

Belinda Hernandez

DC-20-00497

Cause No. \_\_\_\_\_

MANSFIELD DERMATOLOGY, PLLC	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
ALSAL CONSTRUCTION, INC., D1	§	
ARCHITECTS AND ASSOCIATES, INC	§	
<i>Defendants.</i>	§	____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION & JURY DEMAND**

Plaintiff MANSFIELD DERMATOLOGY, PLLC. (“Mansfield” or “Plaintiff”) by and through their attorneys, files this Original Petition & Jury Demand against Defendants ALSAL CONSTRUCTION, INC. (“Alsal”) and D1 ARCHITECTS AND ASSOCIATES, INC. (“D1”) (collectively “Defendants”) and would respectfully show the following:

**Discovery Control Plan**

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

**Parties**

2. Plaintiff is a domestic limited liability company doing business in Texas.

3. Upon information and belief, Alsal Construction, Inc. is a domestic for-profit corporation engaged in business in Texas. Alsal regularly and systematically engages in business in Texas, operating for the purpose of accumulating monetary profit. Alsal may be served with process by serving **Alsal Construction, Inc., Saleha Haider, 1400 Meadow Drive, Irving, Texas 75063.**

4. Upon information and belief, D1 Architects and Associates, Inc. is a domestic for-profit corporation engaged in business in Texas. D1 regularly and systematically engages in business in Texas, operating for the purpose of accumulating monetary profit. D1 may

be served with process by serving **D1 Architects and Associates, Inc., Attn: Afreen Dewan, 20 Clear Pond Drive, Frisco, Texas 75034.**

### **Venue & Jurisdiction**

5. Venue is proper in Dallas County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(3) because Defendants' principal offices are located in Dallas County, Texas.

6. Plaintiff seeks damages within the jurisdictional limits of this Court. Plaintiff trust the jury to evaluate the evidence, but at this time, Plaintiff seeks monetary relief in an amount over \$1,000,000. Plaintiff reserves the right to modify the amount and type of relief sought in the future.

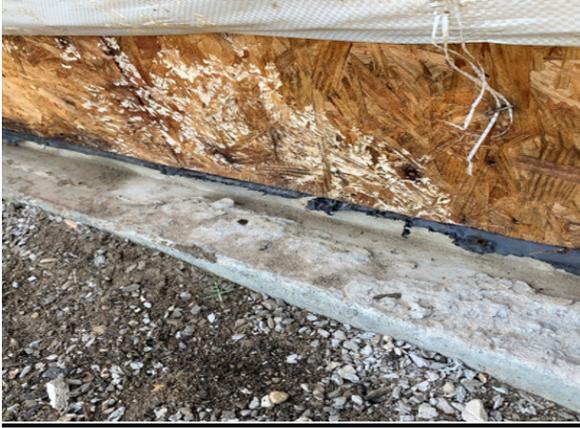
### **Facts**

7. Mansfield Dermatology, PLLC is the owner of the property located at 130 Regency Parkway, Mansfield, Texas 76065 ("Property"). The property consists of 10,540 sq. feet of interior office space. Mansfield and Defendants entered into a contract that was executed on April 27, 2017. As part of the contract, Defendants would properly construct the building from the ground up and would achieve substantial completion of the entire construction by December 27, 2017 (8 months or 250 days). Construction remained ongoing throughout December 2017 and January 2018, Plaintiff was not permitted to move in as specific final inspection violations were identified including non-compliance with the Architectural Barriers Act in December 2017 and additional Air Balance tests through January 30, 2018. These issues were represented by Defendants to be remedied by Defendants after January 30, 2018. Ultimately, Defendants accepted contractual payments but failed to properly perform in delivering a properly constructed building.

8. After moving in, Mansfield identified damage in violation of the contract and in violation of standards in the commercial building industry. Mansfield notified Defendant, Alsal Construction, on March 23, 2018 that they had confirmed substantial leaks throughout the building, including all along the east side and consistently coming from windows and window ledges damaging the interior of the building in numerous respects including water damages all the way down to the base of the building. Among other things, it was ultimately discovered that Defendants failed to construct waterproof barriers and flashing. Mansfield allowed time for Defendants to make corrections to remedy the breaches, however only temporary repairs were done, and the actual problems were not corrected despite specific promises that all of the defective building components would be remedied. Plaintiff began completing their own repairs out-of-pocket and essentially was required to gut the building and start over effectuating appropriate building construction methods including use of water barriers and proper flashing and repairing the damaged areas.

9. As a result of Defendants' failures, substantial damages to the building occurred. The damages continued to progress to the interior and exterior of the building, including but not limited to stucco, windows, walls, ceilings, baseboards and floors.

10. The following photographs were taken after the Defendants' construction conduct, and depict some of the damages:





### **FIRST CAUSE OF ACTION---Breach of Contract**

11. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of the Petition as if fully set forth herein.

12. Alsal's failure to perform the contractual obligations constitutes breach of the construction contract. Such failure to perform, including the failure to make complete repairs in a diligent manner was the direct and proximate cause of to the harm and damage to the Plaintiff's business and of the losses set forth below.

13. As a direct and proximate result of Alsal's breach of contract, the Plaintiff lost business and customers and has a damaged property. A large portion of the Plaintiff's property was damaged and considered uninhabitable causing Plaintiff to lose revenue.

14. As a further direct and proximate result of Alsal's breach of contract, the Plaintiff was forced to employ new contractors to repair the property out-of-pocket.

15. As a result of the Alsal's conduct as described above, Plaintiff has suffered losses and damages in a sum within the jurisdictional limits of this Court.

**SECOND CAUSE OF ACTION---Violations of Texas DTPA**

16. Plaintiff re-alleges and incorporates each allegation contained in previous paragraphs of this Petition as if fully set forth herein

17. Plaintiff is a consumer as defined by the Texas Deceptive Trade Practices Act. Plaintiff is a corporation who sought or acquired, by purchase or lease, services, and it is not a business consumer that has assets of \$25 million or more, or that is owned or controlled by a corporation or entity with assets of \$25 million or more.

18. Defendants' representations were false, misleading and deceptive in that Defendants represented to Plaintiff that they were qualified, competent and available to appropriately complete this construction contract. Defendants misleading and deceptive representations were to induce the Plaintiff into entering into the assignment.

19. The representations violate subdivisions (b)(5) and (b)(24) of Section 17.46 of the Deceptive Trade Practices Act in that they constitute representations that particular goods and services have certain qualities, uses or benefits when they did not and failing to disclose information about goods or services with the intent to induce Plaintiff to enter into a transaction that they would not have entered into if the information had been disclosed.

20. Plaintiff relied upon these representations to their detriment.

21. Defendants engaged in an unconscionable course of action by falsely representing to Plaintiff their competencies and qualifications. Defendants took advantage of Plaintiff's desperation, and lack of knowledge, ability, experience or capacity, to Plaintiff's detriment, to a grossly unfair degree.

22. Defendants' conduct as described above was a producing cause of Plaintiff's economic damages. As a result of Defendants' conduct, Plaintiff has suffered economic damages within the jurisdictional limits of this court.

23. Defendants' conduct described above was committed knowingly and intentionally. Defendants were actually aware, at the time of the conduct of the falsity, deception, and unfairness of the conduct about which Plaintiff complains.

24. Defendants' misleading representations and failure to provide the contracted for services, is a breach of implied warranty or expressed warranty, constitutes a deceptive trade practice. As a result of the deceptive act, Plaintiff is entitled to damages for economic loss under Section 17.50(b)(1) of the Business and Commerce Code.

**THIRD CAUSE OF ACTION--- Fraud, Concealment, and Constructive Fraud**

25. Plaintiff re-alleges and incorporates each allegation contained in the previous Paragraphs of this Petition as if fully set for herein.

26. Defendants committed fraud by concealment and constructive fraud on Plaintiff. The Defendants are liable for the fraudulent misrepresentations of facts and for the omissions and failures to state as such misrepresentations and omissions are imposed by statute, law and public policy because of the circumstances of the immediate parties to the transactions and the tendency to deceive other, to violate confidences, or to injure the public interest.

27. The actions of these Defendants constitute breaches of legal and equitable duties which the law deems to be fraudulent and/or illegal. Plaintiff has been damaged as a result of the misrepresentation and fraudulent statements and actions of the Defendants.

**PRAYER FOR RELIEF**

28. Therefore, Plaintiff respectfully requests that Defendants be cited to appear and answer, and that on final trial Plaintiff has:
29. Judgment against Defendants for damages in an amount within the jurisdictional limits of this court, together with pre- and post-judgment interest on the judgment as allowed by law;
30. Judgment against Defendants for damages as described herein;
31. Additional damages as allowed under Section 17.50(b)(1) of the Business and Commerce Code;
32. Reasonable and necessary attorney's fees;
33. Costs of suit; and
34. Any other relief to which plaintiff may be entitled.
35. Plaintiff requests trial by jury and shall pay appropriate jury fees.

Respectfully submitted,

**RAIZNER SLANIA, LLP**



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**ATTORNEYS FOR PLAINTIFF**

**JURY DEMAND**

*Plaintiff hereby demand a trial by jury, a right enshrined in the Constitution of the United States of America and the State of Texas and preserved by the sacrifices of many. The necessary jury fee has been paid.*



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**ANDREW P. SLANIA**