

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

<b>YOUNG AMERICANS FOR LIBERTY, INC.,</b>	§	<b>IN THE DISTRICT COURT</b>
<i>Plaintiff</i>	§	
	§	
v.	§	____ <b>JUDICIAL DISTRICT</b>
	§	
<b>CITY OF DALLAS,</b>	§	
<b>DALLAS CONVENTION CENTER HOTEL</b>	§	
<b>DEVELOPMENT CORP.,</b>	§	<b>DALLAS COUNTY, TEXAS</b>
<b>OMNI HOTELS MANAGEMENT, INC.,</b>	§	
<i>Defendants</i>	§	

**ORIGINAL PETITION**

**COMES NOW**, Young Americans for Liberty, Inc. (“YAL”), seeking damages from the City of Dallas, the Dallas Convention Center Hotel Development Corp., and Omni Hotels Mgmt. Corp.

SUMMARIZING, the parties formed an agreement in which YAL leased space at the Omni Hotel for its Mobilize 2020 educational event scheduled in August of 2020. To conduct the event safely and avoid a *force majeure* cancellation due to COVID-19, the City and Omni repeatedly imposed, and Plaintiff repeatedly adopted, stringent, fire-marshall-approved safety measures, the final such measures implemented the Friday before the event.

Despite adoption of these negotiated rules, the City of Dallas and its agent Dr. Phillip Huang directed the Omni to cancel the event two days before its start. Had the City and Omni canceled the event the week prior, YAL would have incurred less than \$10,000 in damages, but waiting until just before the event caused YAL more than \$160,000 in damages.

The City and Omni’s cancellation was based on an inappropriate assertion of a *force majeure* clause was a breach of contract and in derogation of YAL’s members’ constitutional right to assemble. YAL seeks economic damages and a declaration that the City’s actions infringed YAL members’ right to assemble.

## **I. DISCOVERY-CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

## **II. RELIEF**

2. Plaintiff seeks monetary relief over \$250,000 but not more than \$1,000,000 and all other relief to which it is entitled.

## **III. PARTIES**

3. Plaintiff Young Americans for Liberty (“YAL” or “Plaintiff”) is a registered foreign nonprofit corporation located at 500 N. Capital of Texas Hwy, Bldg 5, Ste 100, Austin, TX 78746 and may be reached through the undersigned counsel.

4. Defendant City of Dallas (“City” or “Dallas”) is a home rule municipality located in Dallas County, Texas. Pursuant to Tex. Civ. Prac. & Rem. Code § 17.024(b), the City may be served by serving its mayor, Eric Johnson, at Dallas City Hall, 1500 Marilla St., Room 7DN, Dallas, Texas 75201, or wherever he may be found.

5. Defendant Dallas Convention Center Hotel Development Corporation (“Hotel Corporation”) is a domestic nonprofit corporation formed as a local government corporation, and which may be served to its registered agent, Mary Suhm, at 1500 Marilla, Dallas, Texas 75201.

6. Defendant Omni Hotels Management Corporation (“Omni”) is a corporation at 555 South Lamar Street Dallas, TX 75202, and 420 Decker Drive, Irving, Texas 75062, and may be served to its registered agent, Corporation Service Company, 211 E. 7<sup>th</sup> Street, Ste. 620, Austin, Texas 78701-3218, its president Peter Strebel or vice-president W. Kurt Alexander, both at 4001 Maple Ave, Ste. 600, Dallas, Texas 75219, or wherever they may be found.

#### IV. JURISDICTION, VENUE, AND WAIVER OF IMMUNITY

7. This Court has subject matter jurisdiction pursuant to Section 24.007 of the Texas Government Code, as the issue concerns a dispute exceeding \$500.

8. Venue is proper in Dallas County based on Section 15.035(a) of the Texas Civil Practice & Remedies Code because the events giving rise to this suit occurred in Dallas County and all Defendants are located in Dallas County.

9. Defendants have no sovereign immunity to the claims herein asserted (neither immunity from suit or liability) because YAL and Hotel Corporation entered into a written contract in which Hotel Corporation would host YAL's Mobilize 2020 educational event ("Event") from August 5-8, 2020, at the Omni Hotel Dallas, at 555 South Lamar Street ("Facility").

10. Plaintiff seeks a declaration that the City of Dallas had no legal authority to interfere in the YAL-Hotel Corporation lease, a claim not subject to sovereign immunity or for which sovereign immunity is waived by Section 37.006(b) of the Texas Civil Practices and Remedies Code ("UDJA"). The Hotel Corporation owns the property on which the Omni operates the Omni Hotel on behalf of the Hotel Corporation. The Hotel Corporation has no immunity as contractual landlord to force the Omni to cancel the YAL event. Alternatively, the City commanded the cancellation based on its police authority, which when challenged for validity is waived by the UDJA.

11. Although cities are generally immune from liability for negligence for its performance of governmental functions, they may be liable for their actions in the course of the non-negligent performance of such functions. *Bible Baptist Church v. Cleburne*, 848 S.W.2d 826, 829 1993 Tex. App. LEXIS 491 (Tex. App.--Waco 1993, writ denied) (concluding Cleburne did not have immunity against a claim for non-negligent nuisance or constitutional takings claim).

## V. FACTS AND LEGAL BACKGROUND

12. The Young Americans for Liberty (“YAL”) is a political organization scheduled to have its Mobilize 2020 educational event at the Omni Dallas Hotel in Dallas from August 6-8, 2020.<sup>1</sup>

13. The Hotel Corporation owns the real property on which the Omni Hotel sits (“Facility”). The Hotel Corporation is a discretely presented component unit of the City and the members of its Board of Directors are appointed by the Dallas City Council.

14. The Omni Hotels Management Corporation (“Omni”) manages the Facility on behalf of the Hotel Corporation.

### A. Plaintiff and defendant entered into a binding contract.

15. YAL and the Hotel Corporation formed a lease for use of commercial meeting space and supporting services at the Facility on June 16. During the formation and as noted on the lease agreement, the Omni represented the Hotel Corporation.

16. The Contract fixed with certainty all material terms of the parties’ agreement, including the time and place of performance, specifically, August 5-9, at the Omni Hotel Dallas.

17. Defendant Hotel Corporation, through its agents, knew that YAL sought to lease space for an educational event scheduled from August 6-8 for young adults to gather and discuss political issues (“Event”). These agents included at least Vicky Witt, CSM for Omni, and Courtney Roy, Director of National Accounts, who are in the business of renting out event spaces including the Omni Hotel Dallas.<sup>2</sup> The Contract allowed for YAL to have possession from August 5-9 so the YAL could prepare for the Event the day before its start and depart the day after the Event on August 9.

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<sup>1</sup> All dates are in 2020 unless otherwise noted.

<sup>2</sup> References to statements made by agents of the parties may be simplified herein to simply the parties themselves.

**B. YAL coordinated with Facility personnel to hold a safe event.**

18. YAL was in constant contact with the Omni to work cooperatively with the Facility, and agents of the City, to implement common-sense safety measures in light of COVID-19, to facilitate a safe and productive educational event experience for its delegates and guests.

19. On or about June 26, YAL leadership and Courtney Roy from the Omni discussed safety standards required by Dallas County.

20. On or about July 17th, Vicky Witt ("Witt"), CSM for Omni Dallas, sent an email to YAL staff which stated, "Theatre in general session unfortunately will not happen. We are city owned and can't take the risk to be shut down. We have to listen to the guidelines which are at 50% capacity with a 6' distance in each meeting room."

21. On or about July 20th, YAL and the Omni discussed options for the event, recognizing that the venue's theatre section was unavailable, resulting in the following thread:

OMNI: "The diagram that Justin created shows 2595 chairs without 6' social distancing. Unfortunately per the governor's guidelines we are at 50% capacity with a 6' distance between chairs. I asked Justin to re-draw the diagram to show the distancing to see how many people can fit. I'm almost certain that we can't fit 1,100ppl with the AV. Based on Courtney's email, she referenced the 50% occupancy not including the social distancing which we were told at some point. In order for us to accommodate the amount of attendees, we will have to go rounds of 10ppl with 6' in between tables to meet the governor's requirements."

YAL: "I've asked Kathryn [Kathryn Brackbill, YAL Director of Operations] to have Justin redraw with less chairs and 6 feet in between. Having 10 people at a table only gets 680 Ppl I believe, per Justin. Happy to hop on a call, but Courtney was pretty confidence in the contract process that we could do theater with chairs 6 feet apart and still get 1000 people."

OMNI: "When we were chatting about setup and our ballroom occupancy, I was under the impression that we would be at 50% occupancy without a 6ft distance requirement. You can definitely fit at 50% occupancy 1000 people theater set; however, its not at 6ft distancing. In my email I referenced right now our ballroom was set at 25% occupancy @ 6ft distancing, which could only fit 378. I definitely apologize and wish we were under different circumstances right now. We were hoping that by August we would be entering

phase 3, but its unfortunate that we have take a turn and are going backwards. I chatted with Vicky this AM and she feels that rounds would be the best set and you'd be able to accommodate the full group with the tables @ 6ft distancing. She'll circle back with you on everything."

22. On or about July 22nd, YAL contacted Omni staff about the City's Health Department, citing concerns about interference from the City, resulting in the following assurance:

YAL: "I'm just wanting to make sure we're not going to be surprised if the health department or the city tries to shut down the event because they're worried about how many are coming to the event. I would rather over communicate with them at this point, so they are completely aware of the size of the event. Just don't want any surprises!"

OMNI: "Our Senior leadership team is in contact with the City of Dallas regarding the size of the event. If we have any updates, I will communicate them to you by the end of this week."

23. On or about July 28th, YAL and Omni discussed seating, resulting in Omni developing a new plan to seat individuals in groups of four and space them six feet apart.

24. On or about July 28th, Omni sent YAL's final drawings on safe seating and setup arrangements to the Fire Marshall of the City of Dallas, who approved the final seating and setup drawings and sent them back with revisions.

25. On or about July 30th, 2020, Witt sent the following to be disseminated among attendees:

Stay A Part of Safety: Omni Dallas Hotel

Conference attendees: As you are aware, you have chosen to share a hotel room with other attendees or family members and this will put you less than six feet apart from other occupants in your hotel room. Similarly, you understand you are attending a conference with a large number of other individuals. To promote as safe of an event as possible, your group planner intends to seat you with your roommates at the conference events and, while you will be sitting within six feet of your roommates, we intend to space each traveling group at least six foot away from the next row of chairs and or tables. The State of Texas and local regulations require individuals to wear face coverings such as masks when within six feet of others, in addition to other physical distancing requirements. Your group has agreed to abide by and enforce this face covering requirement and other applicable health and safety standards for attendees of your events and activities while you are at the conference. For additional information, please refer to this link. <https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/061920-Amended-SupplementalOrderonContinuingRequirements.pdf>"

26. On or about August 1st, 2020, Omni sent YAL to inform it that event attendees would have to individually sign an additional waiver, to which YAL agreed.

27. On or about August 3rd, 2020, Cliff Maloney (“Maloney”), President of YAL, received a call from Dan Surette (“Surette”), Vice President of Omni. Surette told Maloney that he had just come from a conference call with the City of Dallas and that Dr. Phillip Huang, acting as an agent of the city, was ordering Omni to cancel the event. Witt later called YAL’s Brackbill at 12:14 p.m. that same day to inform Brackbill of the cancellation as well as apologize for it.

**C. Defendant City of Dallas interfered in the YAL-Omni Contract.**

28. Around July 22, City of Dallas officials contacted the Omni instructing it to cancel the event and invoke the *force majeure* provision if YAL and Omni did not make substantial changes to the safety planning of the event.

29. Omni complied with the City’s demands and worked with YAL to create a new safety plan, which was approved by the Dallas Fire Marshall.

30. In spite of both Omni and YAL’s significant efforts to accommodate the City of Dallas’ demands, and as expressly approved by the City of Dallas’ relevant agent, Dallas subsequently ordered Omni to invoke the *force majeure* clause only two days prior to the beginning of the Mobilize 2020 event.

31. Had the City of Dallas through the Fire Marshal simply not approved the new safety plan changes, *force majeure* would have been invoked more than two days before the event and saved YAL a loss of approximately \$160,000.

## **VI. CLAIM: BREACH OF CONTRACT AGAINST DEFENDANTS**

32. Plaintiff YAL and Defendant Hotel Corporation entered into a valid and enforceable agreement in which YAL was promised use of the Omni Hotel Dallas from August 5-8.

33. Plaintiff performed under the agreement until excused from performing its obligations under the agreement by the Hotel Corporation's unilateral cancellation.

34. Defendants Omni and Hotel Corporation breached the agreement when two months after the formation of the contract, and two days prior to YAL's scheduled event, Omni and Hotel Corporation canceled the Event and prevented YAL from using the hotel as promised.

35. As a result of Defendants Omni and Hotel Corporation's breach, Plaintiff has suffered damages related to equipment rental, labor, logistics and planning, freight and shipping, and transportation. YAL calculates its expenses as: \$144,432.50 on equipment rental; \$67,477.50 on event labor; \$7,000.00 on logistics and detailed planning; \$8,500.00 on freight and shipping; \$962.15 on a rental forklift; \$1,896.10 on transportation. YAL has received \$63,784.17 as reimbursements, resulting in economic damages of \$166,484.08 as currently understood.

36. Based on communications between Omni and the City and the fact that the Omni Hotel sits on property owned by the Hotel Corporation, and the City controls the Hotel Corporation, Plaintiff asserts the City is inherently part of the lease agreement and the City's actions controlling the Omni's actions constitute a breach of the contract on behalf of the City.

37. Alternatively if the facts unfold to determine the City or Omni has no authority to control or made part of the lease agreement, then the claim may be amended to tortious interference with the Contract as to the City or Omni, or a contract breach between the City-Omni contract under an intended third-party beneficiary claim, or such other claim as the facts are uncovered.

38. At this time, YAL seeks contract damages from all three defendants.

## VII. CLAIM: DECLARATORY JUDGMENT

39. Plaintiff seeks a declaration pursuant to the Texas Uniform Declaratory Judgment Act, Chapter 37 of the Texas Civil Practice and Remedies Code, that the City had no authority to interfere in the event or the parties' lease, which remains valid now as a repeatable issue.

40. Section 37.002(b) of the Texas Civil Practices and Remedial Code states, "This chapter is remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered." The power of the City to interfere in the YAL-Omni lease is uncertain and repeatable.

41. Plaintiff expects the City of Dallas to cite Chapter 418 of the Texas Government Code, known as the Texas Disaster Act of 1975 ("Act") for authority, specifically Section 418.1015 of the Act, which purports to give power to local authorities, who then craft "laws" based on their preferences. This free-wheeling law-making is unsupported by the Texas Constitution.

42. Section 418.108(f)-(g) was added to the Act following the 2005 hurricane season, and was designed to allow local authorities to control movement into and out of damaged areas. It was never contemplated that, for example, a county judge would determine that Condom Sense, GameStop, every petri-dish daycare, and every liquor store in the City is "essential" and could remain open, but salons employing trained stylists with 1500 hours of training in hygienic care for clients were too dangerous to stay in operation, or a gathering of a number of young people discussing political issues which clearly constitutes political speech must be stopped at any cost.

43. Section 418.1015 of the Disaster Act is too vague to be a permissible delegation of authority to interfere in the event, particularly when the City has simultaneously allowed unmasked participation in public protests and riotous protests, suggesting a difference of treatment based only on ideology, but no permissible material distinction.

## VIII. CLAIM: VIOLATION OF TEXAS' RIGHT TO ASSEMBLE

44. In contrast to the United States Constitution's right to assemble, which protects assembly only in connection with political matters, the Texas Constitution protects the right for citizens to assemble together *for their common good* in a peaceable manner. Tex. Const. art. 1, § 27; *Zaatari v. City of Austin*, No. 03-17-00812-CV, 2019 Tex. App. LEXIS 10290, at \*40-48 (Tex. App.—Austin Nov. 27, 2019) (pet. filed). The “common good” clause refers to the common good of citizens and not that of the state. *Id.* at \*44-46.

45. In *Zaatari*, the Third Court of Appeals reasoned the Texas Constitution's right to assemble has a “common good” prong that the United States Constitution does not, and found Austin's short-term rental ordinance infringed on Texan's fundamental right to assemble because it limited the number of people gathering at a residence used as a short-term rental. *Id.*

46. Further, the court in *Zaatari* recognized the right to assemble is particularly strong on private property. *Id.* at \*50-52.

47. Ultimately, *Zaatari* teaches that a Texan's right to assemble on private property is fundamental and examined under a strict scrutiny analysis. *Id.* at \*56.

48. Here, the City limited assembly on private property without the legal support of the Texas Legislature when it instructed the Omni to cancel Plaintiff's event. Further, the City acted without regard to the peacefulness of or reasons for the assembly. Lastly, Plaintiff's actions were for the common good of all who sought to assemble at the convention. As such, this Court should find the City acted in violation of section 27 of article 1 of the Texas Constitution.

49. To the argument that the issue is moot, Plaintiff asserts that the matter is capable of repetition and thus escapes that defense. Plaintiff should be able to make hotel reservations under the conditions of this case and know whether this same series of events will happen again.

## **IX. ATTORNEY'S FEES**

50. Because of Defendants' actions, YAL was required to retain legal counsel and has incurred, and continues to incur, fees, and expenses. The YAL should be entitled to recover its reasonable and necessary expenses and fees for the services of legal counsel in equity, contract, or the UDJA pursuant to TEX. CIV. PRAC. & REM. CODE chapters 37 & 38 *et seq.*

## **X. PRAYER**

WHEREFORE, Plaintiff prays that Defendant be cited to appear and answer, and that this Court, upon a final hearing or trial in this action, enter judgment in Plaintiff's favor and against Defendant on all claims asserted in this action, including:

- a. Plaintiff requests to be granted damages for breach of contract, including a money judgment for the past due and future claims;
- b. Plaintiff requests pre- and post-judgment interest at the highest legal rate;
- c. Plaintiff requests to be granted judgment for reasonable and necessary attorney fees, including contingent amounts in the event of appellate proceedings;
- d. Plaintiff to be granted judgment for all costs of court;
- e. Plaintiff to be granted all further relief to which Plaintiff may be entitled.

Respectfully submitted,

**NORRED LAW, PLLC**

s/Warren V. Norred

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