



**HEMPEL, NGOC HUONG THI LE, PETER JEDRZYNSKI, LINDA JONES, AMY AND JASON LOWERY, DEAN AND ESTHER LUHMAN, JESSICA MENCHACA, JOSEPH AND CHARLOTTE NICKNISH, PETER AND MARTA RICHARDSON, JAMES ROACH, JEFFREY ROBINSON, KIM RODGERS, RYAN RODRIGUEZ, BARBARA SMITH, DONALD, ELEANOR, AND DANIEL TAYLOR, LINDA AND TERRY TRAYLOR, BRIAN AND SHARON VOORHES, MICHAEL WOOD, and DEBORAH YOCHAM,** (collectively referred to as “Plaintiffs”), and file this Petition complaining of **FIGURE FOUR PARTNERS, LTD., PSWA, INC., and REBEL CONTRACTORS, INC.** (collectively referred to as “Defendants”), and for cause of action would respectfully show the following:

**DISCOVERY LEVEL DESIGNATION**

1. Plaintiffs intend to conduct discovery in accordance with Rule 190.4 of the Texas Rules of Civil Procedure, also known as "Level 3" Discovery Control Plan, and as such, requests a discovery control plan be entered herein. Plaintiffs affirmatively plead that this suit is not governed by the expedited-actions process in Rule 169 of the Texas Rules of Civil Procedure.

2. In accord with Texas Rules of Civil Procedure 47, Plaintiffs allege that this is a claim for only monetary relief in a sum over \$1,000,000.00, and a demand for judgment for all other relief to which Plaintiffs may show themselves to be entitled, including but not limited to damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. Plaintiffs would show that The Rules of Civil Procedure require Plaintiffs to set forth such demand or claim but that Plaintiffs represent that the Jury and/or Trier of Fact are charged with such final determination and Plaintiffs do not seek to represent or assert that the Rules of Civil Procedure do not require Plaintiffs to honor in any way

take away or impugn the obligations, duties and/or considerations of the Jury or Trier of Fact.

### **PARTIES**

3. Plaintiffs are residents in Kingwood, Harris County, Texas.

4. Defendant **FIGURE FOUR PARTNERS, LTD.** (“Figure Four”), is a Texas company and may be served with process by and through its registered agent, PSWA, Inc. at 9000 Gulf Freeway, Houston, Texas 77017.

5. Defendant, **PSWA, INC.** (“PSWA”), is a Texas Corporation doing business in Harris County, Texas and may be served with process by and through its registered agent, Michael C. Brisch, at 9000 Gulf Freeway, 3<sup>rd</sup> Floor, Houston, Texas 77017.

6. Defendant, **REBEL CONTRACTORS, INC.** (“Rebel”), is a Texas Corporation doing business in Harris County, Texas and may be served with process by and through its registered agent, George Lowry, at 17942 IH 45N, Willis, Texas 77378.

### **VENUE AND JURISDICTION**

7. The present Court has personal jurisdiction over the parties as they are citizens of Texas or otherwise have minimum contacts with the State of Texas. The Court has subject matter jurisdiction as the amount in controversy is within the limits of the Court, and no other court has exclusive jurisdiction.

8. Venue is proper in the present forum as this cause of action because the events giving rise to this cause of action occurred in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(1).

### **BACKGROUND/FACTUAL ALLEGATIONS**

9. Plaintiffs have been residents of the Elm Grove neighborhood in Kingwood, Texas. Prior to May 7, 2019, none of Plaintiffs’ homes had ever flooded.

10. In May 2019, Defendants, Figure Four and PSWA, were developing a plot of land named the Woodridge Village Development (the “Development”) bordering the north side of Elm Grove. These Defendants hired Rebel as the general contractor to prepare the Development for construction. The Development is intended for a residential community and is neighboring the north side of Elm Grove.



11. As of May 7, 2019, the Development was not completed, but Defendants had begun the removal of trees and debris from the Development. Defendants trenched out certain areas and added box culverts in an attempt to create drainage for the Development. Defendants also filled in existing creeks and drainage channels while developing the land. In doing so, Defendants completely blocked waterflow from the existing water channels—ridding Elm Grove of proper drainage. Additionally, as Defendants cleared the land, the Development was sloped toward Plaintiffs’ neighborhood such that water would flow directly towards Plaintiffs’ home.



12. On May 7, 2019, a rainfall no worse than any other rainfall Plaintiffs have experienced in the last 25 years hit the Kingwood area. The water drained from the Development directly into Elm Grove's streets and into Plaintiffs' homes. This water caused extreme damage to the structures and the personal effects of the Plaintiffs.

13. There is nothing that Plaintiffs did to contribute to this flooding.

#### **COUNT 1**

#### **NEGLIGENCE, NEGLIGENCE *PER SE* AND GROSS NEGLIGENCE**

14. Plaintiffs would show that the incident and injuries and damages giving rise to this incident were proximately caused by the negligence of Defendants acting by or through

their agents or employees, jointly, severally, singularly and together in any combination. The actions and omissions of Defendants, acting by or through their agents or employees, jointly, severally, singularly and together in any combination constitute negligence and/or gross negligence which proximately resulted in injuries and damages being suffered by Plaintiffs.

15. The negligent actions and/or omissions of Defendants, acting by or through its agents or employees, jointly, severally, singularly and together in any combination, include but are not limited to:

- a. Blocking the drainage channels;
- b. Filling in existing drainage channels;
- c. Failing to properly install box culverts;
- d. Failing to create temporary drainage channels;
- e. Failing to allow adequate drainage after construction;
- f. Failing to install silt barriers;
- g. Allowing the Development to force rainfall toward Plaintiffs' homes;
- h. Failing to pay proper attention;
- i. Failing to provide notice or warning;
- j. Failing to have a proper rain event action plan;
- k. Failing to have a proper storm water pollution prevention plan;
- l. Failing to follow a proper storm water pollution prevention plan;
- m. Failing to coordinate activities and/or conduct;
- n. Failing to supervise the activities of the Development;
- o. Failing to instruct in proper construction and/or drainage requirements;
- p. Failing to train in proper construction and/or drainage requirements, and;

q. Failing to comply with the construction permit(s), among other things.

16. Further, all employees, contractors, subcontractors, independent contractors, agents, representatives, and/or individuals under the control of Defendants were, at all material times, acting within the course, scope, and direction of Defendants. Accordingly, Defendants are also liable for Plaintiffs' injuries under the doctrine of *respondeat superior*, vicarious liability, and applicable theories of agent/servant liability.

17. The acts or omissions of Defendants, when viewed objectively from its standpoint at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. These acts and omissions were more than momentary thoughtlessness, inadvertence, or error of judgment. Rather, Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Such acts and/or omissions were a proximate cause of the flooding and the resulting injuries and damages sustained by Plaintiffs. Accordingly, Plaintiffs hereby seek an award of exemplary damages.

18. Furthermore, the aforementioned conduct of Defendants was willful and/or motivated by the conscious disregard to the rights and welfare of others. Therefore, Plaintiffs are entitled to recover both actual and exemplary damages from Defendants as set forth above, together with prejudgment and post-judgment interest at the highest rate allowed by law, and all costs of court.

19. Pleading further and/or in the alternative, Plaintiffs would show that they cannot more specifically allege the acts of negligence on the part of Defendants, acting by or through their agents or employees, jointly, severally, singularly and together in any combination for the reason that the facts in that regard are peculiarly within the knowledge of each Defendant and, in the alternative, in the event Plaintiffs are unable to prove specific acts of

negligence, Plaintiffs rely on the doctrine of *res ipsa loquitur*. In this connection, Plaintiffs will show that Defendants have exclusive control of the construction and or matters or things that caused damage about which this complaint is made. Plaintiffs have no means of ascertaining the method or manner in which the incident was caused to occur other than through Defendants. The occurrence causing harm to the Plaintiffs as described above, was one which, in the ordinary course of events, would not have occurred without negligence on the part of the Defendants. Thus, Defendants acting by or through their agents or employees are/were negligent in their use and/or operation of its respective equipment and materials involved and such negligence was a proximate cause of the injuries and damages of Plaintiffs.

## COUNT 2

### **SEC. 11.086 OF THE TEXAS WATER CODE. OVERFLOW CAUSED BY DIVERSION OF WATER – STRICT LIABILITY**

20. Defendants' conduct created a diversion and/or impoundment of surface water during the storm by blocking drainage channels and filling in existing creeks prior to May 7, 2019. This diversion and impoundment of the surface water by the defective construction proximately caused the flooding of Plaintiffs' home. This flooding was the cause of the damages to Plaintiffs' homes pursuant to the Tex. Water Code Ann. § 11.086 (West).

21. Section 11.086 of the Texas Water Code states that "No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded." Tex. Water Code Ann. § 11.086 (West). Defendants' conduct as described herein created a diversion and/or impoundment of the natural flow of surface water. This diversion and/or impoundment proximately caused the flooding of Plaintiff's property. Defendants are subject to strict liability pursuant to the



Texas Water Code and common law.

**COUNT 3**  
**NUISANCE**

22. When Defendants unlawfully diverted or impounded water (or allowed such diversion or impounding by them to continue) by not properly creating drainage channels and/or impounding water onto Plaintiffs' homes it also resulted in private nuisances to Plaintiffs' home. The four elements of a private nuisance claim are: (1) Plaintiffs had an interest in the land; (2) Defendant interfered with or invaded Plaintiffs' interest by conduct that was negligent, intentional, or abnormal and out of place in its surroundings; (3) Defendant's conduct resulted in a condition that substantially interfered with Plaintiffs' use and enjoyment of their land; and (4) the nuisance caused injury to Plaintiffs. *Cerny v. Marathon Oil Corp.*, 480 S.W.3d 612, 622 (Tex. App. 2015), review denied (Dec. 2, 2016). The facts asserted in this case proximately caused the nuisance in question.

23. Plaintiffs properly and clearly held an interest in their individual property as the owners and residents of the homes at the time of the incident. Defendants' conduct was negligent, intentional and unreasonable, and/or abnormal and out of place in its surroundings, and nevertheless, also subject to state statute Tex. Water Code Ann. § 11.086 (West). This conduct substantially interfered with Plaintiffs' use and enjoyment of their land, and caused injury to Plaintiffs when their homes, contents, automobiles, and personal effects were damaged, destroyed, and or interfered with by the diverted and/or impounded surface water which flooded the surrounding neighborhoods.

**DAMAGES**

24. As a direct and proximate result of negligence of Defendants, acting by or through their agents or employees, jointly, severally, singularly, and/or together in any combination, Plaintiffs suffered or experienced damages in the past and, in all reasonable probability,

is expected to experience such damages for a long time into the future.

25. The damages of Plaintiffs consist of one or more of the following:

- a. Cost of repairs to real property;
- b. Cost of replacement or fair market value of personal property lost, damaged, or destroyed during such event;
- c. Loss of use of real and personal property;
- d. Diminution of market value of Plaintiffs' properties;
- e. Loss of income and business income;
- f. Consequential costs incurred, inclusive of but not limited to alternative living conditions or accommodations and replacement costs;
- g. Mental anguish and/or emotional distress;
- h. Prejudgment interest;
- i. Post judgment interest;
- j. Attorneys' fees; and,
- k. Costs of Court.

26. By reason of the above and foregoing, Plaintiffs would show that they have been damaged in a sum within the jurisdictional limits of the Court.

**SEC. 11.0841 OF THE TEXAS WATER CODE**  
**CIVIL REMEDY AND ATTORNEY FEES**

27. Sec. 11.0841(a) and (b) provide: (a) Nothing in this chapter affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common-law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury. (b) A district court may award the costs of litigation, including reasonable attorney fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder

and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of this chapter or a rule adopted pursuant to this chapter.

### **EXEMPLARY DAMAGES**

28. As a result of the gross negligence of Defendants, a sum of money should be assessed against Defendants as allowed by law and awarded to Plaintiffs as exemplary damages for the injuries Plaintiffs sustained in connection with the grossly negligent acts and/or omissions of Defendants. Exemplary damages should be awarded as a penalty or by way of punishment, taking into consideration the following:

- a. The nature of wrong;
- b. The character of the conduct involved;
- c. The degree of culpability of the wrongdoer;
- d. The situation and sensibility of the parties involved;
- e. The extent to which such conduct offends a public sense of justice and propriety; and,
- f. The net worth of Defendants.

### **APPLICATION FOR TEMPORARY MANDATORY INJUNCTION AND PERMANENT INJUNCTION**

In light of the above described facts, Plaintiffs seek recovery from Defendants. Plaintiffs are likely to succeed on the merits of this lawsuit because Defendants' negligence and violation of the Texas Water Code clearly and unequivocally flooded Plaintiffs' home, causing Plaintiffs to suffer extensive damages.

Plaintiffs are concerned that, should the current status of Defendants' property remain, their property is at great risk of flooding again should there be any typical, South Texas, summertime rainstorm and/or tropical disturbance or hurricane as hurricane season

approaches.

Unless this Honorable Court immediately restrains the Defendants and/or requires Defendants to remedy the current status of the drainage on their property, Plaintiffs will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. More specifically, Plaintiffs will show the Court the following:

A. The harm to Plaintiffs is imminent for several reasons. First, absent repair of the drainage system on Defendants' property, Plaintiffs property will flood again given any significant rainfall. Such damages will create further significant health and safety issue, not just for Plaintiffs, but for an entire neighborhood of families and small children.

B. This imminent harm will cause Plaintiff irreparable injury in that Plaintiff's property will become uninhabitable, and a significant health and safety issue will arise for an entire neighborhood of families and small children.

C. Although Texas Civil Practices and Remedies Code § 65.011(5) does not require Plaintiffs to prove that they do not have an adequate remedy at law because this suit involves injury to real property, there is no adequate remedy at law which will give Plaintiffs complete, final and equal relief because Plaintiff's damages are difficult to calculate or monetize and this matter raises a significant public health concern. Absent an Order by this Court, restraining Defendants from blocking and/or impeding drainage on their property, Plaintiffs' right to use and enjoy their property will undoubtedly be interfered with. Any damage to Plaintiffs' health, and the health and safety of an entire neighborhood of families and small children, cannot be calculated or monetized.

## **BOND**

Plaintiffs are willing to post a reasonable temporary injunction bond and requests the court to set such bond.

## **REMEDY**

Plaintiffs have met their burden by establishing each element which must be present before injunctive relief can be granted by this Court, therefore Plaintiffs are entitled to the requested Temporary Mandatory Injunction.

In order to preserve the status quo as it existed prior to Defendants' actions of blocking and impeding proper drainage, Plaintiffs ask the Court to restrain and/or enjoin Defendants from interfering with, blocking and/or impeding drainage from their property into the Harris County Flood Control drainage ditch. In as much as Defendants have taken action to interfere with, block and/or impede the drainage prior to May 7, 2019, Plaintiffs seek a Mandatory Injunction from this Court ordering Defendants to return the property to its prior condition wherein the surface water runoff properly flows into the drainage ditch. This Court is granted broad discretion in issuing a Mandatory Temporary Injunction, and the facts and circumstances of this case warrant such an Injunction. *See RP&R, Inc. v Robert Territo*, 32 S.W.3d 396 (Tex.App.—14<sup>th</sup> Dist. 2000).

On final trial on the merits, this Court should permanently enjoin Defendants herein, and their assigns and successors from interfering with, blocking and/or impeding drainage from their property into the Harris County Flood Control drainage ditch.

## **PRE AND POST-JUDGMENT INTEREST**

29. Plaintiffs assert a claim for pre-judgment and post-judgment interest on all applicable elements of damages.

**CONDITIONS PRECEDENT**

30. All conditions precedent to Plaintiffs' right to recover herein and to Defendants' liability have been performed or have occurred.

**NOTICE OF INTENT TO USE AUTHENTICATED DOCUMENTS**

31. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs hereby give notice of intent to offer into evidence all documents and items produced by Defendants in response to Plaintiffs' discovery requests as authenticated for use against Defendants by virtue of Defendants' production of the same.

**JURY DEMAND**

32. Plaintiffs demand a trial by jury to resolve all fact issues in this case.

**WHEREFORE PREMISES CONSIDERED** Plaintiffs respectfully request that each Defendant be cited to appear and answer, and that on final trial, Plaintiffs have and recover from Defendants, jointly and severally, the following:

- a. judgment against Defendants for actual damages in an amount within the jurisdictional limits of the Court;
- b. That after notice and hearing, a temporary injunction will issue enjoining and restraining Defendants from interfering with, blocking and/or impeding drainage from their property into the Harris County Flood Control drainage ditch. In as much as Defendants have taken actions to interfere with, block and/or impede the drainage prior to May 7, 2019, Plaintiffs seek a Mandatory Injunction from this Court ordering Defendants to return the property to its prior condition wherein the surface water runoff properly flows into the drainage ditch;
- c. That after trial on the merits, the Court permanently enjoin Defendants from interfering with, blocking and/or impeding drainage from their property into the Harris County Flood Control drainage ditch;
- d. judgment against Defendants for exemplary damages in an amount within the jurisdictional limits of the Court;
- e. pre-judgment and post-judgment interest as provided by law;
- f. costs of suit; and,

- g. such other and further relief to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

**THE WEBSTER LAW FIRM**

*/s/ Jason C. Webster*

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**ATTORNEYS FOR PLAINTIFFS**

**VERIFICATION**

STATE OF TEXAS


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COUNTY OF HARRIS

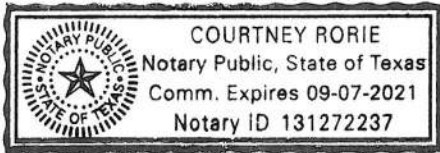
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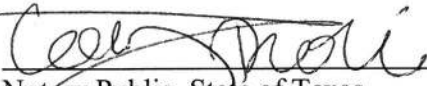
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BEFORE ME, the undersigned authority, personally appeared JASON C. WEBSTER, who, on oath, stated that the statements made in the foregoing Original Petition, Application for Temporary Injunction and Permanent Injunction are true and correct.

  
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JASON C. WEBSTER

SUBSCRIBED AND SWORN TO BEFORE ME on this the 24th day of May, 2019, to certify which witness my hand and seal of office.



  
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Notary Public, State of Texas