

CAUSE NO. 2019-33415

ABEL AND NANCY VERA, ET AL.,

Plaintiffs,

vs.

**FIGURE FOUR PARTNERS, LTD., PSWA
INC., AND REBEL CONTRACTORS, INC.**

Defendants.

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IN THE DISTRICT OF

HARRIS COUNTY, TEXAS

234th JUDICIAL DISTRICT

**DEFENDANT CONCOURSE DEVELOPMENT, LLC'S ORIGINAL ANSWER
AND AFFIRMATIVE DEFENSES TO SIXTH AMENDED PETITION**

COMES NOW Defendant Concourse Development, LLC ("Concourse" or "Defendant"),
and in support thereof would respectfully show this Court the following:

I. GENERAL DENIAL

1. Defendant denies each and every, all and singular, of the material allegations contained in Plaintiff's Sixth Amended Petition, asserts this general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that Plaintiff be required to prove the charges and allegations brought against Defendant by a preponderance of the evidence as required by the Constitution and the laws of the State of Texas.

II. AFFIRMATIVE DEFENSES

2. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendant would show that no acts, omissions, negligence, or other conduct of Defendant and/or any of its agents or employees were a proximate, producing or sole cause of the occurrence in question, as well as the damages complained of herein.

3. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendant would show that acts, omissions, fault,

negligence or other conduct of the Plaintiffs, were a proximate, producing, or sole cause, in whole or in part, of the occurrence in question, as well as the damages complained of herein.

4. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving such, Defendant would show Plaintiffs' damages, if any, were caused in whole or in part by the acts of others for whom Defendant is not in law responsible, and as a result, Plaintiffs' claims should be barred or proportionally reduced by the fault of others.

5. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving such, Defendant would show that the acts, omissions, fault, negligence, or other conduct of third parties or persons or entities over whom Defendant shares no control or right of control, were a new and independent cause of the occurrence in question, as well as the damages complained of herein.

6. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendant would show that acts, omissions, fault, negligence or other conduct of other persons or entities not under the control of Defendant are a proximate, producing, or sole cause, in whole or in part, of the occurrence in question, as well as the damages complained of herein.

7. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, Defendant would show that it was not negligent and did not breach any legal duty owed to Plaintiffs in any manner which caused or contributed to the injuries and damages alleged by Plaintiffs. Specifically, Defendant would show that its conduct was at all times in keeping in that degree of ordinary care exercised by persons of reasonable prudence under the same or similar circumstances.

8. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, Defendant would show that the occurrence was an unavoidable accident not proximately caused by any act or omission of Defendant or its agents or employees.

9. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendant would show Plaintiffs failed to mitigate their damages and, therefore, any such claims or causes of action are barred to that extent.

10. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendant would show that in the event that they are found liable to Plaintiffs herein, any such liability being expressly denied, then, in that event, defendants would show they are entitled to contribution, credit and/or indemnity as provided by contract and the laws and statutes of the state of Texas, including, but not limited to, the provisions of Chapters 32 and 33 of the Texas Civil Practice & Remedies Code, as well as other applicable laws and statutes.

11. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendant would show itself entitled to a credit or offset for all monies or consideration paid to Plaintiff by virtue of any type or form of settlement agreement entered into by and between Plaintiff and any party herein, or any other person or entity not a party to this litigation. Furthermore, by way of additional pleading, Defendant asserts the affirmative defenses of offset, credit, payment, release and accord and satisfaction as provided in Rule 94 of the Texas Rules of Civil Procedure.

12. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendant would show that any award against it must be reduced by the percentage of fault attributable to others, including Plaintiffs, and third parties.

13. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, the subject incident was caused by a superseding or intervening cause.

14. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Plaintiffs' claims fail to state a claim upon which relief can be granted.

15. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendants assert that to the extent that Plaintiff is alleging lost wages or loss of earning capacity as a result of the incident in question, Defendants would show that such recovery is limited to post-tax earnings or net earnings figured pursuant to Section 18.091 of the Texas Civil Practice and Remedies Code and other applicable statutes and/or case law.

16. Pleading further, and in the alternative, if such be necessary and subject to the foregoing pleas and without waiving same, Defendant asserts that Plaintiffs' damages in the premises are the result of prior or pre-existing conditions in the premises at issue over which Defendant had no control and did not cause.

17. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, Defendant asserts that Plaintiffs' alleged damages are the result of an Act of God and not acts or omissions of Defendant.

18. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, Defendant asserts that to the extent that Plaintiffs' negligence contributed to their injuries, any amount of punitive damages recoverable from Defendant should be reduced in proportion to Plaintiffs' negligence.

19. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, Plaintiffs' claims are or may be barred because Defendant acted with due care and complied with applicable statutory, regulatory, and common law requirements provides by federal, state, and local law.

20. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, Plaintiffs' claims are or may be barred, in whole or in part, because Plaintiffs assumed the risk that resulted in Plaintiffs' alleged damages.

21. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, Plaintiffs' claims are barred, in whole or in part, to the extent they seek an improper punitive damages award for an alleged single wrong because such an award would violate Defendant's rights guaranteed by the United States Constitution, including, without limitation, the Due Process and Equal Protection provisions of the Fourteenth Amendment and the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution, and Defendant's rights to the Due Course of Law under the Texas Constitution.

22. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, Plaintiff is not entitled to punitive damages, and any and all excessive amounts of such damages south herein violate Chapter 41 of the Texas Civil Practice and Remedies Code, the Texas Constitution, and the United States Constitution, all of which sets limits on the award of the punitive damages.

23. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing pleas and without waiving same, any award of pre-judgment interest is limited by the dates and amounts as set forth in Chapter 304 of the Texas Finance Code and/or Chapter 41 of the Texas Civil Practice & Remedies Code.

24. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs have not fulfilled all conditions precedent necessary to maintain this lawsuit.

25. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs' recovery, if any, on its causes of action in this lawsuit is subject to the one satisfaction rule.

26. Defendants reserve the right to amend this answer to the extent necessary as facts are investigated and developed.

III. PRODUCTION OF DOCUMENTS SELF-AUTHENTICATING

27. Pursuant to Texas Rule of Civil Procedure 193.7, Defendant hereby gives actual notice to all parties that any and all documents produced during discovery may be used against such parties at any pre-trial proceeding and/or trial of this matter without the necessity of authenticating the document.

IV. REQUEST FOR DISCLOSURE

Defendant requests that Plaintiffs provide the disclosures required under Rule 194 of the Texas Rules of Civil Procedure within thirty (30) days from the date of service.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Concourse Development, LLC prays that, upon final hearing, Plaintiffs take nothing by their claims; that Defendant recovers its

costs and reasonable and necessary attorneys' fees from Plaintiffs; and for such other and further relief to which Defendants may be justly entitled.

Respectfully submitted,

By: /s/ Melissa Vest

Melissa Vest

Texas Bar No. 24096002

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served upon all counsel of record via electronic filing pursuant to the Texas Rules of Civil Procedure on July 24, 2020.

/s/ Melissa Vest

Melissa Vest