

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

TOPEKA ROGERS	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
	§	
ENERGY PLAZA HOTEL INVESTMENT	§	
LTD DBA EMBASSY SUITES HOTEL	§	
ENERGY CORRIDOR, AIMBRIDGE	§	
HOSPITALITY, LLC, AND EMBASSY	§	
SUITES MANAGEMENT, LLC	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiff(s) Topeka Rogers complaining of Defendant(s) Energy Plaza Hotel Investment LTD d/b/a Embassy Suites Hotel Energy Corridor, Aimbridge Hospitality, LLC, and Embassy Suites Management, LLC, and files this Original Petition.

**I. PARTIES**

1. Plaintiff(s) Topeka Rogers is an individual residing in Pensacola, Florida.
2. Defendant(s) Energy Plaza Hotel Investment, LTD., is a Texas limited partnership doing business as Embassy Suites Hotel Energy Corridor, and may be served through its registered agent Mac Haik, 11757 Katy Freeway, Suite 1500, Houston, Texas 77079, or any other place where Defendant may be found.
3. Defendant(s) Aimbridge Hospitality, LLC, is a foreign limited liability company with a principal place of business of 2500 N. Dallas Pkwy, #600, Plano, TX 75093, and may be served through its registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201, or any other place where Defendant may be found.

4. Defendant(s) Embassy Suites Management, LLC, is a foreign limited liability company, with a principal place of business at 9336 Civic Center Drive, Beverly Hills, CA 90210, and may be served through its registered agent Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701, or any other place where Defendant may be found.

## **II. DISCOVERY LEVEL**

5. Discovery is intended to be conducted under Level 3 of TEX. R. CIV. P. 190.

## **III. VENUE AND JURISDICTION**

6. Venue is proper in this cause pursuant to CIV. PRAC. & REM. CODE §15.002 in Harris County, Texas because all or a substantial part of the events which gave rise to this cause of action occurred in Harris County, Texas and the subject matter in controversy is within the jurisdictional limits of this Court.

## **IV. FACTS**

7. The Texas Health & Safety Code, Section 341.011 classifies bedbugs as a “public health nuisance.”

8. In July 2019, Plaintiff checked into room 1314 of the Embassy Suites located at 11730 Katy Freeway, Houston, Texas 77079. During the night Plaintiff began itching and developed painful lesions on her body. Plaintiff was unaware of the source of the irritations. Plaintiff began searching the room and discovered bed bugs crawling in the unit. The bed bugs were confirmed by hotel staff. Plaintiff immediately complained to the front desk clerk of the hotel. Defendant(s) failed to disclose the relevant bed bug history of the property. Had it been disclosed that the property was infested by bedbugs, Plaintiff(s) would not have checked into Defendant(s)’ property.

## **V. CAUSES OF ACTION**

### **A. Negligence**

9. The bed-bug-infested property provided to Plaintiff(s) and the resulting injuries and damages, were proximately caused by the negligent conduct of the Defendant(s). Defendant(s) were negligent in one or more of the following ways:

- a. Failing to rent property in a reasonably safe condition;
- b. Failing to reasonably inspect property prior to renting;
- c. Failing to reasonably clean property prior to renting;
- d. Failing to notify Plaintiff(s) of the risk of bedbug infestation;
- e. Failing to disclose prior bedbug activity in the property;
- f. Failing to properly treat the bed bugs; and
- g. Failing to properly eradicate the bed bugs.

10. Each of these acts and omissions, singularly or in combination with others, constituted negligence that proximately caused the occurrence made the basis of this action and Plaintiff(s)' injuries and damages.

### **B. Deceptive Trade Practices Act ("DTPA")**

11. Plaintiff(s) herein incorporate by reference all paragraphs above.

12. In the alternative and without waiving the foregoing, Defendant(s) violated the Texas Deceptive Trade Practices Act ("DTPA").

13. Plaintiff(s) is a consumer under the DTPA because Plaintiff(s) are individuals who acquired goods by lease.

14. The term "goods" includes real property under the DTPA.

15. Defendant(s) is a corporation that can be sued under the DTPA.

16. Defendant(s) violated the DTPA when Defendant(s) engaged in false, misleading, or deceptive acts or practices in relation to the transaction and/or failed to disclose as set forth under §17.46 of the Texas Business and Commerce Code, including, but not limited to, §§17.46(b)(5), (7) and/or (24).

17. Plaintiff(s) gave Defendant(s) notice as required by Texas Business & Commerce Code section 17.505(a).

18. Defendant(s)' wrongful conduct was a proximate and producing cause of Plaintiff(s)' damages.

19. Plaintiff(s) suffered economic and mental anguish damages as a result of Defendant(s)' DTPA violations.

**C. Breach of Contract**

20. Plaintiff(s) herein incorporate by reference all paragraphs above.

21. In the alternative and without waiving the foregoing, Defendant(s) breached its contract with Plaintiff(s).

22. Plaintiff(s) and Defendant(s) executed a valid and enforceable contract. The contract provided that Plaintiff(s) would pay money to Defendant(s) in exchange for the use of Defendant(s)' property.

23. Plaintiff(s) tendered performance of Plaintiff(s)' contractual obligation. Namely, Plaintiff(s) paid money to Defendant(s) per the terms of their contract.

24. Defendant(s) materially breached the contract by providing Plaintiff(s) with property that was infested with bedbugs.

25. As a direct and proximate result of Defendant(s)' breach, Plaintiff(s) has suffered actual damages.

26. Plaintiff(s) seeks unliquidated damages within the jurisdictional limits of this Court.

#### **VI. CONDITIONS PRECEDENT**

27. All conditions precedent occurred or have been performed under the lease agreement at issue.

#### **VII. DAMAGES**

28. As a result of the negligent conduct of Defendant(s), Plaintiff(s) suffered and will continue to suffer in the future, actual damages within the jurisdictional limits of this Court, including but not limited to, past and future medical, pharmaceutical, and hospital expenses, past and future pain and suffering, past and future mental anguish, past and future physical impairment, past and future disfigurement, property damage, exemplary damages, pre-judgment and post-judgment interest, and costs of court.

29. For Plaintiff(s)' DTPA claims, Plaintiff(s) suffered and will continue to suffer in the future, actual damages within the jurisdictional limits of this Court, including but not limited to: medical expenses, property damage, past and future physical impairment, past and future disfigurement, past and future mental anguish damages, attorneys' fees and expenses, pre-judgment and post-judgment interest, and costs of court.

30. For Plaintiff(s)' breach of contract claims, Plaintiff(s) suffered and will continue to suffer in the future, actual damages and consequential damages within the jurisdictional limits of this Court, including but not limited to, economic damages, attorneys' fees and expenses, pre-judgment and post-judgment interest, and costs of court.

31. Plaintiff(s) seek monetary relief over \$250,000 but not more than \$1,000,000.

### **VIII. GROSS NEGLIGENCE AND EXEMPLARY DAMAGES**

32. Upon information and belief, Defendant(s) have had prior bed-bug infestation problems in their property. Despite this knowledge, Defendant(s) have failed to take reasonable steps to prevent further bed-bug infestations. Defendant(s)' conduct as described above constituted acts and/or omissions which, when viewed objectively from their standpoint at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant(s) had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. Accordingly, Defendant(s)' actions constitute gross negligence and Plaintiff(s) seeks an award of exemplary damages.

### **IX. TREBLE DAMAGES**

33. Defendant(s) knowingly and intentionally violated the DTPA. Plaintiff(s) is therefore entitled to treble economic damages and mental anguish damages under the DTPA.

### **X. ATTORNEYS' FEES**

34. Because Defendant(s) violated the DTPA, Plaintiff(s) is entitled to recover and hereby seek attorney's fees pursuant to § 17.50(c) of the Texas Business and Commerce Code.

35. In the alternative, Plaintiff(s) is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code Chapter 38 because this is a suit for breach of a written contract. Plaintiff(s) retained counsel, who presented Plaintiff(s)' claim to Defendant(s). Defendant(s) did not tender the amount owed within 30 days of when the claim was presented.

## **XI. NOTICES**

36. Pursuant to Texas rule of Civil Procedure 193.7, Plaintiff(s) places the Defendant(s) and the Court on notice of its intent to use all documents produced by Defendant(s) in response to written discovery in all pre-trial proceedings and/or trial of the above-entitled and numbered cause.

37. Pursuant to Rule 609(f) of the Texas Rules of Evidence, Plaintiff(s) further places the parties to this suit on notice of its intent to use evidence of criminal convictions, if any, at trial of the above-entitled and numbered cause.

## **XII. DESIGNATED E-SERVICE EMAIL ADDRESS**

38. The following is the undersigned attorney's designated e-service email address for all e-served documents and notices, both filed and unfiled, pursuant to Tex. R. Civ. P. 21(f)(2) & 21a: **firm@ricefirmpc.com**. This is the undersigned's only e-service email address and service through any other email address will be considered invalid.

## **XIII. PRAYER**

39. For these reasons set forth above, Plaintiff(s) prays that they have judgment against the Defendant(s) for the following:

- a. Actual damages within the jurisdictional limits of this court;
- b. Past and future economic damages;
- c. Past and future pain and suffering damages;
- d. Past and future mental anguish damages;
- e. Past and future impairment;
- f. Past and future disfigurement;
- g. Exemplary damages;
- h. Treble damages under the DTPA;

- i. Pre-judgment and post-judgment interest at the highest rate allowed by law;
- j. Attorney's fees and expenses, and costs of court; and
- k. All other relief, in law and equity, to which Plaintiff(s) may be entitled.

Respectfully submitted,

**THE RICE FIRM**

By: /s/ Tad Rice

Tad Rice  
State Bar No.: 24027653  
25700 I-45 North, Suite 130  
The Woodlands, Texas 77386  
Telephone: (713) 234-1266  
Facsimile: (832) 495-4767  
Email: firm@ricefirm.com

**ATTORNEY FOR PLAINTIFF(S)**