

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

**M.A., N.C., N.N. and D.C.**  
**Plaintiff,**

**V.**

**MAINTENANCE OF HOUSTON, INC.,**  
**ALTERA EAST HOUSTON, LLC.,**  
**EAST HOUSTON MOB, LLC., AND**  
**AURUM PROPERTY PARTNERS,**  
**LLC.**  
**Defendants.**

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**IN THE DISTRICT COURT**

\_\_\_\_ **JUDICIAL DISTRICT**

**OF HARRIS COUNTY, TEXAS**

**PLAINTIFFS' ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** M.A., N.C., N.N. and D.C., hereinafter called Plaintiffs, complaining of and about Maintenance of Houston, Inc., Altera East Houston, LLC., East Houston MOB, LLC., and Aurum Property Partners, LLC., hereinafter called Defendants, and for cause of action would show unto the Court the following:

**I.**  
**DISCOVERY CONTROL PLAN LEVEL**

Plaintiffs intend that discovery be conducted under Discovery Level 3.

**II.**  
**PARTIES AND SERVICE**

Plaintiffs are individuals living in Harris County, Texas. The last three numbers of M.A.'s social security number are 551.

Defendant Maintenance of Houston, Inc., a Texas Corporation, may be served with process by serving its registered agent, Diane Jolly, at 9876 Plano Road, Dallas, Texas 75238, or wherever she may be found. Service of said Defendant as described above can be effected by personal delivery.

Defendant Altera East Houston, LLC, a Foreign Limited Liability Company doing business in the State of Texas, may be served with process by serving its registered agent, Terry Quinn, at 5910 N. Central Expressway, Suite 1360, Dallas, Texas 75206, or wherever he may be found. Service of said Defendant as described above can be effected by personal delivery.

Defendant East Houston MOB, LLC, a Foreign Limited Liability Company doing business in the State of Texas, may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Service of said Defendant as described above can be effected by personal delivery.

Defendant Aurum Property Partners, LLC, a Florida Limited Liability Company, not registered in the State of Texas but doing significant business in the State of Texas, may be served with process by serving its registered agent, Peter J. Applefield, 319 Clematis Street, Suite 608, West Palm Beach, Florida 33401, or wherever he may be found. Service of said Defendant as described above can be effected by personal delivery.

### **III. JURISDICTION AND VENUE**

The subject matter in controversy is within the jurisdictional limits of this court. Plaintiffs seeks monetary relief over \$1,000,000.00. This court has jurisdiction over the parties because Defendants are companies either incorporated under the laws of the State of Texas or doing business in the State of Texas and owning property in the State of Texas. Defendants have purposefully availed themselves of the privilege of conducting activities in the state of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendants, and the assumption of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

Venue in Harris County is proper in this cause under Section 15.002(a)(1) of the Texas

Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

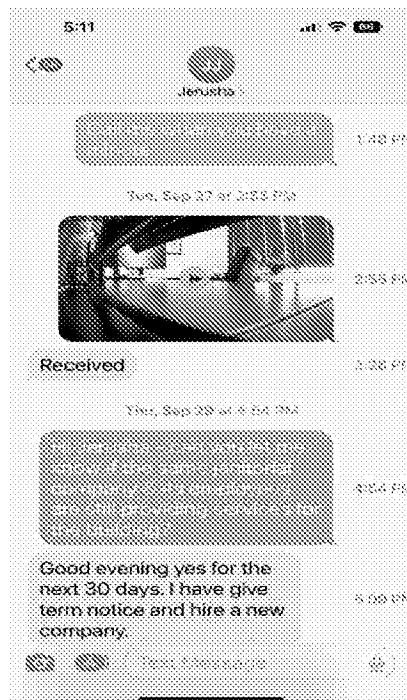
#### **IV. FACTS**

Plaintiffs herein are all individuals who are employed by various businesses who lease certain commercial space in a building located at 1140 Westmont, Houston, Texas 77015 (owned and/or managed by Defendants Altera East Houston, LLC, East Houston MOB, LLC, and Aurum Property Partners, LLC). In or around the end of August 2022, there were several instances where M.A. noticed issues with the bottled water in her office space either smelling foul or tasting foul. As a result, she began to bring her own bottled water to work, and at the end of the day, she would leave those bottles on her desk if they still contained water. M.A. found the water from the bottles on her desk to also be of a foul smell, and on one occasion she and a co-worker agreed it smelled like urine. To be sure, M.A. tested the water, and it came back positive as urine.

In an effort to determine the source, M.A. purchased a hidden camera on Amazon and placed it on her desk. The first recording was on Monday, September 26, 2022. When M.A.'s phone notified her that there was motion on the camera, what she would witness moments later was far worse than anyone could imagine. The video clearly showed the nighttime janitor, Lucio Diaz approach M.A.'s desk as if to clean, set the cleaning rag and cleaning bottle on the desk, unzip his pants, pull out his penis, grab the water bottle sitting on M.A.'s desk, unscrew the cap, and begin to insert his penis into the water bottle (turning it upwards to ensure the water in the bottle touched his penis), and rub his penis on the mouth of the bottle. He then put the cap back on the bottle, set it back where he found it, zipped up his pants, grabbed the cleaning bottle and rag, and continued to "clean" the desk. Diaz was not phased, he was not nervous – he had done this before – and it had now become just a part of his daily "cleaning" ritual.

M.A. immediately contacted the police and went to the building to meet them there. During the time she was waiting, she spoke with an employee by Maintenance of Houston, Inc., informing them of what had transpired, and she showed them the video. Unfortunately, after waiting several hours, the police did not come, and M.A. returned home for the evening. The next morning, M.A. drove to the Houston Police Department sub-station near the office building and made a report.

On Tuesday, September 27, 2022, M.A. contacted Jerusha Jones with building management (Aurum Property Partners, LLC) by phone and text message. M.A. informed Ms. Jones of what had transpired previously as well as the prior evening, and provided Ms. Jones with a copy of the video recording from September 26, 2022, as can be seen in the text string below:



M.A. informed Ms. Jones that she would be going to the building to notify all of the tenants, however Ms. Jones asked her not to do that and stated that building management would ‘handle’ the situation as well as notify the tenants. No such notification went out on September

27, 2022. No such notification went out on September 28, 29 or 30. No such notification went out on October 1 or 2. Aurum Property Partners, LLC waited six (6) days to notify the tenants in the building of potential contamination of their water – a period of time in which other unsuspecting victims, including Plaintiffs herein, could be, and likely were, assaulted. Defendants did nothing to protect them.

On the evening of Tuesday, September 27, 2022, M.A.'s phone went off – another notification from the hidden camera – and yet again Lucio Diaz was in her office, committing yet another assault on M.A. Same routine, different day. All of the Defendants herein were on notice, and all of the Defendants herein sat on their hands, did nothing, and Lucio Diaz was given free reign to commit another assault on M.A and the other Plaintiffs herein. Ms. Jones, on behalf of Aurum Property Partners, LLC, waited two more days to allegedly terminate Defendant Maintenance of Houston, Inc.'s contract. As of the date this petition is filed, Defendant Maintenance of Houston, Inc. is still permitted on the property, with their employees, to conduct maintenance and janitorial services.

Defendants had been made aware on at least two prior occasions in August of urine smells in the building, one identified below in an email string between Maintenance of Houston, Inc.'s representative Brian Smider and Ms. Jones, and at least one other complaint was made directly to maintenance personnel by a tenant. Defendants did nothing to investigate these bizarre happenings – they simply tried to cover them up.

>>> -----Original Message-----  
>>> From: Brian Smider <>  
>>> Sent: Wednesday, August 31, 2022 2:11 PM  
>>> To: Jerusha Jones <>  
>>> Cc: Liza Macias <>  
>>> Subject: Re: Lunch meeting  
>>>  
>>> Jerusha,

>>>

>>> Sorry you couldn't make it. I stopped by the building after lunch because Leo said the 4th floor restroom has a urine smell. I think it is the carpet. I gave them some bio-enzyme to spray in the restrooms if the smell is still there I think we should shampoo that carpet.

>>>

>>> Brian Smider

>>> Maintenance of Houston/Galveston

The consequences of these Defendants' failures are immense – Plaintiffs herein, after having come in contact with Lucio Diaz's urine and other bodily fluids, have now tested positive for incurable sexually transmitted diseases that will forever affect their lives.

At all times material hereto, Plaintiffs were business invitees at the property located at 1140 Westmont, Houston, Texas 77015; therefore, all Defendants were under a duty to act with reasonable care in accordance with the standard of care afforded a business invitee.

## **V.**

### **LIABILITY OF DEFENDANT MAINTENANCE OF HOUSTON, INC. FOR NEGLIGENCE (HEREINAFTER REFERRED TO AS "MOH")**

Defendant MOH negligently hired, retained, trained, and supervised Lucio Diaz which proximately caused the damages made the basis of this suit. As a result of Defendant MOH's negligent hiring, retention, training, and supervision of Lucio Diaz, Plaintiffs were injured and suffered damages. Defendant MOH was negligent, proximately causing injuries to Plaintiffs, in that Defendant MOH:

- a. knew or should have known of Lucio Diaz's propensity to engage in and history of engaging in sexual misconduct and other crimes.
- b. had a duty to supervise, control, regulate and/or monitor their employees to ensure that invitees were not victims of sexual assault.
- c. had a duty to take adequate action or enact adequate procedures to protect invitees from

sexual assault on the premises.

- d. failed to fulfill their duties and obligations to their customers, including Plaintiffs.
- e. failed to properly train management;
- f. failed to properly train staff;
- g. failed to properly supervise staff;
- h. failed to have policies and procedures in place in regard to the safety of the invitees;
- i. failed to properly implement policies and procedures in place in regard to the safety of the invitees;
- j. failed to ensure that policies and procedures which were in place were complied with in regard to the safety of the invitees;
- k. failed to properly train management in regard to safety of the invitees;
- l. failed to properly train staff and employees in regard to the safety of the invitees;
- m. failed to perform an adequate background check on Lucio Diaz;
- n. failed to ensure Lucio Diaz was legally entitled to work for MOH; and
- o. failed to take appropriate action when provided notice.

In the event that Defendant alleges they have no duty in regard to one or more of the acts or omissions complained herein, Plaintiffs, in accordance with Restatement (Second) of Torts, § 323, asserts that:

“ . . . when one who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, he is subject to liability to the other person for physical harm resulting from his failure to exercise reasonable care to perform the undertaking if:

- a. his failure to exercise reasonable care increases the risk of such harm, or
- b. the harm is suffered because of reliance of the other upon the undertaking.”

**VI.**  
**LIABILITY OF DEFENDANT MAINTENANCE OF HOUSTON, INC. UNDER**  
**RESPONDEAT SUPERIOR AND/OR VICARIOUS LIABILITY**

At all times relevant to the incident, all of the acts and omissions complained of herein were committed by owners, officers, employees, servants, agents, management, or contractors of Defendant “MOH”, each of whom was acting within the course and scope of their employment or agency and who were acting under the direction or control of Defendant MOH. Consequently, Defendant MOH is vicariously liable for all of the acts and/or omissions that were committed by any of those persons operating within the course and scope of their employment, agency and/or direction of Defendant MOH, or actually committed by Defendant MOH itself.

At all times relevant to the incident, Lucio Diaz acted within the course and scope of his employment with Defendant MOH; therefore, said Defendant is vicariously liable for any and all acts committed by Lucio Diaz.

In the alternative, and without waiving the foregoing allegations, if Lucio Diaz is found to have acted outside the scope of his employment with Defendant MOH at the time of the incident, Plaintiff, asserts that:

“...a master is under a duty to exercise reasonable care so as to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them. If the servant is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or is using a chattel of the master, and the master knows or has reason to know that he has the ability to control the servant, and knows or should know the necessity and opportunity for exercising such control, and fails to do so, the master is liable for the acts of the servant.” RESTATEMENT (SECOND) OF TORTS § 317.

In the alternative, and without waiving the foregoing allegations, Lucio Diaz committed acts material to the incident while he was acting within his “apparent authority” to accomplish the



wrongful acts, and as such, was acting within the “apparent scope” of his employment with Defendant MOH; therefore, Defendant MOH and/or Defendants doing business with or in association with Defendant MOH, are liable for the acts of Lucio Diaz.

In the alternative, and without waiving the foregoing allegations, in the event Defendants allege they had no duty in regard to one or more of the acts or omissions complained of herein, Plaintiff, in accordance with RESTATEMENT (SECOND) OF TORTS, § 219(d)(2), asserts that:

“Under the aided-in-agency theory, an employer may be held liable for the intentional torts of an employee acting outside the scope of his or her employment if the employee ‘was aided in accomplishing the tort by the existence of the agency relation.’”

In the alternative, and without waiving the foregoing allegations, Defendant MOH is liable under the theory of ratification. The elements of ratification are the adoption or confirmation by a person, with knowledge of all material facts, or a prior act which did not then legally bind that person and which that person had the right to repudiate. Defendant MOH failed to repudiate the actions of Lucio Diaz and instead chose to conceal said acts, thereby ratifying the actions of Lucio Diaz, for which Plaintiff brings suit.

## **VII. LIABILITY OF DEFENDANTS ALTERA EAST HOUSTON, LLC AND EAST HOUSTON MOB, LLC (COLLECTIVELY REFERRED TO AS “ALTERA”)**

At all times mentioned herein, Defendants Altera owned, controlled, and/or managed the property in question, located at 1140 Westmont, Houston, Texas 77015. Defendants Altera had such control over the premises in question that Defendants Altera owed certain duties to Plaintiffs, the breach of which proximately caused the injuries set forth herein. At all times material hereto, Plaintiffs were invitees on the premises owned by Defendants Altera when Plaintiffs were injured as a result of the acts and omissions of the Defendants Altera. These acts include, but are not limited to, the following:

- a. Failure to employ competent janitorial services as would have been done by a person exercising ordinary care and prudence under the same circumstances;
- b. Failure to have policies and standards in place for employing competent janitorial services; and
- c. Failure to complete background checks or other screening tools prior to employing janitorial services.
- d. Failure to supervise, control, regulate and/or monitor their janitorial staff to ensure that invitees were not victims of sexual assault.
- e. Failure to take adequate action or enact adequate procedures to protect invitees from sexual assault on the premises.
- f. Failure to fulfill their duties and obligations to their customers, including Plaintiffs.
- g. Failure to properly train management;
- h. Failure to properly train staff;
- i. Failure to properly supervise staff;
- j. Failure to have policies and procedures in place in regard to the safety of the invitees;
- k. Failure to properly implement policies and procedures in place in regard to the safety of the invitees;
- l. Failure to ensure that policies and procedures which were in place were complied with in regard to the safety of the invitees;
- m. Failure to properly train management in regard to safety of the invitees;
- n. Failure to properly train staff and employees in regard to the safety of the invitees;
- o. Failure to ensure Lucio Diaz was legally entitled to work for MOH; and
- p. failed to take appropriate action when provided notice.

Defendants Altera were at all times the owner and/or possessor of the property and the property was under its control. Defendants Altera were responsible for contracting with Defendant

MOH and ensuring a safe premises. As a result of Defendants Alteras' negligence, Plaintiffs were seriously and permanently injured. Defendants Altera are liable to Plaintiffs for the physical and mental harm caused by the dangerous condition on Defendants Alteras' premises.

**VIII.  
LIABILITY OF DEFENDANT AURUM PROPERTY PARTNERS, LLC.  
(HEREINAFTER REFERRED TO AS "AURUM")**

At all times mentioned herein, Defendant Aurum managed the property in question, located at 1140 Westmont, Houston, Texas 77015. Defendant Aurum had such control over the premises in question that Defendant Aurum owed certain duties to Plaintiffs, the breach of which proximately caused the injuries set forth herein. At all times material hereto, Plaintiffs were invitees on the premises managed and controlled by Defendant Aurum when Plaintiffs were injured as a result of the acts and omissions of the Defendant Aurum. These acts include, but are not limited to, the following:

- a. Failure to employ competent janitorial services as would have been done by a person exercising ordinary care and prudence under the same circumstances;
- b. Failure to have policies and standards in place for employing competent janitorial services; and
- c. Failure to complete background checks or other screening tools prior to employing janitorial services.
- d. Failure to supervise, control, regulate and/or monitor their janitorial staff to ensure that invitees were not victims of sexual assault.
- e. Failure to take adequate action or enact adequate procedures to protect invitees from sexual assault on the premises.
- f. Failure to fulfill their duties and obligations to their customers, including Plaintiffs.
- g. Failure to properly train management;
- h. Failure to properly train staff;

- i. Failure to properly supervise staff;
- j. Failure to have policies and procedures in place in regard to the safety of the invitees;
- k. Failure to properly implement policies and procedures in place in regard to the safety of the invitees;
- l. Failure to ensure that policies and procedures which were in place were complied with in regard to the safety of the invitees;
- m. Failure to properly train management in regard to safety of the invitees;
- n. Failure to properly train staff and employees in regard to the safety of the invitees;
- o. Failure to ensure Lucio Diaz was legally entitled to work for MOH; and
- p. failed to take appropriate action when provided notice.

Defendant Aurum was at all times the manager of the property and the property was under its control. Defendant Aurum was responsible for contracting with Defendant MOH and ensuring a safe premises. As a result of Defendant Aurum's negligence, Plaintiffs were seriously and permanently injured. Defendant Aurum is liable to Plaintiffs for the physical and mental harm caused by the dangerous condition created by Defendant Aurum.

## **IX. EXEMPLARY DAMAGES**

Defendants acts or omissions described above, when viewed from the standpoint of Defendants at the time of the acts or omissions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs and others. Defendants had actual, subjective awareness of the risk involved in the above-described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs and others. Based on the facts stated herein, Plaintiffs request exemplary damages be awarded to Plaintiffs from Defendants, jointly and severally.

**X.**  
**DAMAGES FOR PLAINTIFF, M.A.**

As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendants' acts as described herein, Plaintiff, M.A. was caused to suffer and to endure anxiety, pain, illness, and an incurable disease resulting in damages more fully set forth below. Plaintiff, M.A. has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, M.A. for the necessary care and treatment of the injuries resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services in Harris County, Texas;
- B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Mental anguish in the past;
- E. Physical pain and suffering in the future; and
- F. Mental anguish in the future.

By reason of the above, Plaintiff, M.A. has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

**XI. DAMAGES FOR PLAINTIFF, N.C.**

As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendants' acts as described herein, Plaintiff, N.C. was caused to suffer and to endure anxiety, pain, illness, and an incurable disease resulting in damages more fully set forth below. Plaintiff, N.C. has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, N.C. for the necessary care and treatment of the injuries resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services in

Harris County, Texas;

- B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Mental anguish in the past;
- E. Physical pain and suffering in the future; and
- F. Mental anguish in the future.

By reason of the above, Plaintiff, N.C. has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

## **XII. DAMAGES FOR PLAINTIFF, N.N.**

As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendants' acts as described herein, Plaintiff, N.N. was caused to suffer and to endure anxiety, pain, illness, and an incurable disease resulting in damages more fully set forth below. Plaintiff, N.N. has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, N.N. for the necessary care and treatment of the injuries resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services in Harris County, Texas;
- B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Mental anguish in the past;
- E. Physical pain and suffering in the future; and
- F. Mental anguish in the future.

By reason of the above, Plaintiff, N.N. has suffered losses and damages in a sum within

the jurisdictional limits of the Court and for which this lawsuit is brought.

### **XIII. DAMAGES FOR PLAINTIFF D.C.**

As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendants' acts as described herein, Plaintiff, D.C. was caused to suffer and to endure anxiety, pain, illness, and an incurable disease resulting in damages more fully set forth below. Plaintiff, D.C. has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, D.C. for the necessary care and treatment of the injuries resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services in Harris County, Texas;
- B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Mental anguish in the past;
- E. Physical pain and suffering in the future; and
- F. Mental anguish in the future.

By reason of the above, Plaintiff, D.C. has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs, M.A., N.C. and D.C., respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages; and pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such

other and further relief to which the Plaintiffs may be entitled at law or in equity.

Respectfully submitted,

Spurlock & Associates, P.C.

By: /s/ Kimberley M. Spurlock

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**PLAINTIFFS HEREBY DEMANDS TRIAL BY JURY**