

CAUSE NO. DC-24-06371

MORGAN SMITHAM and	§	IN THE DISTRICT COURT
LINDSEY SMITHAM, both Individually	§	
and as Next Friend of B.S. and D.S.,	§	
minors	§	
<i>Plaintiffs</i>	§	116th
VS.	§	___ JUDICIAL DISTRICT
	§	
AMLI RESIDENTIAL PROPERTIES,	§	
L.P. d/b/a AMLI ADDISON,	§	
PPF AMLI QUORUM DR LLC. d/b/a	§	
AMLI ADDISON,	§	
AMLI ADDISON	§	
<i>Defendants</i>	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **MORGAN SMITHAM and LINDSEY SMITHAM, both Individually and as Next Friend of B.S. and D.S., minors**, hereinafter referred to as **Plaintiffs**, complaining of Defendants **AMLI RESIDENTIAL PROPERTIES, L.P. d/b/a AMLI ADDISON, PPF AMLI QUORUM DR LLC d/b/a AMLI ADDISON, and AMLI ADDISON** hereinafter referred to as **Defendants**, and for cause of action, **Plaintiffs** would respectfully show the Court and Jury as follows:

I.
DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends for discovery to be conducted under Level III pursuant to rule 190.1 of the Texas Rules of Civil Procedure.

II.
PARTIES AND SERVICE

Plaintiffs Morgan Smitham and Lindsey Smitham and their children are residents of Dallas County, Texas.

Defendant, **AML I RESIDENTIAL PROPERTIES, L.P. d/b/a AML I ADDISON** is a limited partnership that does business in Texas and may be served with citation by and through their registered agent for service, **CT CORPORATION SYSTEM, 1999 BRYAN ST., SUITE 900 DALLAS, TX 75201.**

Defendant, **PPF AML I QUORUM DR LLC d/b/a AML I ADDISON** is a limited liability company and may be served with citation by and through their registered agent for service, **CT CORPORATION SYSTEM, 1999 BRYAN ST., SUITE 900 DALLAS, TX 75201.**

Plaintiff includes “AML I ADDISON” as the d/b/a for the apartment complex responsible for the injuries as further described below and specifically pleads TRCP Rule 28 and requests that upon motion of any Defendant, the true name for any Defendant be substituted in for any of the common names of the Defendant which have so been named in this petition.

III. **JURISDICTION AND VENUE**

Venue is proper in this court pursuant to Section 15.002 of the Civil Practices and Remedies Code. All or a substantial part of the events or omissions giving rise to this claim occurred in Dallas, Dallas County, Texas.

IV. **FACTUAL ALLEGATIONS**

Plaintiffs Morgan Smitham, his wife Lindsey Smitham, and their two 10-month-old twin boys B.S. and D.S. lived together in apartment #133 at the AML I Addison apartment complex in Addison, Texas which is the apartment complex owned and operated by Defendants at all times relevant hereto. From May through September of 2022, the entire

family suffered from chronic illness. As their collective sickness persisted, they noticed a water spot above the boys' crib during their investigation of the cause of the sickness and the room smelled off. Morgan and Lindsey began to suspect that mold was the cause of their sickness, and hired a company called EnviroBiomics to perform an ERMI mold test on September 12, 2022. Unfortunately, their fears were realized, and the mold test came back positive on September 20th, 2022, and it was recommended that they move out of the contaminated apartment until remediation takes place. (See mold test attached as Exhibit A) The next day on September 21st, 2022, Plaintiffs informed AMLI Addison about the positive mold test.

Initially, Addison AMLI dismissed their complaints out of hand and took no action. Finally, after five days of unresponsiveness to the Smithams' repeated calls for assistance, the AMLI staff took "moisture readings" and stated to the Smithams that there was no further need for testing. Not going to take chances with their sons' health and relying on the expertise of the mold testing company, the Smithams moved out of their apartment and into Lindsey's parents' house. As a result of their exposure to mold, all four of the family members have incurred a varying degree of health conditions and resulting medical bills, which have caused in the past, and continue to cause various chronic health problems which have still not subsided.

In addition to the injuries caused by the mold, the Smithams were forced to move out of their apartment, they had nearly 2 months left on their lease and were unable to move back into their apartment. Furthermore, due to the exposure to mold, it was recommended by experts that they not retain any exposed furniture or items that could not be thoroughly washed in a washing machine, causing substantial property damage loss.

V.
CAUSES OF ACTION AGAINST DEFENDANTS

Defendants owed the Smithams a duty to provide a safe and habitable apartment free of mold and also to respond reasonably to remediate the mold damage, take appropriate tests, and to make appropriate accommodations to the Smithams to ensure their safety. Defendants were guilty of the following acts of negligence:

- a. In causing mold to occur in the apartment complex which they owned and operated and which Plaintiffs resided;
- b. In failing to discover the mold in a timely manner;
- c. In failing to reasonably maintain the apartment complex thereby causing mold to grow in the apartment complex in which Plaintiffs resided;
- d. In failing to properly inspect the apartment complex to ensure that it is free of mold; and
- e. In failing to reasonably make repairs or take steps to remediate the mold upon receiving notice from Plaintiffs.

VI.
DAMAGES

As a proximate result of the negligence as above described, Plaintiffs **MORGAN SMITHAM and LINDSEY SMITHAM both individually and on behalf of their minor children B.S. and D.S.**, sustained personal injuries, all of which have caused them in the past and will cause them in the future, physical pain, mental anguish, physical impairment, and medical and hospital expenses, for which they should be compensated in accordance with the laws of the State of Texas.

Additionally, Plaintiffs have suffered loss of use damages for not being able to live in their apartment (despite still incurring rent) until their contract expired, property damage,

moving expenses, cost of testing, and further incidental damages due to the negligence of Defendants.

VII.
REQUIRED DISCLOSURES

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are required to provide the information or material described in Rule 194.2, 194.3, and 194.4 within 30 days of Defendants' Original Answer.

VIII.
TRCP RULE 193.7 NOTICE

Plaintiff hereby gives notice pursuant to Tex. R. Civ. P. 193.7 that any documents or items produced by any party in this case may be used at any pretrial proceeding and/or trial in this matter.

IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final hearing hereof, Plaintiffs have judgment against Defendants for all damages to which they are entitled under the laws of the State of Texas, which monetary amount may exceed \$200,000.00 but not more than \$1,000,000.00 and is within the jurisdictional limits of this Court; in the event a jury believes the value is lessor or greater than this statement, mandated by the Texas Supreme Court, the Plaintiff accepts this jury's determination; and for pre-judgment interest in accordance with the law; for interest on the judgment; cost of suit; and for such other and further relief, either at law or in equity, to which Plaintiffs may be entitled.

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