

CAUSE NO. _____

**JANICE CARTER, AS NEXT OF KIN OF
DEBORAH KIEL, DECEASED,**

Plaintiff,

v.

**ELECTRIC RELIABILITY COUNCIL OF
TEXAS, INC., CENTERPOINT ENERGY,
INC., CALPINE CORP., LUMINANT
GENERATION CO., VISTRA CORP.,
DUKE ENERGY CORP., NRG
ENERGY, INC., EXELON GENERATION
CO., LLC, TENASKA GATEWAY
PARTNERS, LTD., AND TENASKA, INC.,**

Defendants.

IN THE DISTRICT COURT

JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

To the Honorable Judge of this Court:

Plaintiff Janice Carter, as Next of Kin of Deborah Kiel, Deceased, files this Original Petition against Defendants Electric Reliability Council of Texas, Inc., CenterPoint Energy, Inc., Calpine Corp., Luminant Generation Co., Vistra Corp., Duke Energy Corp., NRG Energy Inc., Exelon Generation Co., LLC, Tenaska Gateway Partners, Ltd., and Tenaska, Inc., and would respectfully show as follows:

I. DISCOVERY PLAN

1. Pursuant to TEX. R. CIV. P. 190.4, Plaintiff intends to conduct discovery in this case under a Level 3 Discovery Plan.

II. PARTIES

2. Plaintiff Janice Carter is an individual residing in Harris County, Texas, and is a citizen of the State of Texas. Janice Carter is the sibling of Decedent Deborah Kiel.

3. Plaintiff brings a survival action on behalf of the Estate of Deborah Kiel, Deceased.

4. At the time of her death, Deborah Kiel resided in Harris County, Texas, in the 9000 block of Ribbonwood Street, Houston, Texas.

5. Defendant Electric Reliability Council of Texas, Inc. (“ERCOT”) is a Texas corporation with its principal place of business at 7620 Metro Center Drive, Austin, TX 78744. Defendant ERCOT may be served with process by serving its registered agent, Bill Magness, at 7620 Metro Center Drive, Austin, TX 78744.

6. Defendant CenterPoint Energy, Inc. (“CenterPoint”) is a Texas corporation with its principal place of business at 1111 Louisiana Street, Houston, Texas 77002. Defendant CenterPoint may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, TX 75201. Defendant CenterPoint in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name “CenterPoint,” which is hereby sued in its partnership, assumed, or common name in connection with producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on CenterPoint Energy, Inc. effects service on CenterPoint in its assumed or common name.

7. Defendant Calpine Corp. (“Calpine”) is a Delaware corporation with its principal place of business at 717 Texas Avenue, Houston, Texas. Defendant Calpine Corp. may be served with process by serving its registered agent, Corporation Service Company, at 211 East 7th Street, Suite 620, Austin, TX 78701. Defendant Calpine Corp. in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name “Calpine,” which is hereby sued in its partnership, assumed, or common name in connection with

producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on Calpine Corp. effects service on Calpine in its assumed or common name.

8. Defendant Luminant Generation Co. (“Luminant”) is a Texas company with its principal place of business at 6555 Sierra Drive, Irving, Texas. Defendant Luminant Generation Co. may be served with process by serving its registered agent, Capitol Corporate Services, Inc., at 206 East 9th Street, Suite 1300, Austin, TX 78701. Defendant Luminant Generation Co. in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name “Luminant,” which is hereby sued in its partnership, assumed, or common name in connection with producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on Luminant Generation Co. effects service on Luminant in its assumed or common name.

9. Defendant Vistra Corp. (“Vistra”) is a Delaware corporation with its principal place of business at 6555 Sierra Drive, Irving, Texas. Defendant Vistra Corp. may be served with process by serving its registered agent, Capitol Corporate Services, Inc., at 206 East 9th Street, Suite 1300, Austin, TX 78701. Defendant Vistra Corp. in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name “Vistra,” which is hereby sued in its partnership, assumed, or common name in connection with producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on Vistra Corp. effects service on Vistra in its assumed or common name.

10. The separate identities or corporate forms of Defendants Luminant and Vistra must be disregarded to prevent the use of the corporate fiction as an unfair device to inflict injustice on

Plaintiff and others similarly situated. At the time of events giving rise to this suit, Defendants Luminant and Vistra were the alter egos of each other. Because these entities were organized and operated as mere tools or business conduits of each other, they must be treated as one entity, and each of these Defendants is liable for the negligent acts and omissions of each of the others. The corporate form of Defendant Luminant must be disregarded because the entity was inadequately capitalized in light of the nature and risk of its business. Alternatively, Defendants Luminant and Vistra operated collectively as a joint business enterprise, carrying out a common business objective, and are jointly and severally liable for the damages alleged herein and liable for each other's liability. Regardless of their superficial corporate-form designations, the Defendants were de facto partners and thus are liable for the acts of their partners.

11. Defendant Duke Energy Corp. ("Duke Energy") is a Delaware corporation with its principal place of business at 550 South Tryon Street, Charlotte, North Carolina. Defendant Duke Energy Corp. may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, TX 75201. Defendant Duke Energy Corp. in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name "Duke Energy," which is hereby sued in its partnership, assumed, or common name in connection with producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on Duke Energy Corp. effects service on Duke Energy in its assumed or common name.

12. Defendant NRG Energy, Inc. ("NRG") is a Delaware corporation with its principal place of business at 910 Louisiana Street, Houston, Texas. Defendant NRG Energy, Inc. may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street,

Suite 900, Dallas, TX 75201. Defendant NRG Energy, Inc. in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name “NRG,” which is hereby sued in its partnership, assumed, or common name in connection with producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on NRG Energy, Inc. effects service on NRG in its assumed or common name.

13. Defendant Exelon Generation Co., LLC (“Exelon”) is a Pennsylvania corporation with its principal place of business at 10 Dearborn Street, Chicago, Illinois. Defendant Exelon Generation Co., LLC may be served with process by serving its registered agent, Corporate Creations Network Inc., at 5444 Westheimer, Suite 1000, Houston, TX 77056. Defendant Exelon Corp. in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name “Exelon,” which is hereby sued in its partnership, assumed, or common name in connection with producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on Exelon Corp. effects service on Exelon in its assumed or common name.

14. Defendant Tenaska Gateway Partners, Ltd. (“Tenaska Gateway”) is a Texas limited partnership with its principal place of business 14302 FNB Parkway, Omaha, Nebraska. Tenaska Gateway Partners, Ltd. may be served with process by serving its registered agent, Corporation Service Company, at 211 East 7th Street, Suite 620, Austin, TX 78701. Defendant Tenaska Gateway Partners, Ltd. in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name “Tenaska Gateway,” which is hereby sued

in its partnership, assumed, or common name in connection with producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on Tenaska Gateway Partners, Ltd. effects service on Tenaska Gateway in its assumed or common name.

15. Defendant Tenaska Inc. (“Tenaska”) is a Delaware corporation with its principal place of business 14302 FNB Parkway, Omaha, Nebraska. Tenaska Inc. may be served with process by serving its registered agent, Prentice Hall Corporation System, at 211 East 7th Street, Suite 620, Austin, TX 78701. Defendant Tenaska Inc. in its assumed or common name is sued under TEX. R. CIV. P. 28 and includes suit against any and all partnerships, unincorporated associations, private corporations, and individuals doing business under the assumed name “Tenaska,” which is hereby sued in its partnership, assumed, or common name in connection with producing, transmitting, or distributing electric power. *See* TEX. R. CIV. P. 28. Service of process on Tenaska Inc. effects service on Tenaska in its assumed or common name.

16. The separate identities or corporate forms of Defendants Tenaska Gateway and Tenaska must be disregarded to prevent the use of the corporate fiction as an unfair device to inflict injustice on Plaintiff and others similarly situated. At the time of events giving rise to this suit, Defendants Tenaska Gateway and Tenaska were the alter egos of each other. Because these entities were organized and operated as mere tools or business conduits of each other, they must be treated as one entity, and each of these Defendants is liable for the negligent acts and omissions of each of the others. The corporate form of Defendant Tenaska Gateway must be disregarded because the entity was inadequately capitalized in light of the nature and risk of its business. Alternatively, Defendants Tenaska Gateway and Tenaska operated collectively as a joint business enterprise, carrying out a common business objective, and are jointly and severally liable for the damages alleged herein and liable for each other’s liability. Regardless of their superficial corporate-form

designations, the Defendants were de facto partners and thus are liable for the acts of their partners.

III. JURISDICTION AND VENUE

17. This Court has jurisdiction over this action under TEX. GOV'T CODE § 24.007.

18. The damages sought are within the jurisdictional limits of the Court. Plaintiff's counsel states that the amount of damages sought in monetary relief falls under TEX. R. CIV. P. 47(c)(4).

19. Venue is proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because it is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred, and under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3) because it is the county of Defendant CenterPoint's principal office in this state.

20. Plaintiff has not alleged any federal causes of action, and expressly and unequivocally disclaims and disavows any reliance on federal law. Plaintiff proceeds herein solely pursuant to the laws of the State of Texas, and does not raise any federal question, substantial or otherwise. There is no federal question, and any alleged federal question could not possibly be substantial, much less substantial to the federal system as a whole. *See Gunn v. Minton*, 568 U.S. 251 (2013). Even were a federal question raised, actually disputed, and substantial (all of which is denied), it would not be capable of resolution in federal court without disruption of the federal-state balance approved by Congress. Therefore, any removal of this case pursuant to 28 U.S.C. § 1331 would be improvident and sanctionable.

21. Plaintiff and Defendants ERCOT, CenterPoint, Calpine, Luminant, Vistra, and NRG are citizens of the State of Texas. Pursuant to both 28 U.S.C. § 1441(b)(2) and 28 U.S.C. § 1332, this action cannot be removed, and any such removal would be sanctionable.

IV. FACTS

22. On or about February 14, 2021, the State of Texas experienced a cold weather event in which more than 4 million Texas households, including Decedent's home, lost power.

23. As a result of the impending cold weather event, Texas Governor Greg Abbott issued a disaster declaration on February 12, 2021, for all 254 counties in the State of Texas.

24. On the following day, February 13, 2021, Governor Abbott requested a federal emergency declaration, which was approved on February 14, 2021.

25. By February 15, 2021, the National Weather Service had issued a winter storm warning for the entire State of Texas.

26. The cold weather event caused increased energy demands across the state as Texans tried to keep their homes and businesses warm, with total state energy demand peaking around 69,000 megawatts.

27. A peak winter demand of 69,000 megawatts is by no means unusual. As recently as the 2018 winter season, the Texas energy grid experienced demand in excess of 65,000 megawatts.

28. The Texas energy grid regularly meets summer demands of 125,000 megawatts—almost twice the peak demand experienced in February 2021.

29. As energy demand rose in February 2021, the supply of energy fell as outdated power generators failed, depriving the Texas power grid of 45,000 megawatts of energy.

30. Defendants could have increased electricity production capacity in Texas in the days and weeks leading up to the February 2021 cold weather event but consciously chose not to do so.

31. Similarly, Defendants could have weatherized and updated their generation,

transmission, and distribution facilities to prevent cold-weather failures like those experienced in February 2021, but consciously chose not to do so.

32. In response to Defendants' failure to anticipate increased energy demands in February 2021, as well as the failure of Defendants to weatherize and update their generation, transmission, and distribution facilities, the transmission and distribution utilities—including Defendants—that make up the Texas energy grid were ordered to initiate rolling blackouts. These rolling blackouts left millions of people in the State of Texas without power for several days.

33. This cold weather event and its effects on the Texas energy grid were neither unprecedented, nor unexpected, nor unforeseen.

34. In fact, similar cold weather events in 1989 and 2011 led to exactly the same type of rolling blackouts that have affected and continue to affect Texas residents and businesses.

35. Texas also experienced disruptive cold weather events in 1983, 2003, 2006, 2008, and 2010.

36. After investigating the Texas power grid in the wake of the cold weather event of 1989, the Public Utilities Commission of Texas made the following recommendations:

- “All utilities should ensure that they incorporate the lessons learned during December of 1989 into the design of new facilities in order to ensure their reliability in extreme weather conditions.
- All utilities should implement procedures requiring a timely annual (each Fall) review of unit equipment and procedures to ensure readiness for cold weather operations.
- All utilities should ensure that procedures are implemented to correct defective freeze protection equipment prior to the onset of cold weather.
- All utilities should maintain insulation integrity and heat tracing systems in proper working order. Generating unit control systems and equipment essential to cold weather operations should be included in a correctly managed preventive maintenance program.

- Additional training programs for plant personnel on the emergency cold weather procedures, including periodic drills, should be implemented by each responsible utility.”

PUCT 1989 Report at 7.

37. The Federal Energy Regulatory Commission and a nonprofit regulatory authority investigated the Texas power grid after rolling blackouts were again required during a cold weather event in 2011. The FERC report concluded:

Despite the recommendations issued by the PUCT in its report on the 1989 event, the majority of the problems generators experienced in 2011 resulted from failures of the very same type of equipment that failed in the earlier event. And in many cases, these failures were experienced by the same generators. . . . In its 1989 report, the PUCT commented that “whether the corrective actions being implemented [by the generators in the wake of the event] are sufficient to prevent future freeze-off related power plant failures, only direct experience with another deep freeze will ascertain.” **Texas has now had that second event, and the answer is clearly that the corrective actions were not adequate, or were not maintained.** Generators were not required to institute cold weather preparedness, and efforts in that regard lapsed with the passage of time.

FERC 2011 Report at 178–79 (footnote omitted) (emphasis added).

38. The FERC report further noted:

the massive amount of generator failures that were experienced raises the question whether it would have been helpful to increase reserve levels going into the event. This action would have brought more units online earlier, might have prevented some of the freezing problems the generators experienced, and could have exposed operational problems in time to implement corrections before the units were needed to meet customer demand.

FERC 2011 Report at 8.

39. As the FERC report observed, “[m]any of the generators that experienced outages in 1989 failed again in 2011.” FERC 2011 Report at 8.

40. Now, many of these same power generators, transmitters, and distributors, including Defendants, have failed once again due to their refusal to implement the reasonable economical remedies recommended in 1989 and 2011.

41. The power in Decedent's home went out at approximately 2:30 A.M. on Sunday, February 14, 2021. As a direct result, Decedent's home had no electricity.

42. At the time that Decedent's electricity was turned off, the temperature was approximately 37 degrees in Houston, Texas. Over the next 41 hours, Decedent's power was never restored, and temperatures continued to drop.

43. Overnight on February 14, 2021, temperatures reached a low of 19 degrees. On Monday, February 15, 2021, the temperature did not rise above 27 Degrees in the Houston area.

44. Due to the continued lack of electricity in Decedent's home, the interior of her home reached freezing temperatures, and Decedent was unable to stay warm.

45. During this time, Decedent would intermittently use her vehicle to warm herself and charge her phone.

46. During this time, Decedent was in frequent contact with her sister, Plaintiff Janice Carter, and expressed her extreme fear and anxiety because she was so cold, unable to leave, and afraid of the dark. Plaintiff was able to go to a nearby friend's home, who had not lost electricity, and intended to take Decedent there as well. Plaintiff promised to pick up Decedent as soon as possible but was unable to collect Decedent from her freezing home because the roads were hazardous and impassable.

47. At 7:30 p.m. on Monday, February 15, 2021, Plaintiff decided to brave the roads to save her sister.

48. On arriving at Decedent's home, Decedent expressed great relief, while gathering her things, Decedent complained that she felt tired and then collapsed. Plaintiff called 911 and administered CPR for approximately 15 minutes while waiting for the ambulance to arrive.

49. When the paramedics arrived, they spent approximately 20 minutes trying to

resuscitate Decedent. Decedent was transported to St. Joseph Medical Center in Houston, Texas, where she was pronounced dead.

50. On information and belief, Decedent died of heart failure caused by hypothermia after spending nearly two days in below-freezing temperatures as a direct result of the power outage, which deprived her of electricity in her home.

V. CLAIMS FOR RELIEF

COUNT 1: NEGLIGENCE AND GROSS NEGLIGENCE OF DEFENDANT ERCOT

51. Defendant ERCOT had a duty to take reasonable care in estimating and planning the amount of power that would be required in the Winter 2021 season.

52. Defendant ERCOT further had a duty to take reasonable corrective actions when it became clear that its own projections showed insufficient supply capacity to meet forecast demand.

53. Defendant ERCOT failed to take reasonable care in estimating and planning the amount of power that would be required in the Winter 2021 season.

54. Defendant ERCOT failed to take reasonable corrective actions when it became clear that its own projections showed insufficient supply capacity to meet forecast demand.

55. Defendant ERCOT failed to “make all reasonable efforts to prevent interruptions of service” as required by 16 TEX. ADMIN. CODE § 25.52.

56. Defendant ERCOT failed to “make reasonable provisions to manage emergencies resulting from failure of service” as required by 16 TEX. ADMIN. CODE § 25.52.

57. Defendant ERCOT’s violations of 16 TEX. ADMIN. CODE § 25.52 constituted negligence per se.

58. Defendant ERCOT’s negligent acts and omissions, as described above, caused DECEDENT to lose power at his home and proximately caused his injuries and damages.

59. In addition, Defendant ERCOT's acts and omissions described herein involved an extreme degree of risk of harm to others, including Decedent.

60. Despite knowledge of this extreme risk of harm, Defendant ERCOT persisted in performing the acts and omissions described herein with a conscious indifference to and reckless disregard of to the rights, safety, or welfare of others.

61. Defendant's relevant conduct resulting in the death of Decedent reflected such an entire want of care as to establish that the acts and omissions in question were the result of actual conscious indifference to the rights, welfare, or safety of the persons affected by it, including without limitation Decedent. Defendant's conduct constituted more than momentary thoughtlessness, inadvertence, or error of judgment.

62. Such gross negligence was a proximate cause of Decedent's injuries and damages. Accordingly, Defendant ERCOT was grossly negligent, and Plaintiff is entitled to recover exemplary damages in an amount sufficient to punish Defendant ERCOT and deter others from engaging in similar conduct.

**COUNT 2: NEGLIGENCE AND GROSS NEGLIGENCE OF DEFENDANTS
CENTERPOINT, CALPINE, LUMINANT, VISTRA, DUKE ENERGY, NRG,
EXELON, TENASKA GATEWAY, AND TENASKA**

63. Defendants CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska had a duty to Decedent to exercise reasonable care in maintaining and updating their generation, transmission, and distribution facilities in order to prevent cold-weather failures like those experienced in February 2021.

64. Defendants CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska failed to take reasonable corrective actions to prevent cold-weather failures in their generation, transmission, and distribution facilities.

65. In addition, Defendants CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska had a duty under 16 TEX. ADMIN. CODE § 25.52 to “make all reasonable efforts to prevent interruptions of service.”

66. Defendants CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska failed to “make all reasonable efforts to prevent interruptions of service” as required by 16 TEX. ADMIN. CODE § 25.52.

67. In addition, Defendants CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska had a duty under 16 TEX. ADMIN. CODE § 25.52 to “make reasonable provisions to manage emergencies resulting from failure of service.”

68. Defendants CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska failed to “make reasonable provisions to manage emergencies resulting from failure of service” as required by 16 TEX. ADMIN. CODE § 25.52.

69. Defendants had further duties pursuant to 16 TEX. ADMIN. CODE Chapter 25.

70. Defendants’ violations of 16 TEX. ADMIN. CODE Chapter 25 constituted negligence per se.

71. Defendants’ negligent acts and omissions, as described above, caused Decedent to lose power at her home and proximately caused the resultant injuries and damages.

72. In addition, each Defendant’s acts and omissions described herein involved an extreme degree of risk of harm to others, including Decedent.

73. Despite knowledge of this extreme risk of harm, each Defendant persisted in performing the acts and omissions described herein with a conscious indifference to and reckless disregard of to the rights, safety, or welfare of others.

74. Each Defendant’s relevant conduct resulting in the death of Decedent reflected such

an entire want of care as to establish that the acts and omissions in question were the result of actual conscious indifference to the rights, welfare, or safety of the persons affected by it, including without limitation Decedent. Each Defendant's conduct constituted more than momentary thoughtlessness, inadvertence, or error of judgment.

75. Such gross negligence was a proximate cause of Decedent's injuries and damages. Accordingly, Defendants CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska were grossly negligent, and Plaintiff is entitled to recover exemplary damages in an amount sufficient to punish Defendants CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska and deter others from engaging in similar conduct.

VI. DAMAGES

76. As a direct and proximate result of the acts and omissions alleged above, Plaintiff's Decedent suffered injuries and damages.

77. As a direct and proximate result of the acts and omissions alleged above, Plaintiff seeks all damages allowed under law for all elements of damages recognized under existing law.

78. Plaintiff is a surviving sibling of Decedent. Decedent suffered physical pain and mental anguish before her death.

79. Plaintiff respectfully requests the Court and jury to determine the amount of loss she is entitled to recover, including *inter alia* the expense of Decedent's funeral and compensation for the physical and mental suffering and anguish that Decedent was caused to endure for the injuries received in the events made the basis of this lawsuit until the time of death.

VII. NOTICE

80. Defendants ERCOT, CenterPoint, Calpine, Luminant, Vistra, Duke Energy, NRG, Exelon, Tenaska Gateway, and Tenaska are hereby provided with notice under TEX. R. CIV. P. 193.7 that all documents produced by it in this suit will be used at pretrial proceedings and at trial in this case.

VIII. CONDITIONS PRECEDENT

81. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

IX. REQUEST FOR RELIEF

82. As a result of the foregoing, Plaintiff respectfully requests that the Defendants be cited to appear and answer, and that upon final trial and hearing hereof, Plaintiff recover:

- a. Actual and compensatory damages;
- b. Exemplary damages;
- c. Costs of court;
- d. Pre- and post-judgment interest; and
- e. Such other and further relief, both general and special, at law or in equity, to which Plaintiff may be entitled.

X. JURY DEMAND

Plaintiff hereby demands trial by jury on all claims so triable.

Respectfully submitted,

/s/ Patrick A. Luff

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