

Cause No.

MARIA FRANKLIN, individually, and as heir)	IN THE DISTRICT COURT
of JOHN FRANKLIN,)	
PLAINTIFF,)	
V.)	OF HIDALGO COUNTY, TEXAS
ANITA JUAREZ and)	
CHARITABLE FOUNDATION)	
DEFENDANTS.)	_____ JUDICIAL DISTRICT

PLAINTIFF’S FIRST AMENDED PETITION

Maria Franklin, individually, and as heir of John Franklin, Plaintiff, files this petition and in support, shows the Court as follows.

I. DISCOVERY

1. Plaintiff intends to conduct discovery under Level 2.

II. PARTIES

2. Maria Franklin, Plaintiff, is a resident of Hidalgo County, Texas. She brings this lawsuit on behalf of herself and as heir of John Franklin.
3. Anita Juarez, Defendant, resides at Edinburg, Texas. No service of process is necessary at this time.
4. Charitable Foundation, Defendant, is located, at Edinburg, Texas. No service of process is necessary at this time.

III. JURISDICTION AND VENUE

5. The amount in controversy is within the jurisdictional limits of the court. Venue is proper because the cause of action arose in Hidalgo County, Texas.

IV. FACT STATEMENT

6. Two months before he died of prostate cancer, 73-year-old John Franklin was living in the crumbling hulk of a former bar without electricity or water. He had no air-conditioning in the South Texas summer. Rats scurried underneath the old furniture his landlord made him store. When a hospice nurse came to check on him, he was lying stark naked in his bed, and the bar's one main room reeked of urine. Franklin, along with his wife and pre-adolescent son, were renting what used to be known as the "Cinco de Oros" -- Five of Spades -- bar from their landlord, Defendants Anita Juarez ("Juarez") and the Charitable Foundation ("Foundation"). The building -- a small shack several miles north of Edinburg -- had holes in the wall and had no bathing facilities. The bar's old sign still hung on the front wall, facing out toward the traffic on U.S. Highway 281.

7. The Franklins' tragic story began several years ago, when they discovered the rental house when they went to a nearby shop to have their car repaired. Their arrangement with the landlord was purely oral: they paid her \$100 per month in rent and paid the utilities directly to the utility companies.

8. Problems began in spring 2001. It was about then that Mr. Franklin's condition had dramatically worsened. Ms. Franklin -- a native of Mexico -- spent most of the month ferrying her husband to hospitals in Mexico, looking for medical care she could afford. They traveled on public buses deep into Mexico, going to hospitals as far away as Guadalajara.

Somewhere along the way, they fell behind on some of the rent.

9. Juarez claims they owed several hundred dollars. Since Juarez refused to provide receipts for cash payments - as required by law -- this was impossible to verify. On May 29, 2001, Juarez sent the Franklins a certified letter stating that they were behind \$260 in rent: \$60 for April and a total of \$200 for May and June. The Franklins, looking for medical care in Mexico, never received the letter, which was returned marked “unclaimed.”

10. When they returned from their trip on June 27, 2001, the Franklins discovered their lights and water had been cut off -- not by the utility companies, but by the landlord. The Franklins sought help from the Advocacy Resource Center for Housing (“ARCH”), a nonprofit agency that provides information and assistance to low income renters in Hidalgo County. ARCH persuaded Juarez to turn the water back on by July 2, 2001. However, she refused to restore electricity. Eventually, she referred calls on the matter to Dr. Juan Garza, the Executive Director of the Foundation. Juarez usually told ARCH to call Dr. Garza, then hung up the phone and refused to discuss restoring electricity. Calls to Garza’s office were usually not returned. When they were, Dr. Garza was non-committal on turning the power on, saying he would “see what he could do.”

11. The Franklins gave Juarez a check for \$160. The check, dated June 29, paid the balance for June and July 2001, according to Ms. Franklin. But, Juarez stated that more money was owed. In any case, Juarez cashed the check, but the power was never restored.

12. When they were without water, Ms. Franklin found herself bathing at the restaurant where she worked, as well as carting water home to her family in gallon jugs. A neighbor named Homero sometimes passed a water hose to the Franklins’ house as well.

13. In the middle of the South Texas summer, electricity is important, but it was life for Mr. Franklin; there was no electricity for air conditioning, a hospital bed, or an oxygen machine. Without electricity, the heat grew stifling, food and insulin went bad in the refrigerator, and Ms. Franklin was unable to cook for her husband. As the cancer progressed, the pain became so great that Mr. Franklin moaned loudly throughout the day and night.

14. Ms. Franklin also went to the offices of Magic Valley Electric Company to have the electric service placed in her name. She showed the company representative a payment receipt dated June 20, 2001 -- seven days before the cut-off. The company representative, however, refused to restore power or to place the service under the Franklins' name. The representative told Ms. Franklin that the landlord had left strict instructions that the service could not be placed in another name.

15. The utility services, however, were not in the landlord's name either. Instead, the accounts were in the names of two deceased brothers of Juarez (Hildejardo and Cristobal Juarez). The water bill was in Cristobal's name; the electricity in Hildejardo's. In short, the Franklins' power was cut-off seven days after they paid the bill. The cut-offs were performed by the landlord, not because the Franklins were behind on the utility bills.

16. Having the power and water cut-off caused severe physical, emotional and financial hardships for the Franklins during the last desperate months of Mr. Franklin's life. He had to lie naked on the bed because of the oppressive heat. Ms. Franklin's husband also had to seek emergency treatment for dehydration -- not surprising considering the lack of air conditioning or water.

17. In the final stages of his life, Mr. Franklin was already in such great pain that he

would moan loudly. A hospice nurse who checked on Mr. Franklin, confirmed that there was no way to get a hospital bed in the house, both because of the lack of electricity and because of all the extra furniture that Ms. Juarez required the Franklins to store.

18. The Franklins also faced economic problems from the cut-offs, problems piled on top of the obvious hardships of medical bills and a near-inability of Ms. Franklin to work. To provide for basic refrigeration of food and insulin, Ms. Franklin spent money on a mini-refrigerator. She also bought a gas-powered generator, which roared through the night in the small, dilapidated building. The generator also needed gas every few hours, forcing Ms. Franklin and her son to get up in the middle of the night to fill it. To make matters worse, the first generator burned out, and the family had to buy a second.

19. On August 15, their power still off, the Franklins finally left the house. Mr. Franklin died just eight days later, on August 23, 2001.

V. CAUSES OF ACTION

Count One: Intentional Infliction of Emotional Distress

20. Defendants intentionally and with malice caused and maintained the interruption of the utilities. Defendants actions were extreme and outrageous, and caused Plaintiff and Plaintiff's deceased husband severe emotional distress. Plaintiff, individually, and as heir to her husband, requests actual damages, exemplary damages and costs.

Count Two: Violation of Deceptive Trade Practices Act

21. Defendants knowingly represented that the lease agreement conferred or involved rights, remedies or obligations that it did not have or involve; and also knowingly committed unconscionable actions in violation of Section 17.50 of the Business and Commerce Code. Plaintiff, individually, and as heir to her husband, requests actual damages and costs. Plaintiff also requests that the court award two times the actual damages awarded that do not exceed \$1,000, and three times the actual damages awarded in excess of \$1,000.

Count Three: Breach of Lease

22. Defendants breached the lease agreement by intentionally causing the interruption of the utilities when Plaintiff was not delinquent in paying the utility bills. Plaintiff, individually, and as heir to her husband, requests actual damages and costs for each interruption of each utility service.

Count Four: Violation of Property Code (92.008)

23. Defendants violated Section 92.008(a) of the Property Code by causing the interruption of utility services paid directly to the utility companies. For each interruption of each utility service, Plaintiff, individually, and as heir to her husband, requests actual damages, civil penalties of \$500, and costs.

Count Five: Violation of Property Code (92.011)

24. Defendants violated Section 92.011 of the Property Code each time they accepted a cash rental payment and did not provide a written receipt. Plaintiff, individually, and as heir to her husband, requests a civil penalty of \$500 for each violation, and costs.

VI. REQUEST FOR RELIEF

25. Plaintiff requests that the Court find Defendants jointly and severally liable, and grant Plaintiff the following relief from Defendants:
- a. actual damages, plus two times the actual damages for amounts under \$1,000, and three times the actual damages for amounts over \$1,000;
 - b. civil penalties as stated herein;
 - c. exemplary damages;
 - d. litigation and court costs;
 - e. pre and post judgment interest; and
 - f. any other relief to which Plaintiff may be entitled.

Respectfully submitted,

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This document is a real document filed in court in an actual case; however, various names have been changed from the original.

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