

Cause No. \_\_\_\_\_

Vonda Shields § \_\_\_\_\_ District Court  
v. §  
CXRE Properties, §  
Naina Chimney Rock, LLC § Harris County, Texas

PLAINTIFF’S ORIGINAL PETITION & REQUEST FOR DISCLOSURES

Plaintiff, Vonda Shields, files this original petition and disclosures demand against defendants, CXRE Properties & Naina Chimney Rock, LLC, and alleges as follows:

**DISCOVERY-CONTROL PLAN**

1. Plaintiff intends to conduct discovery per Texas Rule of Civil Procedure 190.2 and affirmatively pleads that this suit is governed by the expedited action process [i.e., Level 1] in Texas Rule of Civil Procedure 169.

**CLAIM FOR RELIEF**

2. Plaintiff seeks only monetary relief of \$250,000 or less, excluding interest, statutory or additional damages [e.g., treble damages], penalties, attorney fees and costs. Tex. R. Civ. Pro. 47(c).

**PARTIES**

3. Plaintiff is an individual residing in Harris County, Texas and may be contacted through her undersigned attorney. The last three digits of Plaintiff’s Social Security & driver’s license numbers are 661 & 872, respectively.

**\*4.1 [Service 1] Defendant, CXRE Properties, is located in Harris County, Texas, and may be served by the Harris County District Clerk by certified mail at the following address: CXRE Properties, 6671 Southwest Freeway, #300, Houston, Texas 77074.**

**\*4.2 [Service 2] Defendant, Naina Chimney Rock LLC, is located in Fort Bend County, Texas, and may be served by the Harris County District Clerk by certified mail at the following address: Naina Chimney Rock LLC, 4800 Sugar Grove Boulevard, Ste. 317, Stafford, Texas 77477.**

**JURISDICTION**

5. The District Courts of Harris County, Texas have jurisdiction over this case. The amount in controversy exceeds the minimal jurisdictional limits of this Court, and the exercise of this Court’s jurisdiction over the defendants is proper.

**VENUE**

6. Venue for this suit for negligence, premises liability & violations of the Texas Deceptive Trade Practices Consumer Protection Act (DTPA) is proper in Harris County, Texas under Texas Business & Commerce Code section 17.56(1) & Texas Civil Practice & Remedies Code sections 15.002(a)(1)], inasmuch as a substantial part of the acts and omissions giving rise to the claim occurred in Harris County, Texas.

#### STATEMENT OF FACTS

7. On 12.29.2022 at approximately 6:10 p.m., Plaintiff exited the parking garage on Defendants' property at 3033 Chimney Rock Road, Houston, Texas 77056. The automatic exit gate was open when Plaintiff began to pass through it, but as soon as she did, the gate suddenly began to rapidly close for no apparent reason. Plaintiff could not reverse her vehicle to evade the closing gate, as there was a vehicle directly behind her preventing her from doing so; and if Plaintiff had attempted to continue forward through the gate, the gate would have collided with her vehicle anyways. When the gate collided with Plaintiff's vehicle, it caused considerable damage to the vehicle.

Plaintiff contacted Defendants about the incident on 12.30.2022 via email [tenants@cxre.co], but no one responded until 01.03.2023. Defendants asked Plaintiff to provide a police report. Plaintiff did so and sent it to the aforementioned email address per Defendants' request. Plaintiff received no response until 01.17.2023 when Defendants visited Plaintiff's workplace to discuss the matter. No resolution was reached at that time. On 01.24.2023, Defendants emailed Plaintiff requesting that she email Defendants a copy of the repair estimate. Plaintiff complied with this request. Defendants followed up with a communication to Plaintiff stating, in no uncertain terms, that they were not accepting liability for their defective parking gate and would not be compensating Plaintiff for her damages.

#### STATEMENT OF LAW – VIOLATIONS OF THE DTPA

8. Plaintiff is a consumer under the DTPA, as Plaintiff is an individual who sought or acquired goods or services by purchase or lease. Tex. Bus. & Com. Code §17.45(4); *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 649 (Tex.1996). The DTPA does not require the transfer of consideration or privity of contract for Plaintiff to have consumer status. Goods may be "acquired" by someone who actually is not the owner of the good and/or has never taken possession of it. The test is whether the objective of the transaction [the original purchase of the gate by Defendants] was intended to benefit the individual claiming consumer status [here, Plaintiff, or anyone else using the automatic parking gate]. *Wellborn v. Sears, Roebuck & Co.*, 970 F.2d 1420 (5<sup>th</sup> Cir. 1992). Goods that are paid for by another party may still be "acquired" by such a person. *Kennedy v. Sale*, 689 S.W.2d 890 (Tex.1985).

9. Defendants, CXRE Properties & Naina Chimney Rock, LLC, are non-exempt entities who can be sued under the DTPA. Tex. Bus. & Com Code §17.50(a)(1); *Miller v. Keyser*, 90 S.W.3d 712, 715 (Tex.2002).

10. Defendant violated the DTPA when Defendant engaged in false, misleading, or deceptive acts or practices that Plaintiff relied on to Plaintiff's detriment. Tex. Bus. Com. Code §17.50(a)(1); *Brown & Brown v. Omni Metals, Inc.*, 317 S.W.3d 361, 379-80 (Tex.App.–Houston [1<sup>st</sup> Dist.] 2010, pet. denied). Specifically, by operating a malfunctioning automatic parking gate without providing notice of the malfunction to Plaintiff, Defendant misrepresented that the gate was not malfunctioning. Under the DTPA, such [a] misrepresentation is false, misleading, or deceptive if it could deceive an ordinary person, even if that person may have been ignorant, unthinking, or credulous. *Daughtery v. Jacobs*, 187 S.W.3d 607, 614 (Tex.App.–Houston [14<sup>th</sup> Dist.] 2006, no pet.). Hence, Defendants'

misrepresentation is in direct violation of the DTPA “Laundry List,” and Defendants are therefore liable as a matter of law. Tex. Bus. & Com. Code §17.46(b)(5); *Bradford v. Vento*, 48 S.W.3d 749, 759 (Tex.2001); Tex. Bus. & Com. Code §17.46(b)(7); *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 304-05 & n.15 (Tex.2006).

Defendants’ knowledge [“actual awareness”] of its misrepresentation is not an element to this DTPA cause of action; the only requirement – the *sine qua non* – is that, ultimately, Plaintiff was deceived by Defendants’ misrepresentation, even if without knowledge or intent to deceive on the part of Defendants. Tex. Bus. & Com. Code §17.46(b)(5); Tex. Bus. & Com. Code §17.46(b)(7); *Lone Star Ford, Inc. v. McGlashan* 681 S.W.2d 720, 723 (Tex.App–Houston [1<sup>st</sup> Dist.] 1984, no writ). However, actual awareness may be inferred when “objective manifestations” indicate that a defendant acted with actual awareness. Tex. Bus. Com. Code §17.45(9); *St. Paul Surplus Lines Ins. Co. v. Dal-Worth Tank Co.*, 974 S.W.2d 51, 53 (Tex.1998)

The DTPA causation standard – “producing cause” – is the absolute lowest causation standard in the civil court system, whereby proximate cause – with its element of foreseeability – is not required to establish liability. Under the DTPA, only cause-in-fact [“but for” cause + substantial factor] is required to establish Defendants’ liability for misrepresentation. The only question the trier of fact needs to ask is: “*But for* Defendants’ misrepresentation, would Plaintiff have suffered Plaintiff’s economic damages? If the trier of fact can answer “No” to this question, liability must be applied to Defendants as a matter of law. Tex. Bus. & Com. Code §17.50(a); *Metro Allied Ins. Agency, Inc. v. Lin*, 304 S.W.3d 830, 834 (Tex.2009).

11. Defendants violated the DTPA when Defendants engaged in an unconscionable course of action that, to Plaintiff’s detriment, took advantage of Plaintiff’s lack of knowledge, ability, experience, or capacity to a grossly unfair degree. Specifically, Defendants are in the commercial real estate ownership/management business; Plaintiff, however, is not and has never been engaged in such business and knows very little about it. Defendants took advantage of this disparity in knowledge and experience to a grossly unfair degree. Tex. Bus. & Com. Code §§17.50(a)(3) & 17.45(5); *Mays v. Pierce*, 203 S.W.3d 564, 572 (Tex.App–Houston [14<sup>th</sup> Dist.] 2006, pet. denied); *Insurance Co. of N. Am. v. Morris*, 981 S.W.2d 667, 677 (Tex.1998).

Defendants’ knowledge [“actual awareness”] of its unconscionable course of action is not an element to this DTPA cause of action; here, the only requirement to establish Defendants’ liability is that the resulting unfairness of Defendants’ course of action was grossly unfair – i.e., “glaringly noticeable, flagrant, complete and unmitigated” – to Plaintiff, a course of action for which Defendants are liable as a matter of law. *Morris*, 981 S.W.2d at 677; *Bradford v. Vento*, 48 S.W.3d 749, 760 (Tex.2001). However, actual awareness may be inferred when “objective manifestations” indicate that Defendants acted with actual awareness. Tex. Bus. Com. Code §17.45(9); *St. Paul Surplus Lines Ins. Co. v. Dal-Worth Tank Co.*, 974 S.W.2d 51, 53 (Tex.1998)

The DTPA causation standard – “producing cause” – is the absolute lowest causation standard in the civil court system, whereby proximate cause – with its element of foreseeability – is not required to establish liability. Under the DTPA, only cause-in-fact [“but for” cause + substantial factor] is required to establish Defendants’ liability for unconscionability. The only question the trier of fact needs to ask is: “*But for* Defendants’ unconscionable act/course of action, would Plaintiff have suffered Plaintiff’s economic damages? If the trier of fact can answer “No” to this question, liability must be applied to Defendants as a matter of law. Tex. Bus. & Com. Code §17.50(a); *Metro Allied Ins. Agency, Inc. v. Lin*, 304 S.W.3d 830, 834 (Tex.2009).

12. Plaintiff gave Defendants notice as required by Texas Business & Commerce Code section 17.505(a).

#### STATEMENT OF LAW & FACTS – NEGLIGENCE

\*13. See section 7 of this petition for statement of facts.

14. Defendants owed a legal duty to Plaintiff; Defendants breached the duty; the breach caused Plaintiff’s injury. *Nabors Drilling, U.S.A., Inc. v. Escoto*, 288 S.W.3d 401, 404 (Tex.2009). As an invitee to Defendants’ property at 3033 Chimney Rock Road, Houston, Texas 77056, Defendants owed Plaintiff a legal duty to properly maintain its exit gate so gate-vehicle collisions do not occur. Defendants breached this duty by failing to properly maintain this exit gate. The breach caused Plaintiff actual damages, including auto body repair, vehicle depreciation, lost wages, car rental expenses and mental anguish. *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 441 (Tex.1995).

#### STATEMENT OF LAW & FACTS – PREMISES LIABILITY

\*15. See section 7 of this petition for statement of facts.

16. Plaintiff was an invitee (i.e., a person who entered the Defendants’ premises with the Defendants’ knowledge and for their mutual benefit; Defendants were a possessor of the premises; a condition on the premises posed an unreasonable risk of harm; Defendants knew or reasonably should have known of the danger; Defendants breached its ordinary care by: a) failing to adequately warn Plaintiff of the condition or b) failing to make the condition reasonably safe; Defendants’ breach proximately caused Plaintiff’s injuries. *Del Lago Partners v. Smith*, 307 S.W.3d 762, 767 (Tex.2010). Plaintiff was an invitee to the premises on 12.29.2022. Defendants were the possessor of the premises on that date. A condition on the premises – the automatic exit gate – posed an unreasonable risk of harm, as it was malfunctioning. Defendants knew or reasonably *should have known* of the danger posed by the dysfunctional gate. Defendants breached the “ordinary care” standard by failing to warn Plaintiff of the malfunctioning gate and failing to appropriately repair, or disengage, the gate prior to it colliding with her vehicle when she exited Defendants’ property. This breach caused Plaintiff actual damages, including auto body repair, vehicle depreciation, lost wages, car rental expenses and mental anguish. *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 441 (Tex.1995).

17. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

18. Damages. Defendants' wrongful conduct was both the producing and proximate cause of Plaintiff's injuries as a result of its negligence & premises liability breaches, DTPA misrepresentation & unconscionable course of action violations, which resulted in the following damages: [DTPA] economic damages; mental anguish damages; [negligence/premises liability]: actual damages.

19. Additional Damages. [DTPA] Defendants acted knowingly and with intent to deceive, which entitles Plaintiff to recover treble economic damages [base economic damages + 3x base economic damages] and treble mental anguish damages [base mental anguish damages + 3x base mental anguish damages] per Texas Business & Commerce Code section 17.50(b)(1). *Tony Gullo Motors I, L.P.*, 212 S.W.3d 299, 314-15 (Tex.2006) (dicta); *Texas Mut. Ins. v. Morris*, 287 S.W.3d 401, 433-34 (Tex.App.–Houston [14<sup>th</sup> Dist.] 2009); [negligence/premises liability] exemplary damages. *Palais Royal, Inc. v. Gunnels*, 976 S.W.2d 837, 853-54 (Tex.App.–Houston [1<sup>st</sup> Dist.] 1998, pet. dism'd).

20. Mandatory Attorney Fees. Plaintiff is entitled to recover mandatory reasonable and necessary attorney fees for prosecuting this suit per Texas Business & Commerce Code section 17.50(d).

**JURY DEMAND**

21. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

**CONDITIONS PRECEDENT**

22. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

**REQUIRED DISCLOSURES**

23. Under Texas Rule of Civil Procedure 194, Defendants are required to disclose – within 50 days of service of citation – the information or material described in Rule 194.2.

**OBJECTION TO ASSOCIATE JUDGE**

24. Plaintiff objects to the referral of this case to an associate or visiting judge for a hearing on a dispositive motion, hearing a trial on the merits or presiding at a jury trial.

**PRAYER**

25. For these reasons, Plaintiff asks that the Court issue citation for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants for the following:

- a. Treble Economic Damages [base economic damages + 3x base economic damages];
- b. Treble Mental Anguish Damages [base mental anguish damages + 3x base mental anguish damages];
- c. Actual Damages;
- d. Exemplary Damages;
- e. Pre/Postjudgment Interest;
- f. Court Costs;
- g. Mandatory Reasonable and Necessary Attorney Fees;

h. All Other Relief to Which Plaintiff Is Entitled.

Respectfully,

*M. Chappell – Attorney At Law*

/s/ M. Chappell

TBN: 24090029

617 Caroline, 4<sup>th</sup> Floor

Houston, Texas 77002

mac@chappellpllc.com

832.855.0828