiff H.L.

VIII.
DAMAGES

31. As a result of this incident, Plaintiffs sustained serious injuries and seek compensation for the following damages:

- a. Actual damages;
- b. Past and future mental anguish;
- c. Past and future physical pain and suffering;
- d. Past and future bodily impairment and disability;
- e. Past and future disfigurement;
- f. Past and future medical expenses;
- g. Past and future lost wages or loss of earning capacity;
- h. Prejudgement and postjudgement interest;
- i. Costs of court; and
- j. All other relief to which Plaintiffs are justly entitled.

X.
PRESERVATION OF EVIDENCE

32. Plaintiffs hereby requests and demands that Defendant Globix 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 therefrom, including photographs; videotapes; audiotapes; recordings; business or medical records; bills; estimates; invoices; checks; correspondence; memoranda; files; facsimiles; email; voice mail; text messages; investigation; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiffs, the referenced incident,

or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

XI.
NOTICE OF INTENT TO USE DOCUMENTS

33. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs give notice that they may use documents produced by all parties in response to written discovery at any pretrial proceeding in this case as well as at trial.

XII.
PRAYER

Plaintiffs Frederick Lane and Martha Lebby, Individually and as Next Friend of minor child S.L. and H.L., respectfully prays that citation and notice issue as required by law and that the Court award Plaintiffs' damages against Defendant Globix Palms, LLC D/B/A The Palms at Cypress Station, including actual damages, past and future economic damages, past and future medical and therapeutic expenses, past and future mental anguish and pain and suffering, punitive damages, additional damages under the DTPA, pre-judgment and post-judgment interest, attorneys' fees, and court costs. Plaintiffs also pray for such other and further relief to which they may be entitled at law or in equity.

[Signatures on next page]

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,
AGOSTO, AZIZ & STOGNER**

/s/ Muhammad S. Aziz

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