

CAUSE NO.

2

OF DALLAS COUNTY, TEXAS

Defendants.

1

2. Plaintiff, Allison A. Jean is a citizen and a resident of Castries, St. Lucia. Allison is the surviving mother of Botham Shem Jean, decedent, and brings this wrongful-death action on her own behalf as a surviving parent. *See* Tex. Civ. Prac. & Rem. Code § 71.021.

3. Plaintiff, Allisa E. Findley is a resident of New York, NY. Allisa is the duly appointed, qualified, and ***acting*** Administrator of the Estate of Botham Shem Jean, and brings this survival action on behalf of the Estate of Botham Shem Jean. *See* Tex. Civ. Prac. & Rem. Code § 71.021.

4. Defendant WPRV XIII Southside Flats Dallas, L.L.C. ("Southside"), the owner of the Southside Flats Apartment ("Southside Flats"), may be served through its registered agent, CT Corporation System, 1999 Bryan ST., STE 900, Dallas, Texas 75201.

5. Defendant Waterton Residential, L.L.C. ("Waterton"), the management company for the Southside Flats may be served through its registered agent, C T Corporation System, 1999 Bryan ST., STE 900, Dallas, Texas 75201.

6. Defendant Dormakaba Group USA, Inc. ("Dormakaba"), the manufacturer of the door locking system installed at the Southside Flats, may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers, Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701.

II. JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court as the matters in controversy occurred in Dallas County, Texas, and because the damages sought, exclusive of interest and cost, are within the jurisdictional limits of this Court.

8. Venue is proper in Dallas County, Texas because all or a substantial part of the events giving rise to Plaintiffs' claims occurred and arose in Dallas County, Texas.

9. Plaintiffs seek monetary relief over \$1,000,000 and a demand for judgment for all the other relief to which the parties deem themselves entitled.

III. DISCOVERY LEVEL

10. Plaintiffs intend to conduct discovery in this matter pursuant to the Level Three Discovery Plan.

IV. FACTS

11. On or about September 6, 2018, at approximately 9:34 p.m., Botham Shem Jean ("Botham") entered his apartment, unit, #1478, at the Southside Flats, 1210 South Lamar, Dallas, Dallas County, Texas, 75215, by using a keyless entry remote transmitter commonly known as a Key FOB. Botham's apartment complex is owned and operated by Defendant WPRV XIII Southside Flats Dallas, L.L.C. ("Southside"). Southside hired Defendant Waterton Residential, L.L.C. ("Waterton") as the management company to handle the day-to-day operations of Southside. Defendant Dormakaba Group USA, Inc. ("Dormakaba") manufactured the Key FOB Botham and all residents of Southside Flats were required to use to access their apartments.

12. Shortly after arriving home, Botham, like most football fans, was on his sofa enjoying a bowl of ice cream while watching the Philadelphia Eagles play the Atlanta Falcons. According to Allison Jean, Botham's mother, one of the reasons Botham moved to the Southside Flats was to be in an area that he felt was safe. Although the Southside Flats was located across the street from the Dallas Police Department headquarters, crime remained a major concern in the area and at the apartment complex.

13. Less than one hour after Botham arrived home, Dallas Police Officer Amber Guyger (“Guyger”), who had just ended her shift across the street at the Dallas Police Department headquarters, entered the security gates of the Southside Flats and allegedly parked her vehicle on the fourth floor of the parking garage. Defendant Guyger eventually exited her vehicle and upon information and belief walked towards the fourth-floor resident area of the Southside. At approximately 9:53 p.m., Defendant Guyger arrived at apartment number 1478 where Botham was then present as the lawful inhabitant. Guyger lives in apartment number 1378.

14. Guyger used her Key Fob to enter what she alleged was her apartment unit. The doors at the Southside Flats are designed to securely close without having to use force but there were multiple incidents and investigations that show the doors, strike plates, and locking mechanisms were unreliable and did not operate properly on a consistent basis. When Guyger reached Botham’s door, either the door had not closed as it was designed to do, or Guyger’s Key FOB allowed her to access an apartment door that was not hers, as it was not designed to do. Either circumstance created an unreasonably dangerous condition that allowed someone access to an apartment that was not theirs. When Guyger entered what she alleges she believed was her apartment, she claims to have also believed that there was an intruder, who she immediately shot twice and killed. That individual was Botham, who had been sitting in his own apartment watching television. Guyger would be charged with, and eventually convicted of, murdering Botham.

SIMILARITIES IN FLOORS AT THE SOUTHSIDE FLATS

15. Guyger testified during her criminal trial that due to similarity of the floors and the difficulty in reading the apartment numbers, she thought she was at Apartment No. 1378. Guyger

indicated that the layout the Southside Flats was confusing, and the similarities of the floors led to her entering Botham's apartment.

16. In support of Guyger's argument that there was no way of distinguishing which floor she was on, Guyger made the following claims in her appellate brief which the Plaintiffs recite verbatim¹:

17. "Residents regularly parked on the wrong floor, walked to the wrong apartment, attempted to enter the wrong apartment, or entered the wrong apartment, or a combination of these."²

18. "In connection with the investigation of the death of Botham, lead investigator Texas Ranger David Armstrong ("Armstrong") and his team interviewed 297 of the 349 residents of Southside Flats. (RR10.41). Armstrong discovered that:³

- 71 tenants—44% of them—on floors three and four had walked to the wrong apartment on the wrong floor (RR10.43);
- 23% of the tenants on floors three and four had gone to the wrong door and inserted their fobs into the locks. (RR9.292-293; RR10.42);
- 76 tenants—47% of them—on floors three and four had unintentionally parked on the wrong floor (RR10.43);
- 93 tenants—32% of them—on all floors had unintentionally parked on the wrong floor (RR10.43); and

¹ These facts were taken from the Appellant's Brief filed by Amber Guyger in the appeal of her murder conviction. See <http://www.search.txcourts.gov/Case.aspx?cn=05-19-01236-CR&coa=coa05> (last visited August 31, 2020).

² *Id.*

³ *Id.*

- 15% of all residents had gone to the wrong door and inserted their fobs into the locks.

(RR9.293; RR10.42).”

19. In Guyger’s appellate brief, she identifies other incidents in which tenants went to the wrong apartment. Among the examples:

- Marc Lipscomb—an attorney who worked for Kirkland & Ellis—lived with a roommate on the third floor in apartment 1300, a two-bed, two-bath unit. (RR12.172-173, 181; RR17.DX80). Lipscomb had **never** met Guyger or Jean. (RR12.173). Lipscomb had unintentionally parked on the fourth floor 10-12 times. (RR12.173-174). Lipscomb described how the entryway into the apartment building from the parking garage when he was on the third floor was virtually identical to the same position when he was on the fourth floor. (RR12.174-176; RR17.SX251, DX79). Lipscomb **never** noticed the roofline of the apartment building from the fourth-floor garage. (RR12.176). **Nor** did he recall anything that distinguishes the third floor from the fourth floor. (RR12.177) One time after walking his dog, Lipscomb used the stairwell, and in error ascended one flight of stairs to the second floor rather than two flights to the third floor. (RR12.180). He had **not** consumed any alcohol. (RR12.185). Lipscomb walked to what he thought was his apartment 1300—but instead walked to apartment 1200, one floor directly beneath his. (RR12.181-182, 188).
- Jessica Martinez—a teacher at Dallas ISD—had lived on the third floor in apartment 1352 for about two years. (RR12.190-191). Once or twice she unintentionally parked on the fourth floor. (RR12.196). She could not differentiate between the third and fourth floors unless she recognized vehicles as “markers” next to which she normally parked. (RR12.196). She had unintentionally entered the wrong hall. (RR12.198). Several times, Martinez’s fob would **not** work, and she had to complain to management. (RR12.191-192). One time when she was home, a smelly, toothless man who had a fob entered her apartment. (RR12.193). Amy Rose had lived on the third floor in apartment 1380 for about one year. (RR12.201). Once she unintentionally parked on the fourth floor. (RR12.201). She walked all the way to what she thought was her apartment before she realized she was on the wrong floor. (RR12.202). Hughes had a problem with her door because when it was humid due to rain, the deadbolt would **not** enter the socket because the strike plate was installed unevenly with the deadbolt. (RR10.110-111, 124-127). This forced her to pull the door to lock it. (RR10.124, 127). Hughes had parked on the wrong floor two times. (RR10.113).⁴

⁴ *Id.*

20. Guyger claimed to have entered Jean’s apartment because of a malfunction in the lock to Jean’s door, the absurd design of the building and its attached garage, and the incompetent management of Southside Flats. “In the parking garage, the only indicator of what floor one is on are signs in front of the reserved parking signs and small black placards with floor numbers on the inside frames of the elevators. (RR10.30-31, 224-225, 229; RR11.60, 66; RR17.SX68, SX83, SX261). The third and fourth floor of the garage approaching the entry into the building are indistinguishable (RR12.174-175; RR17.SX251, DX79). This caused confusion for many residents; In error, Guyger alleged that she drove to the fourth floor and parked her truck by backing into a spot that was in the direct line of sight of the entryway into the building. (RR9.253, 260; RR10.33; RR12.65-66; RR17.SX170, SX175-SX176).”

21. Guyger stated in her appellate brief that these problems were glaring and obvious. “After the incident, Southside Flats labeled the entryways with floor numbers (RR10.31-32), showing that they recognized this problem.”⁵

PROBLEMS WITH DOORS

22. “In investigating the door and lock to Botham’s apartment, Armstrong discovered that the strike plate—where the throw for the deadbolt enters to catch and secure the door—was bowed out, indicating that when the strike plate was installed, its screws had been over torqued, causing the strike plate to bow (RR10.43-44; RR17.DX39-DX43). The over torqued strike plate caused a crack inside the doorframe. (RR10.45-46; RR17.SX26, DX40-DX41).”⁶

⁵ *Id*

⁶ *Id*

23. “Because the bottom of the strike plate was driven in too far, the gap between the wood and strike plate was exposed and the screws were torqued into the wood to the point that the strike plate was bowed into the area where the door throw would sweep. (RR10.46).”⁷

24. “On September 6, 2018, it had rained so there was humidity. (RR10.47-49). In an experiment conducted in October 2018 when the weather conditions were similar to September 6, 2018, Armstrong and his team opened the door to Jean’s apartment numerous times, and each time it did **not** completely close depending on the distance that the door had been open before they let it go. (RR10.47, 50; RR17.SX26). The door would “close” but **not** fully latch. (RR10.48; RR17.SX26).”⁸

25. “On September 20, 2018, while assisting Armstrong, DPS Special Agent Wallace interviewed resident George Lucas of apartment 1123, who showed Wallace how the door to his apartment would **not** close unless he pushed it for the latch to catch. (RR12.166-168). On September 20, 2018, while assisting Armstrong, DPS Special Agent Estes interviewed the resident of apartment 1226, who was holding the door open with her foot but walked away to check on her child. (RR12.169-171). The door did **not** close because it was not “square” with frame and the latch did **not** catch, which would have enabled Estes to open it from the hallway. (RR12.170).”⁹

ACTS AND OMISSIONS OF DEFENDANTS SOUTHSIDE AND WATERTON

26. Defendants Southside and Waterton were aware of the condition of the doors at the Southside Flats but failed to provide its tenants and guests with adequate notice or warnings of the

⁷ *Id*

⁸ *Id*

⁹ *Id*

failures. Defendants Southside and Waterton also had notice of the crime in the vicinity of the Southside Flats and knew that their tenants and their tenants' guests could be harmed if the doors were not properly locked. Defendants Southside and Waterton were also aware that the third and fourth floor of the garage approaching the entry into the building are indistinguishable, causing confusion to their tenants and guests. Despite notice of the problems with the doors and the fact that the entries into the building are indistinguishable, Defendants Southside and Waterton failed to assure that the doors were working properly and the entryway to each floor was properly labeled, for the safety of their tenants and their guests.

27. Defendants Southside and Waterton, through their employees, failed to repair the doors and to assure that they were working properly. Defendants failed to warn the tenants and guests of the Southside Flats about the problems with the doors that were deemed to be hazardous to the safety of the tenants or the general public.

28. Defendants Southside and Waterton, through their employees, failure to repair the doors and to assure that they were working properly, despite actual and constructive knowledge of the unsafe condition ultimately resulted in the death of Botham.

ACTS AND OMISSIONS OF DEFENDANT DORMAKABA

29. Defendant Dormakaba constructed, produced, and manufactured the door, strike plate, and locking mechanism that was installed in Botham's apartment.

30. Upon information and belief, Plaintiffs would show that an alternative door design was available to the Defendants that would inhibit cracking of the strike plate and therefore permit the door to close properly regardless of environmental conditions.

31. Upon information and belief, Plaintiffs would show that an alternative door design was available to the Defendants that would inhibit swelling of the door and therefore permit the door to close properly regardless of environmental conditions.

32. Additionally, upon information and belief, Plaintiffs would show that the alternative designs were both economically feasible and readily available to the defendants at the time the door, strike plate, and locking mechanism were constructed and installed.

DEFENDANTS CONTRIBUTED TO CAUSE THE DEATH OF BOTHAM

33. Botham's death occurred as a direct result of the faulty poorly maintained door and locking mechanism and the confusion with the layout of the Southside Flats, which Defendants knew or in the exercise of ordinary care, should have known to exist.

34. Upon information and belief, Defendants knew or had reason to know that similar incidents where an intruder was able to gain access to the apartments in the complex because of the faulty locks had occurred at the building, yet did not make any reasonable effort to fix the issue.

35. As a result of the Defendants' negligence, premises defects, product defects, and gross negligence, Botham suffered a painful death.

36. As a direct and proximate result of Defendants' conduct, Plaintiffs have sustained substantial damages and pecuniary loss.

37. Botham was twenty-six (26) years old when he was killed. Botham was very well liked. He was in good health, with a reasonable life expectancy of living at least 58 more years to age 84. Botham leaves behind his parents and two siblings.

38. Bertrum and Allison Jean have suffered pecuniary loss from the death of their son

by virtue of the destruction of the parent-child relationship, including the right to love, affection, solace, comfort, companionship, society, emotional support, and happiness. Bertrum and Allison Jean will suffer anguish, grief, and sorrow as a result of Botham's death and are likely to continue to suffer for a long time in the future. For these losses, Plaintiffs seek damages in a sum in excess of the minimum jurisdictional limits of the court.

V. CAUSES OF ACTION

COUNT I: NEGLIGENCE

39. Plaintiff incorporates by reference paragraphs 1 through 38 as if fully set forth herein.

40. Defendants owed Botham a legal duty to protect him from the harm and injuries he suffered, which ultimately resulted in his death. Defendants Southside and Waterton had a duty to exercise the degree of care that a reasonable person would use to avoid harm to others under circumstances similar to those herein. Plaintiffs injuries were proximately caused by Defendants' negligent, careless, and reckless disregard of said duty. The negligent, careless, and reckless disregard of duty by the Defendants consisted of but is not limited to the following acts and omissions:

- A. Failing to properly inspect and maintain the apartment door in question to discover dangerous condition;
- B. Failing to routinely inspect and maintain the apartment door in question to maintain a reasonable safe condition;
- C. Failing to give adequate and understandable warnings to Plaintiff of the unsafe condition of the door;
- D. Failing to replace the faulty door which allowed an intruder to enter the home and cause bodily harm resulting in the death of the Plaintiff;
- E. Failing to properly repair the door so that when it was released from the inside it would close securely;

- F. Failing to install signs to identify the floors; and
- G. Failing to comply and meet the standards of the Texas Property Code for Rental Properties, Chapter 92 of the Texas Property Code, Subchapter D. Security Devices, Sec. 92.154.

41. As a direct and proximate result of the Defendants' negligence and gross negligence, Botham sustained severe fatal injuries, which Plaintiffs are entitled to recover in excess of the minimum jurisdictional limits of this Court.

COUNT II: PREMISES LIABILITY

42. Plaintiffs incorporate by reference paragraphs 1 through 41 as if fully set forth herein.

43. On the date Botham was injured; a dangerous condition existed on the Defendants Southside and Waterton's premises which was the proximate cause of the injuries, specifically being shot by an intruder who entered his apartment through the faulty door that was ajar.

44. Defendants Southside and Waterton controlled the safety and security of the apartment complex and as such had a duty to use ordinary care to protect invitees from the wrongful acts of third parties.

45. Defendants Southside and Waterton were aware of issues with the functionality of the apartment doors, strike plates, and locking mechanisms of Botham Jean and others within the apartment complex.

46. It is axiomatic that an apartment door that does not properly close and lock creates an unreasonable risk of harm to the safety and security of the tenant and their guests.

47. The condition described posed an unreasonable risk of harm to Botham and others in that there was a probability of a harmful event occurring that a reasonably prudent person would have foreseen that the event that did occur or some similar event was likely to happen.

48. Defendants Southside and Waterton did not exercise reasonable care to reduce or eliminate the risk.

49. The negligent, careless, or reckless acts and omissions of Defendants Southside and Waterton consisted of one or more of the following:

- A. Defendants Southside and Waterton failed to provide an adequate apartment door;
- B. Defendants Southside and Waterton failed to properly maintain and inspect the apartment door;
- C. Defendants Southside and Waterton failed to provide the necessary procedures to repair and or replace a faulty apartment door.
- D. Defendants Southside and Waterton failed to use due care to test and or inspect the door or its component parts thereof to determine its durability and function ability for the purpose for which it was intended; and
- E. Although events similar are believed to have previously occurred Defendants Southside and Waterton failed to take any corrective action to prevent a recurrence of the problem in other units.

COUNT III: NEGLIGENCE PER SE - VIOLATION OF TEXAS STATUTE § 92.153

50. Plaintiffs incorporate by reference paragraphs 1 through 49 as if fully set forth herein.

51. Defendants Southside and Waterton knew or had reason to know that the locks on Botham and other tenants' doors were not operable at the time of the September 6 incident.

52. Despite this, Defendants made no reasonable effort to fix the defect in Botham's door lock in a timely manner.

53. Defendants' failure to fix the defect was grossly negligent, and this negligence was a direct and proximate cause of Botham's death, as it allowed Guyger to enter Jean's apartment and shoot him.

54. Defendants' failure and gross negligence is in direct violation of Texas Statute § 92.153(a)(2).

55. Plaintiffs seek relief for the actual damages suffered as a result of Defendants' failure and gross negligence, as well as punitive damages, court costs, and attorney's fees, under Texas Statute § 92.164(a)(4).

COUNT IV: STRICT PRODUCT LIABILITY OF DEFENDANT DORMAKABA

56. Plaintiffs incorporate by reference paragraphs 1 through 55 as if fully set forth herein.

57. The door, strike plate, and locking mechanism used at the Southside Flat were produced, manufactured, sold, distributed, marketed and installed by Defendant Dormakaba.

58. The door, strike plate, and locking mechanism were defective and unreasonably dangerous, as it made it nearly impossible for the door to properly close, allowing anyone to enter Botham's apartment uninvited and unannounced.

59. Specifically, the door was defectively designed in that it would swell with moisture making it impossible to close.

60. Additionally, the "strike plate" in the door was defectively designed in a manner that caused it to crack when moisture was in the air, inhibiting the closure of the door.

61. Defendant knew of safer alternative designs to the door, strike plate, and locking mechanism that were available at the time of production. These safer alternative designs would

have prevented or significantly reduced the risks without substantially impairing the products' utility. The safer alternative design was economically and technologically feasible at the time the product left the control of Defendant.

62. The door, strike plate, and locking mechanism were also defectively marketed by Defendant in that Defendant knew or should have known of the risks associated with the use and installation of its products and failed to adequately warn of those risks.

63. Alternatively, the door, including the locking mechanism and the strike plate were defective as installed by Defendant.

64. Defendant Dormakaba improperly installed the door, strike plate, and locking mechanism and as a result the apartment door would not properly close.

65. Botham relied on Defendant to install the door and related hardware properly.

66. As a direct result of Defendant's defective installation, Guyger was able to enter Jean's apartment without warning, shoot and kill Jean.

67. These defects rendered the products unreasonably dangerous and the producing cause of the death of Botham.

COUNT V: NEGLIGENCE OF DEFENDANT DORMAKABA

68. Plaintiffs incorporate by reference paragraphs 1 through 67 as if fully set forth herein.

69. The door, strike plate, and locking mechanism used at the Southside Flat were produced, manufactured, sold, distributed, and installed by Defendant Dormakaba.

70. The door, strike plate, and locking mechanism were defective and unreasonably dangerous, as it made it nearly impossible for the door to properly close, allowing anyone to enter Botham's apartment uninvited and unannounced.

71. The door was negligently designed in that it would swell with moisture making it impossible to close.

72. Additionally, the “strike plate” in the door was negligently designed in a manner that caused it to crack when moisture was in the air, inhibiting the closure of the door.

73. The door, strike plate, and locking mechanism were also negligently marketed by Defendant in that Defendant knew or should have known of the risks associated with the use and installation of its products and failed to adequately warn of those risks.

74. Defendant knew of safer alternative designs to the door, strike plate, and locking mechanism that were available at the time of production. These safer alternative designs would have prevented or significantly reduced the risks without substantially impairing the products’ utility. The safer alternative design was economically and technologically feasible at the time the product left the control of Defendant.

75. Alternatively, the door, including the locking mechanism and strike plate were negligently installed by Defendant.

76. Defendant Dormakaba negligently installed the door, strike plate, and locking mechanism and as a result the apartment door would not properly close.

77. As a direct result of Defendant’s negligent design, manufacture, marketing, and installation, Guyger was able to enter Botham’s apartment without warning, shoot and kill Botham.

78. This negligence was a proximate cause of the death of Botham.

COUNT VI: NEGLIGENT UNDERTAKING OF DEFENDANT DORMAKABA

79. Plaintiffs incorporate by reference paragraphs 1 through 78 as if fully set forth herein.

80. Defendant Dormakaba undertook to render services to Defendant Southside that it knew or should have known were necessary for the protection of Southside's tenants.

81. Defendant Dormakaba failed to exercise reasonable care in performing those services—i.e., its undertaking.

82. Defendant Dormakaba's failure to exercise reasonable care either increased the risk of harm to Southside's tenants or the harm suffered by Southside's tenant, Botham, was because Southside and/or its tenants, including Botham, relied upon Defendant Dormakaba's undertaking.

83. Defendant Dormakaba's breach of these duties were the proximate cause of Botham's death.

VI. DAMAGES

84. **Actual damages.** Plaintiffs reallege and incorporate each and every allegation and fact contained above and below as though set forth fully herein. Defendants' acts and/or omissions were a proximate and/or producing cause of the death of Botham and the following damages:

a. Estate of Botham Shem Jean (Survival Claim; Tex. Civ. Prac. & Rem. Code § 71.021).

1. Conscious pain and mental anguish suffered by Botham Shem Jean prior to his death;
2. Funeral and burial expenses; and
3. Exemplary damages.

b. Bertrum Jean (as wrongful death beneficiary of Botham Shem Jean; Tex. Civ. Prac. & Rem. Code § 71.004).

1. Mental anguish—the emotional pain, torment, and suffering experienced by Bertrum Jean because of the death of his son, Botham—that Bertrum Jean

sustained in the past and that he will, in reasonable probability, sustain in the future;

2. Loss of companionship and society—the loss of the positive benefits flowing from the love, comfort, companionship, and society that Bertrum Jean would have received from Botham had he lived—that Bertrum Jean sustained in the past and that he will, in reasonable probability, sustain in the future;
3. Pecuniary loss—loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Bertrum Jean would have received from Botham had he lived—that Bertrum Jean sustained in the past and that he will, in reasonable probability will sustain in the future.

c. Allison Jean (as wrongful death beneficiary of Botham Shem Jean; Tex. Civ. Prac. & Rem. Code § 71.004).

1. Mental anguish—the emotional pain, torment, and suffering experienced by Allison Jean because of the death of her son, Botham—that Allison Jean sustained in the past and that she will, in reasonable probability, sustain in the future;
2. Loss of companionship and society—the loss of the positive benefits flowing from the love, comfort, companionship, and society that Allison Jean would have received from Botham had he lived—that Allison Jean sustained in the past and that she will, in reasonable probability, sustain in the future;
3. Pecuniary loss—loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Allison Jean would have received from Botham had he lived—that Allison Jean sustained in the past and that he will, in reasonable probability will sustain in the future.

85. **Punitive/Exemplary Damages.** Defendants’ acts and/or omissions, as outlined above, were grossly negligent, in that, when viewed objectively from the standpoint of each defendant at the time of its respective act and/or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and of which each Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with

conscious indifference to the rights, safety, or welfare of others, including Botham. As such, the Estate of Botham Shem Jean is entitled to recovery punitive and exemplary damages.

86. Prejudgment and postjudgment interest.

87. Costs of court.

VII. CONDITIONS PRECEDENT

88. Defendants have actual notice of the injuries complained of herein. Any conditions precedent have occurred, been performed, or have been waived.

VIII. DEMAND FOR JURY

89. Pursuant to Texas Rules of Civil Procedure 216, Plaintiffs demand a jury trial and would show that the appropriate fee has been paid contemporaneously with the filing of the Original Petition.

IX. REQUEST FOR DISCLOSURES

90. Pursuant to Texas Rule 194, you are requested to disclose, the information or material described in the Rule.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment against the Defendants for all wrongful death damages, survival damages, general and special damages, including but not limited to, loss of love, affection, comfort, assistance, protection, affection and care, physical pain and suffering, mental anguish, funeral and burial expenses, loss of services, loss of earnings, exemplary damages, for costs, for pre and post judgment interest at the legal rate, and for such other and further relief, both at law and in equity, to which Plaintiffs may show themselves entitled.

Respectfully submitted,

By: /s/ Daryl K. Washington
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