

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

MAY HOMSY,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
H-E-B, LP,	§	
	§	
<i>Defendant.</i>	§	_____ JUDICIAL DISTRICT COURT

**PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

COMES NOW, May Homsy (“Plaintiff”), and files this Original Petition and Request for Disclosure against H-E-B, LP, (“HEB”), and would respectfully show this Honorable Court the following:

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

Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiff files this petition under a Level 3 Discovery Control Plan.

**II.**  
**PARTIES**

Plaintiff, May Homsy is a resident of Texas.

Defendant, H-E-B, LP is a domestic limited partnership. Defendant may be served through its registered agent: Abel Martinez, at 646 South Flores, St., San Antonio, Texas 78204, or wherever he may be found.

Plaintiff specifically invokes the right to institute this suit against whatever entity was conducting business using the assumed or common name of “HEB” with regard to the events described in this Petition. Plaintiff expressly invokes her right under Rule 28 of the Texas Rules

of Civil Procedure to have the true name of this party substituted at a later time upon the motion or of the Court.

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

The Court has jurisdiction of the subject matter of this lawsuit and the amount in controversy is above the minimum jurisdictional limits of this Honorable Court as Plaintiff seeks aggregate monetary relief between \$200,000 and \$1,000,000.00. Additionally, removal to federal court would be improper because this lawsuit does not involve a federal question, this lawsuit lacks diversity and/or because of the forum defendant rule.

Pursuant to Texas Civil Practice and Remedies Code section 15.002(a)(1), Harris County is the proper venue because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

**IV.**  
**FACTUAL BACKGROUND**

On or about April 13, 2020, Plaintiff was a customer at a HEB grocery store, located at 9722 Fry Road in Houston, Texas. While there, a Plexiglas partition, that was improperly installed as protection from COVID-19/Coronavirus, fell on her left foot and caused injury. At first it was thought she sustained bruising to the foot, however, the pain increased and her doctors became concerned compartment syndrome was setting in and performed surgery on her foot on April 17, 2020.

**V.**  
**CAUSES OF ACTION AGAINST DEFENDANT HEB**

**A. PREMISES LIABILITY**

Defendant HEB owned, occupied, and/or controlled the area where Plaintiff was injured. The condition of the area where Plaintiff was injured posed an unreasonable risk of harm, and

Defendant had actual knowledge, or reasonably should have known, of the unreasonably dangerous condition. Moreover, Plaintiff did not have actual knowledge of the unreasonably dangerous condition.

Plaintiff was an invitee who entered HEB with its knowledge and for its benefit. Defendant had a duty to either warn Plaintiff of this unreasonably dangerous condition, or make the unreasonably dangerous condition reasonably safe. Defendant breached this duty by failing to warn Plaintiff of this known unreasonably dangerous condition. Defendant also breached this duty by failing to make this known unreasonably dangerous condition reasonably safe.

Defendant HEB's breach of these duties proximately caused Plaintiff's injuries and damages.

## **VI.** **DAMAGES**

As a result of this incident, Plaintiff seeks compensation for the following damages:

- a. Past and future mental anguish;
- b. Past and future physical pain and suffering;
- c. Past and future bodily impairment and disability;
- d. Past and future medical expenses;
- e. Past and future lost wages or loss of earning capacity;
- f. Costs of suit;
- g. Disfigurement and scarring; and
- h. Any and all other damages to which Plaintiff may be justly entitled

**VII.**  
**PRESERVATION OF EVIDENCE**

Plaintiff hereby requests and demands that Defendant and its agents, attorneys, and insurers preserve and maintain all evidence pertaining to any claim or defense to the incident made the basis of this lawsuit, or the damages resulting therefrom, including but not limited to photographs; videotapes; audiotapes; recordings; business records, memoranda; files; facsimiles; e-mails; voicemails; text messages; sales receipts; invoices; commission records; tax records; telephone messages; telephone calling card transactions; calendar entries; diary entries; any incident report; and any electronic image, data or information related to the referenced incident. Failure to maintain such items, including but not limited any other items previously requested and demanded to be preserved before the subject lawsuit ensued, will constitute a “spoliation” of the evidence and may subject Defendant to sanctions.

**VIII.**  
**TRCP 193.7**

Pursuant to Texas Rule of Civil Procedure 193.7, Defendant is hereby put on actual notice that any documents produced in response to written discovery will be used in pretrial proceedings and at trial and will be deemed authentic unless they make valid objections to authenticity pursuant to this rule.

**IX.**  
**REQUEST FOR DISCLOSURE**

Pursuant to Rule 194.1 *et seq.* of the Texas Rules of Civil Procedure, Plaintiff hereby requests that Defendant discloses the information or material described in Rule 194.2 within **fifty (50) days** of the service of this request at the office of the undersigned.

**X.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that she recovers damages from Defendant in accordance with the evidence; that Plaintiff recover costs of the court herein expended; that Plaintiff recovers interest to which Plaintiff is justly entitled under the law, both prejudgment and post-judgment; that Plaintiff recovers actual damages; that Plaintiff is entitled to recover compensatory damages; and for such other further relief, both general and specific, both in law and in equity to which Plaintiff may be justly entitled.

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,  
SORRELS, AGOSTO, AZIZ & STOGNER**

*/s/Karl P. Long*  
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