

CAUSE NO. _____

CLAUDETTE BOYANCE-JOHNSON,
INDIVIDUALLY AND AS
REPRESENTATIVE OF THE ESTATE
OF SHEFFERY BRENT "BJ"
JOHNSON, DECEASED, AND BIJAN
JOHNSON,

Plaintiffs,

vs.

PULICE CONSTRUCTION, INC.

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION AND
REQUEST FOR HEARING**

COMES NOW, Claudette Boyance-Johnson, Individually, as Surviving Spouse and as Representative of the Estate of Sheffery Brent "BJ" Johnson ("Decedent"), and Bijan Johnson, (collectively "Plaintiffs"), and files this Original Petition and Application for Temporary Restraining Order and Temporary Injunction against Pulice Construction, Inc. ("Defendant"), and would respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.3 of the Texas Rules of Civil Procedure, discovery in this lawsuit is intended to be conducted under Level 2.

II. PARTIES

2. At the time of his death, Decedent resided in Texas.

3. Claudette Boyance-Johnson is the surviving spouse of Decedent and representative of his estate. She brings this lawsuit individually and as representative of the estate. Ms. Boyance-Johnson resides in Fort Bend County, Texas.

4. Bijan Johnson is the natural son of Decedent and is a resident of Fort Bend County, Texas.

5. Defendant, Pulice Construction, Inc., (hereinafter “Pulice Construction”) is a foreign for-profit corporation that does substantial business and maintains continuous and systematic contacts with the State of Texas. In addition to doing business in Texas, Pulice Construction maintains a principal office located at 2050 W. Sam Houston Parkway South, Suite 1100, Houston, Harris County, Texas. Pulice Construction may be served with process by and through its registered agent for service of process: CSC-Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever it may be found.

6. Plaintiffs specifically invoke the right to institute this suit against whatever entities were conducting business using the assumed or common names listed above with regard to the events described in this Petition. Plaintiffs specifically invoke their rights under Rule 28 of the Texas Rules of Civil Procedure to have the true name of any party substituted at a later time upon the motion of any party or of the Court.

III. JURISDICTION, VENUE, AND RULE 47 STATEMENT

7. This is a wrongful death action maintained under the Texas Wrongful Death statute and Texas common law. The amount in controversy is within the jurisdictional limits of this Court.

8. Venue is proper in Harris County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3) as Pulice Construction’s principal office in this state is in Harris County, Texas.

9. Both specific and general personal jurisdiction exist over Defendant as at all times relevant to this action, Defendant Pulice Construction has maintained continuous and systematic contacts with the State of Texas and consented to jurisdiction in the State of Texas and committed a tort in whole or in part in the State of Texas against Plaintiffs, as more fully set forth herein.

10. Plaintiffs make the following statement of damages at this time, as required by

Texas Rule of Civil Procedure 47. Plaintiffs are seeking monetary relief in excess of \$1,000,000.00.

IV. FACTS

11. This lawsuit is necessary as a result of the untimely and unnecessary death of Sheffery Brent “BJ” Johnson, a beloved family man, admired scout of the Houston Rocket’s, well-respected member of the NBA community, and international ambassador for the game of basketball.



12. On or about the early evening of October 15, 2020, “BJ” Johnson was enjoying a bicycle ride along Almeda Parkway in Houston, Texas. He was wearing his helmet, head lamp, and customary Houston Rockets hat—the team for which he worked since the 1994-1995 championship season. During his ride, Mr. Johnson entered a section of roadway that was under construction. The construction was part of an ongoing process of road widening taking place in the area and was being performed by Pulice Construction. Unknown to Mr. Johnson, a section of sidewalk was unfinished, exposing a gutter with deep depressions and sharp concrete beams that was

directly in his path. The unfinished section of sidewalk was unilluminated, and it lacked adequate warnings, buffers, or barriers to warn pedestrians or bicyclists of the danger ahead or otherwise prevent their movement into the area. In fact, the only marker adjacent to the condition was a solitary, foldable sign that failed to even cover the expanse of the sidewalk.

13. The following image shows the condition of the unfinished sidewalk on the date of the incident:



14. As Mr. Johnson rode his bicycle along the sidewalk, unwarned and unaware of the peril ahead, his front tire entered the unfinished area of the sidewalk, causing him to crash his bicycle, fall to the ground and break his neck. “BJ” Johnson died at the scene. He leaves behind a widow, son, and a grieving global basketball community.

15. Nothing Mr. Johnson did or failed to do caused the accident.

V. CAUSES OF ACTION

A. NEGLIGENCE & GROSS NEGLIGENCE

16. Plaintiffs incorporate all paragraphs above herein by reference.

17. At the time and on the occasion in question, Defendant committed acts and omissions, which collectively and separately constitute negligence and gross negligence. Defendant had a duty to exercise ordinary care over the construction zone, meaning the degree of care that would be used by any individual or entity of ordinary prudence under the same or similar circumstances. Defendant breached that duty by:

- a. failing to properly train their employees;
- b. failing to properly supervise their employees;
- c. providing employees with negligent instructions and orders;
- d. failing to provide adequate safety policies and/or procedures;
- e. creating a dangerous condition;
- f. failing to properly inspect and/or maintain the premises;
- g. failing to provide warnings of a dangerous condition;
- h. permitting an unreasonably dangerous condition to exist;
- i. failing to provide an adequate buffer zone;
- j. failing to provide reasonable barriers;
- k. failing to adequately control the work site;
- l. failing to comply with applicable safety standards;
- m. vicariously liable for their employees' negligence and gross negligence;
- n. recklessly disregarding the safety of Decedent and others similarly situated; and
- o. any other acts so deemed negligent.

18. Such negligence and gross negligence, either singularly or in combination,

proximately caused the death of Mr. Johnson and damages sustained by Plaintiffs.

B. PREMISES LIABILITY

19. Plaintiffs incorporate all paragraphs above herein by reference.

20. Defendant occupied and/or controlled the area where Decedent died. The dangerous condition which caused the accident posed an unreasonable risk of harm, and Defendant had actual knowledge of the unreasonably dangerous condition on the premises. Moreover, Decedent did not have actual knowledge of the unreasonably dangerous condition and, through the use of ordinary care, could not have learned of the dangerous condition.

21. Defendant had a duty to either warn Decedent of the unreasonably dangerous condition or make the unreasonably dangerous condition reasonably safe. Defendant breached this duty by failing to warn Decedent of this known unreasonably dangerous condition and by failing to make the unreasonably dangerous condition reasonably safe.

22. Defendant's breach of these duties proximately caused the death of Decedent and Plaintiffs' injuries and damages.

23. Additionally, Defendant acted with flagrant and malicious disregard for Decedent and others' health and safety. Defendant was objectively and subjectively aware of the extreme risk posed by the conditions which caused Plaintiffs' injuries, but did nothing to rectify them. Defendant's acts and omissions involved an extreme degree of risk considering the probability and magnitude of potential harm to Plaintiffs and others. Defendant had actual, subjective awareness of the risk, and consciously disregarded such risks.

VI. SURVIVAL ACTION

24. As a result of the wrongful conduct of Defendant as described above, Decedent suffered physical pain and suffering and mental anguish prior to his death. Additionally, his estate incurred medical and funeral expenses for which Defendant is liable. As the representative of

Decedent's estate, Plaintiff, Claudette Boyance-Johnson asserts the above-pled causes of action against Defendant on behalf of Decedent's estate pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021.

25. As a result of the wrongful conduct of Defendant, Plaintiff Boyance-Johnson, as the representatives of the Decedent's estate, brings this survival action for the following damages he sustained, which survive Decedent's untimely death:

- a. Past physical pain and mental anguish;
- b. Funeral expenses;
- c. Medical expenses; and
- d. Exemplary damages.

VII. WRONGFUL DEATH

26. Because the wrongful and reckless conduct of Defendant, and their agents and employees described above, caused the death of "BJ" Johnson, and because Decedent would have a cause of action against Defendant for his injuries had he lived, Plaintiffs have a cause of action against Defendant to recover damages for the wrongful death of Decedent pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.002 and 71.003.

27. As the surviving spouse and natural child of Decedent, Plaintiffs are the proper beneficiaries of this action pursuant to TEX. CIV. PRAC. & REM. CODE § 71.004(a).

28. Due to the wrongful death of their husband and father, respectively, Plaintiffs, individually, seek to recover damages for:

- a. Past and future pecuniary losses;
- b. Past and future loss of companionship and society;
- c. Past and future emotional pain and mental anguish;

- d. Loss of inheritance; and
- e. Exemplary damages

VIII. DAMAGES

- 29. Plaintiffs incorporate all paragraphs above herein by reference.
- 30. As a result of this incident, Plaintiffs seek compensation for the following damages:
 - a) Past physical pain and suffering of Decedent;
 - b) Past mental anguish of Decedent;
 - c) Decedent's medical and funeral expenses;
 - d) Past and future pecuniary and nonpecuniary wrongful death damages including the loss of companionship and society, mental anguish, and loss of inheritance;
 - e) Prejudgment and post-judgment interest;
 - f) Court costs;
 - g) Exemplary damages; and
 - h) Any and all damages to which Plaintiff may be justly entitled under the law.

IX. NOTICE REGARDING PRODUCTION OF SELF-AUTHENTICATING DOCUMENTS

31. 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 Defendant makes valid objections to authenticity pursuant to this rule.

X. PRESERVATION OF EVIDENCE

32. Plaintiffs hereby request and demand that Defendant and any of his agents preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit and the damages resulting therefrom, including, but not limited to, photographs; videotapes; audiotapes; recordings; business or medical records; bills; estimates; invoices; checks;

correspondence; memoranda; files; facsimiles; email; voice mail; text messages; investigation; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiff, the referenced incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

XI. REQUIRED DISCLOSURES

33. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, please disclose and produce the information or material described in Rule 194.2.

XII. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

34. Based on reasonable information and belief, and given the nature of the construction site and accident scene, Plaintiffs assert that the Defendant will attempt to repair, modify, replace, alter, or destroy the dangerous condition involved in the incident. Plaintiffs therefore request that the Court enter an order restraining Defendant from altering, salvaging, selling, repairing, or destroying any evidence from the subject work site. Additionally, Plaintiffs request that Defendant be required to preserve and not alter and/or destroy the following items with regards to the incident made the basis of this suit: 1) photos and videos taken of the scene; 2) any and all witness statements relating to the incident; 3) all documents and communications relating to any investigations of the incident; 4) any and all incident reports; 5) names of all witnesses to the incident; 6) the identity of all employees/managers/foreman/superintendents with knowledge regarding the security of the premises during work and non-work hours; 6) daily job and/or progress reports; and 7) all documents, correspondence and communications from government agencies related to the incident.

35. To prevent Defendant from altering, salvaging, selling, repairing, or destroying any evidence from the subject scene and in order for Plaintiffs to properly investigate and pursue their

claims, recover damages, and see that justice is done, this Court should require the Defendant, their agents, servants, employees, contractors, contract employees, attorneys, and those acting in concert with or in representation of said Defendant to refrain from altering, salvaging, selling, repairing, or destroying any evidence from the subject scene and pump involved in this incident.

36. There is no adequate remedy at law available to the Plaintiffs to prevent the Defendant from altering, salvaging, selling, or destroying any evidence from the subject scene involved in the incident unless this Court grants immediate relief restraining such conduct. Plaintiffs pray that this Court enter a Temporary Restraining Order preserving the status quo by restraining Defendant from in any way, altering salvaging, selling, repairing, or destroying any evidence from the subject scene.

XIII. REQUEST FOR HEARING

37. Plaintiffs request this Court set their application for temporary restraining order for a hearing and, after hearing, issue a temporary restraining order against Defendant. Additionally, Plaintiffs request that a hearing be set on the application for a temporary injunction.

38. If Defendant is permitted to change, alter, destroy or modify any evidence related to the incident, the Plaintiffs in this lawsuit will lose the opportunity to inspect the evidence and will be unable to prosecute their claim and thus will be deprived of adequate remedies at law.

39. The foregoing tangible and physical evidence is relevant and reasonably necessary to determine the cause of the incident made the basis of this suit, the loss of which would irreparably harm Plaintiffs.

XIV. REQUEST FOR HEARING ON TEMPORARY RESTRAINING ORDER

40. Plaintiffs further pray for this Court to set a hearing on Plaintiffs' Application for Temporary Restraining Order and subsequent injunctive relief in this matter.

XV. REQUEST FOR INSPECTION

41. Plaintiffs also pray that this Court issue an Order permitting the Plaintiffs' attorneys and investigative staff, including but not limited to, consulting experts, to have access to the subject scene to inspect, measure, and photograph it. Such access for the purpose of inspection, photographing and measurement is essential in order for Plaintiffs to prepare this case and to see that justice is done.

XVI. PREJUDGMENT INTEREST

42. Plaintiffs seek prejudgment interest pursuant to § 304.102 of the TEXAS FINANCE CODE.

XVII. PRAYER

43. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Plaintiffs have and recover damages from Defendant in accordance with the evidence; that Plaintiffs recover costs of the court herein expended; that Plaintiffs recover interest to which Plaintiffs are justly entitled under the law, both prejudgment and post-judgment; that Plaintiffs recover actual damages; that Plaintiffs are entitled to recover compensatory and exemplary damages; that the Court set their Application for Temporary Restraining Order and Injunctive Relief for hearing, and for such other further relief, both general and specific, both at law and in equity, to which Plaintiffs may be justly entitled.

(Signature on next page)

Dated: January 11, 2021

Respectfully submitted,

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

/s/ Benny Agosto, Jr.

Benny Agosto, Jr.

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