

**NO. 2017-58465**

<b>CHRISTY GRAVES, DAVID KLOZIK,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>EDWARD ARIEL MEJIA, BRICE</b>	§	
<b>OWENS, STEVEN SCHREIBER,</b>	§	
<b>BRAD SWEETMAN, AND ADAN</b>	§	
<b>TREJO, JR.</b>	§	
<b><i>Plaintiffs,</i></b>	§	<b>333rd JUDICIAL DISTRICT</b>
	§	
<b>V.</b>	§	
	§	
<b>ARKEMA, INC., RICHARD RENNARD,</b>	§	
<b>RICHARD P. ROWE AND ANDREW</b>	§	
<b>BURDETT</b>	§	
<b><i>Defendants.</i></b>	§	<b>OF HARRIS COUNTY TEXAS</b>

**PLAINTIFFS' SECOND AMENDED PETITION AND APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION AND  
REQUEST FOR DISCLOSURE**

**NOW COMES** Plaintiffs Christy Graves, David Klozik, Edward Ariel Mejia, Brice Owens, Steven Schreiber, Brad Sweetman, Adan Trejo, Jr., Juan Celestial, Tommy Crosby, Efrain Hernandez, Isaac Pinson, Shannon Nichols, Martin Encisco, Dusty and Candace Lucas, Candace Lucas as next friend of A. L., and Glen and Tammy Peek, named Plaintiffs in the above-entitled and numbered cause, and files this Second Amended Petition, Application for Temporary Restraining Order and Temporary Injunction and Request for Disclosure, and respectfully shows the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiffs intend to conduct discovery in this case under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

**II. PARTIES**

2. Plaintiff, Christy Graves, is an Individual who resides in Harris County.
3. Plaintiff, David Klozik, is an Individual who resides in Harris County.

4. Plaintiff, Edward Ariel Mejia, is an Individual who resides is in Harris County.
5. Plaintiff, Brice Owens, is an Individual who resides is in Harris County.
6. Plaintiff, Steven Schreiber, is an Individual who resides is in Harris County.
7. Plaintiff, Brad Sweetman, is an Individual who resides is in Harris County.
8. Plaintiff, Adan Trejo, Jr., is an Individual who resides is in Harris County.
9. Plaintiff, Juan Celestial, is an Individual who resides is in Harris County.
10. Plaintiff, Tommy Crosby, is an Individual who resides is in Harris County.
11. Plaintiff, Efrain J. Hernandez, is an Individual who resides is in Harris County.
12. Plaintiff, Isaac Pinson, is an Individual who resides is in Harris County.
13. Plaintiff, Shannon Nichols, is an Individual who resides is in Harris County.
14. Plaintiff, Martin Encisco, is an Individual who resides is in Harris County.
15. Plaintiff, Dusty Lucas, is an Individual who resides is in Harris County.
16. Plaintiff, Candace Lucas, is an Individual who resides is in Harris County.
17. Plaintiff A. L. is a minor and resides in Harris County, Texas. She therefore brings this action by and through her mother, Candace Lucas, as next friend.
18. Plaintiff, Glen Peek, is an Individual who resides is in Harris County.
19. Plaintiff, Tammy Peek, is an Individual who resides is in Harris County.
20. Arkema, Inc., Defendant herein, is a Pennsylvania Corporation doing business in the State of Texas. Based upon information and belief, Arkema, Inc. is the owner of the property and facility located at 18000 Crosby Eastgate Road, Crosby, Texas 77532, hereinafter ("Crosby facility"). As detailed on its website, Arkema, Inc. maintains a corporate headquarters in Texas, located at 9502B Bayport Boulevard, Pasadena, Texas, 77507.<sup>1</sup> Arkema has availed itself of the

---

<sup>1</sup> <https://www.arkema.com/en/all-arkema-locations/?country=northamerica/usa/>.

jurisdiction and laws of the State of Texas.

21. Andrew Burdett, Defendant herein, is an Individual who is a resident of the State of Texas and may be served with process at his home at the following address: 222 Magnolia Bend, New Caney, Texas 77357, or wherever he may be found. Service of said Defendant as described above can be effected by personal delivery.

22. Richard Rennard, Defendant herein, is an Individual who is a resident of the State of Texas and may be served with process at his home at the following address: 914 Main St. #1605, Houston, Texas 77002, or wherever he may be found. Service of said Defendant as described above can be effected by personal delivery.

23. Richard P. Rowe, Defendant herein, is an Individual who is a resident of the State of Pennsylvania and may be served with process at the following address: 900 First Avenue, King of Prussia, Pennsylvania 19406, or wherever he may be found. Service of said Defendant as described above can be effected by personal delivery. Defendant Rowe has subjected himself to the jurisdiction of Texas by committing torts in Harris County, Texas, as more fully described below.

24. Bureau Veritas North America, Inc., (“Bureau Veritas”) is a Delaware Corporation doing business in the State of Texas and may be served with process through its registered agent, CT Corporation System, at 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136. Based upon information and belief, Bureau Veritas North America, Inc. provided air quality monitoring, recording, and reporting of the evacuation zone following the initial explosion at the Arkema facility and during the Arkema mandatory evacuation. Bureau Veritas consultants from its 16800 Greenspoint Park Drive, Ste. 3005, Houston Texas, 77060 location tested the air throughout the evacuation zone in the presence of the First Responder Plaintiffs.

Bureau Veritas has availed itself of the jurisdiction and laws of the State of Texas. Service of citation upon Bureau Veritas is requested.

25. Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Arkema” with regard to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion of any party or of the Court.

### **III. VENUE AND JURISDICTION**

26. The subject matter in controversy is within the jurisdictional limits of this court. Plaintiffs seeks monetary relief in excess of \$1,000,000. Venue is proper in Harris County, Texas, pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) because it is the county where all or a substantial part of the events or omissions giving rise to the claim occurred. Venue is proper as to all Plaintiffs and Defendants under Texas Civil Practice & Remedies Code § 15.005.

27. The Court has subject matter jurisdiction over this civil action because Plaintiffs seek damages in an amount exceeding the Court’s minimum jurisdictional limits.

28. The Court has specific and general personal jurisdiction over Defendants because Defendant Arkema, Inc. owns property located in Texas, including the Crosby facility, and Defendant has purposely availed itself of the privilege of conducting business and activities within Texas; it has substantial and continuous contacts with the State of Texas, generally and with respect to this action, to satisfy both general and specific minimum contacts; and exercising jurisdiction over it does not offend the traditional notions of fair play and substantial justice. Arkema, Inc. has corporate headquarters in Pasadena, Texas pursuant to the Arkema, Inc.

website.

29. The Court has specific and general personal jurisdiction over Defendant Andrew Burdett because Andrew Burdett is a resident of the State of Texas and has committed tort in Harris County, Texas, as more fully described herein.

30. The Court has specific and general personal jurisdiction over Defendant Richard Rennard because Richard Rennard is a resident of the State of Texas and has committed tort in Harris County, Texas, as more fully described herein.

31. The Court has specific and general personal jurisdiction over Defendant Richard P. Rowe because Richard P. Rowe purposefully availed himself of the laws of the State of Texas by committing torts in Harris County, Texas, as more fully described herein.

32. The Court has specific and general personal jurisdiction over Defendant Bureau Veritas because Defendant Bureau Veritas has committed torts in the State of Texas, has purposely availed itself of the privilege of conducting business and activities within Texas; it has substantial and continuous contacts with the State of Texas, generally and with respect to this action, to satisfy both general and specific minimum contacts; and exercising jurisdiction over it does not offend the traditional notions of fair play and substantial justice.

33. Although Plaintiffs seek damages in an amount exceeding \$75,000.00, federal courts lack jurisdiction over this suit. There is incomplete diversity of citizenship, and Plaintiffs' claims raise no federal question. Thus, any attempt to remove this case to federal court is improper. Here, Plaintiffs seek no further relief under a federal law, statute, regulation, treaty or constitution, nor do Plaintiffs' rights to relief necessarily depend on the resolution of a substantial question of federal law.

34. There is no diversity for removal under 28 U.S.C. §1332 because Defendants

Rennard and Burdett are both Texas residents. Further, any argument that Defendants Rennard and Burdett have been fraudulently joined is without merit. The Fifth Circuit has recognized two ways to establish improper joinder: (1) actual fraud in the pleading of jurisdictional facts; or (2) inability of a plaintiff to establish a cause of action against the non-diverse party in state court. *See Smallwood v. Illinois Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004)(en banc). As explained herein, Plaintiffs' allegations and the facts show that Defendants Rennard and Burdett are liable to Plaintiffs.

#### IV. FACTS

35. On or about August 25, 2017, Hurricane Harvey struck the coast of the State of Texas as a Category 4 hurricane. Subsequently, Hurricane Harvey moved slightly inland and stalled for several days, all the while churning massive amounts of rain into the southeast Texas area, including east Harris County, where the town of Crosby, Texas resides. Over the course of those several days, Hurricane Harvey dropped in excess of fifty (50) inches of rain in and around Crosby, Texas. While Hurricane Harvey did cause massive devastation as a result of the rain which poured down from it, the residents and businesses in southeast Texas were given several days' notice that a major rain event was coming. This is not the first time Houston has seen massive amounts of rain, nor is it the first time that widespread areas of Houston and surrounding areas have suffered from flooding as a result of massive amounts of rain. This has happened before. As a matter of fact, this has happened so many times before that most industries, private businesses and even governmental agencies have put in place physical structures and written procedures to prevent harm and damage to their properties and the people in their communities. Unfortunately for the Plaintiffs herein, Arkema, Inc. never heeded the warnings and ignored the foreseeable consequences of failing to prepare.

***Precautions Were Never Taken. First Responders Were Never Warned.***

36. As a result of Arkema's failure to prepare, its employees were forced to completely abandon the Crosby facility on August 29, 2017, leaving behind hazardous and toxic chemicals with no supervision. Those chemicals required refrigeration, and the lack thereof would undoubtedly cause the chemicals to break down and ignite—a fact Arkema was well aware of from a prior incident in 2006. Despite this knowledge, Arkema and its safety managers and engineers nonetheless failed to adequately prepare for back-up refrigeration of those chemicals in the event of a power outage or other catastrophe—an issue that Arkema has previously been cited for by governmental authorities.

37. After directing its employees to abandon the facility, Arkema established an arbitrary 1.5 mile radius was drawn around the Crosby facility, and all residents in that radius were mandatorily evacuated from their homes and businesses. Bureau Veritas was charged with monitoring the air quality of the evacuation zone and worked hand-in-hand with Arkema employees in doing so.

38. Despite the knowledge that First Responders would be working in and around the evacuation zone, Arkema and Bureau Veritas failed to properly disclose and warn First Responders, including Plaintiffs, herein, of the dangers associated with the chemicals at the Crosby facility. Bureau Veritas was well aware of the First Responder Plaintiffs<sup>2</sup> and, during the evacuation, communicated with the First Responder Plaintiffs regularly. Despite this fact, Bureau Veritas failed to warn the First Responder Plaintiffs of high levels of chemicals in the immediate air from the accidental and intentional explosions and fires from the Arkema facility.

---

<sup>2</sup> The "First Responder Plaintiffs" include Harris County Sheriff's Officers David Klozik, Edward Mejia, Brice Owens, Steven Schreiber, Brad Sweetman, Efrain Hernandez, Juan Celestial, and Adan Trejo; and emergency medical services officers Christy Graves and Martin Enciso.

39. The First Responder Plaintiffs, charged with establishing and maintaining a perimeter around the evacuation zone, were never informed of the potential dangers and long term risks associated with the chemical releases and fires from the Crosby facility. Both Arkema and Bureau Veritas failed to properly disclose, warn, and advise the First Responder Plaintiffs and other first responders that precautions, including breathing apparatuses, HAZMAT wear, and the like, would be necessary to do so.

40. In the early morning hours of August 31, 2017, the first of several explosions occurred as a result of the abandoned chemicals heating up and igniting. Although the explosions had occurred, no one from Arkema alerted the first responders who were manning the perimeter of the arbitrary mandatory evacuation area. Immediately upon being exposed to the fumes from the explosion, and one by one, the police officers and first responders began to fall ill. Calls for medics were made, but still no one from Arkema or Bureau Veritas warned of the toxic fumes in the air.

41. Emergency medical personnel arrived on scene, and even before exiting their vehicle, were overcome by the fumes as well. The scene was nothing less than chaos. Police officers were doubled over vomiting, unable to breathe. Medical personnel, in their attempts to provide assistance to the officers, became overwhelmed and they too began to vomit and gasp for air. Some of the police officers, unable to abandon their vehicles due to their weapons being present, jumped in their vehicles and drove themselves to the nearest hospital. The other officers and medical personnel were all placed in ambulances and driven to a local hospital. Each of the First Responder Plaintiffs herein were subjected to that scene, that chaos, and those toxic fumes. Other first responders, including a Plaintiff herein, was overcome by chemical fumes while attending to a Crosby resident well outside the 1.5 mile radius of the Crosby facility. As a result



of Arkema's and Bureau Veritas's conduct, Plaintiffs were caused to suffer, and did suffer, severe bodily injuries.

***Crosby Homeowners Were Forced to Abandon Their Homes***

42. Residents in the 1.5 mile radius of the Crosby facility, including Plaintiffs herein, were mandatorily evacuated. Many left homes, already inundated by water, victims of Hurricane Harvey's rains. Others whose homes remained intact after the Hurricane, were forced to abandon their homes, livestock, even family pets, as law enforcement came door-to-door forcing them to leave their homes. For those who had already suffered flood damage, there was little they could do—water was left to sit in their homes until they were allowed to return. At that point, these homeowners, could do nothing to stop the spread of mold and mildew in their homes—left abandoned for over a week.

43. During the evacuation, residents of Crosby and surrounding areas, including Plaintiffs, were made to sit and wait, waiting for the inevitable explosion of toxic chemicals into the air in and around their homes. On the news, Arkema, Inc.'s representatives Richard Rennard and Richard P. Rowe held press conferences in Harris County, Texas and repeatedly denied that the chemicals were toxic or harmful in any manner to the people, and first responders, in the community. During one such press conference, Rennard remarked that the toxicity of the smoke from the Arkema facility is "a relative thing." In another press conference, Rennard admitted that the smoke and fire would cause irritation "just like any fire." When questioned regarding the nature of the chemicals being released and their dangers, Rowe refused to identify the chemicals by name, instead answering that the chemicals were "nothing that would pose any long-term harm or impact," and any sustained environmental impact would be "minimal."<sup>3</sup> Plaintiffs relied

---

<sup>3</sup> In that same press conference, Rowe also told local officials that the evacuation was not mandatory and he was uncertain whether the 1.5 mile radius around the Crosby facility was "devoid" of people. See

upon these representations and suffered serious bodily injuries as a result.

44. Several more days after the initial explosion and release, residents had grown impatient, waiting to be allowed back into their flooded homes, which were incurring further damage each day they were kept away. Several more explosions occurred. On September 3, 2017, Arkema intentionally ignited the remaining containers of chemicals, sending plumes of smoke, ash, chemicals and other compounds into the air that could be seen for miles. Debris fell all around (well outside the arbitrary perimeter) on people, their homes, their yards, their animals, their property, and their children. More people became exposed to the fumes, and those that had been previously exposed were still trying to recover from the physical limitations they suffered days prior.

45. Residents began returning to their homes on Labor Day—less than twenty-four hours following the intentional ignition of a number of chemical containers in the late afternoon of September 3, 2017. Once residents returned home, they were exposed to a laundry list of chemicals remaining in the air.<sup>4</sup> Local news agencies reported that residents returning to their homes were advised, by Arkema, “to use protective clothing and drink bottled water until further notice.”<sup>5</sup> Such precautions would not be necessary if, in fact, it was safe for residents to return to their homes. And many residents who did return, soon found that out.

46. Residents, including plaintiffs herein, who had no health issues before the

---

<https://www.wsj.com/articles/arkema-warns-it-cant-prevent-potential-chemical-explosion-in-texas-1504124326>.

Yet, due to its location and the volatile peroxides it produces, in 2016, well before Hurricane Harvey, the Crosby facility was identified on a list of Houston-area industrial sites with the highest potential for catastrophe in the event of a natural disaster by the Mary Kay O'Connor Process Safety Center at Texas A&M University.

<sup>4</sup> To date, Arkema has failed to share and/or disclose the material-safety data information of the chemicals involved with the public or the First Responders Plaintiffs. Based upon information and belief, at least two of the chemicals believed to have been released are toxic and known carcinogens, requiring monitoring by the EPA.

<sup>5</sup> See <http://abc13.com/residents-allowed-to-return-around-arkema-plant/2372451/>. To date, no one from Arkema has advised Plaintiffs or the Crosby community to cease this practice.

evacuation, soon began complaining of upper respiratory infections, bronchitis, pneumonia, itchy, burning eyes, tight, burning throats, and the like—illnesses and injuries that did not exist prior to the explosions and fires at the Arkema facility and illnesses resulting from and exacerbated by the explosions and fire at the Arkema facility.

47. As result of the fire, explosions, and mandatory evacuation, Plaintiffs herein have suffered property damages, including: injury to the land that resulted in cost of repairs, loss of use, or any combination thereof; injury to improvements that resulted in cost of repairs, loss of use, or any combination thereof; injury to business, that resulted in lost profits, loss of credit or reputation thereof, loss of goodwill, or any combination thereof; injury to personal property that resulted in cost of repairs, loss of use, or any combination thereof; and diminution in property value.

## **V. CAUSES OF ACTION**

48. Plaintiffs incorporate by reference all preceding paragraphs as if fully stated herein and further states as follows

### **A. NEGLIGENCE**

49. On the occasion in question, as more fully described above in Section IV, Defendants committed acts of omission and commission, which collectively and separately constituted negligence. Defendants had a duty to exercise ordinary care, meaning that degree of care that would be used by any chemical company of ordinary prudence under the same or similar circumstances, and Defendants breached that duty, including but not limited to one or more of the following ways:

- a. In failing to properly store chemicals at the Crosby facility;

- b. In failing to develop, implement, and maintain proper procedures for the backup refrigeration of chemicals stored at the Crosby facility;
- c. In failing to develop, implement, and maintain proper safety procedures and protocol concerning the safe maintenance of the highly toxic and inherently dangerous chemicals maintained at the Crosby facility;
- d. In failing to have adequate procedures in place to protect the safety and welfare of the community in the event of a catastrophe;
- e. In failing to provide the public and first responders accurate information on the chemicals at risk of exploding;
- f. In failing to properly warn the public and first responders concerning the risks and dangers associated with the highly toxic and inherently dangerous chemicals maintained at the Crosby facility;
- g. In failing to implement and maintain proper procedures, as established by Arkema, Inc. and governmental agencies regarding, concerning the safe and proper handling of chemicals at the Crosby facility; and
- h. In failing to adequately prepare for a major flood event, having had the knowledge that such an event was foreseeable.

50. As to Defendant Bureau Veritas, Defendant failed to properly disclose and warn the First Responder Plaintiffs of the high levels of dangerous chemicals and carcinogens in the immediate air from the accidental and intentional explosions and fires from the Arkema facility. Bureau Veritas further failed to properly disclose, warn, and advise the First Responder Plaintiffs and other first responders that precautions, including breathing apparatuses, HAZMAT wear, and the like, would be necessary.

51. Defendants' breaches were a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiffs herein.

## **B. GROSS NEGLIGENCE**

52. Defendants unconscionably and wantonly neglected to take the actions reasonably required to correct its past mistakes and omissions and unconscionably and wantonly neglected to reasonably protect the citizens of Crosby, Texas and surrounding communities from the

unreasonably dangerous condition it created. These acts of omission and commission, included, but were not limited to those as described herein under Section V(A).

53. Defendants committed acts of omission and commission, which collectively and severally, constituted malice under Chapter 41 of the Texas Civil Practices & Remedies Code, which malice was a proximate cause of the accident described herein. Plaintiffs seek exemplary damages as allowed by law in an amount to be determined at trial. These acts of malice involved an extreme degree of risk considering the probability and magnitude of harm to others; and of which Defendants had actual, subjective awareness of such risks involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others.

#### **C. NEGLIGENCE *PER SE***

54. Defendants' conduct described herein constitutes an unexcused breach of duty imposed by law. Plaintiffs are members of the class that the law was designed to protect. Defendants' unexcused breach of the duty imposed by the law proximately caused the Plaintiffs' injuries described herein.

#### **D. NEGLIGENT MISREPRESENTATION**

55. Defendants Rennard and Rowe made representations to Plaintiffs, the Crosby community, and public at large concerning the Crosby facility, the risk and consequences of the explosions, and the like. Defendants downplayed the risks associated with the explosions, fire, and toxicity of the chemicals at issue. Defendant Rennard even remarked, "toxicity is a relative thing." Defendants further represented that the dangers associated with the explosions and fire at the Crosby facility were akin to standing next to a campfire.

56. Defendants supplied this false information and failed to exercise reasonable care when doing so. Plaintiffs relied upon these representations to their detriment. Plaintiffs

justifiably relied upon these representations.

57. As a proximate result of Defendants' negligent misrepresentations Plaintiffs have suffered substantial harm and injury. Plaintiffs are entitled to recover all actual damages, both general and special, against Defendants for tortious representations.

**VI.**  
**APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY**  
**INJUNCTION**

58. In light of the above described facts, Plaintiffs seek recovery from Defendants. Plaintiffs are likely to succeed on the merits of this lawsuit. Plaintiffs are concerned that Defendants will change, alter, destroy, convert, or even transport evidence involved in this incident. Unless this Honorable Court immediately restrains the Defendants, Plaintiffs will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. More specifically, Plaintiffs will show the court that the harm to Plaintiffs is imminent. This imminent harm will cause Plaintiffs irreparable injury in that the Plaintiffs in this lawsuit will lose the opportunity to inspect and photograph the evidence, and will be unable to prosecute their claims. There is no adequate remedy at law which will give Plaintiffs complete, final and equal relief.

59. In order for the Plaintiffs to properly investigate and pursue their claims, and recover damages and see that justice is done, this Court should restrain the Defendants, its agents, servants, employees, contractors, contract employees, attorneys and those acting in concert with or in representation of said Defendants from changing, altering, destroying, modifying, converting, selling or transporting the evidence described below which was involved in this incident. Plaintiffs are willing to post a reasonable temporary restraining order bond and requests the court to set such bond. Plaintiffs have met their burden by establishing each element

which must be present before injunctive relief can be granted by this Court, therefore Plaintiffs are entitled to the requested temporary restraining order.

60. In order to preserve the status quo during the pendency of this action, Plaintiffs pray the Court restrain and/or enjoin Defendants from in any way changing, altering, destroying, modifying, converting, selling, or transporting the below described evidence. Plaintiffs also seek an order preserving:

- a. Any and all photographs and videotapes, including drone footage, of the scene of the incident, parties or equipment involved, including but not limited to the subject containers and any other equipment involved in the August 31, 2017 to September 4, 2017, incident at the Arkema facility in Crosby, Texas;
- b. Any and all stickers, safety slogans, warnings, etc. attached to or placed on the premises and/or equipment located at the Arkema facility in Crosby, Texas;
- c. Any and all equipment, including manuals and materials related to the same, that were and/or have been used in the maintenance of the containers utilized at the Arkema facility in Crosby, Texas from January 1, 2006 to the present;
- d. Any and all documents/communications regarding the chemicals involved in the explosions at the Arkema facility in Crosby, Texas on August 31, 2017-September 4, 2017;
- e. Any and all documents, records, communications, samples, protocols and/or measurements relating to any testing of the air in or within five mile radius of the Arkema facility in Crosby, Texas, for the presence of hazardous gases from August 29, 2017 to the present;
- f. Any and all documents, records, communications, samples, and/or measurements relating

- to any testing for the presence of hazardous materials of any soil on or within a five mile radius of the Arkema facility in Crosby, Texas, from August 29, 2017 to the present;
- g. Any and all documents, records, communications, samples, and/or measurements relating to any testing of debris emitted from the Arkema facility located in Crosby, Texas from August 29, 2017 to the present;
  - h. Any and all documents, records, samples, protocols, and/or measurements relating to any testing of any debris or materials collected from Crosby residents within a five mile radius of the Arkema facility located in Crosby, Texas from August 29, 2017 to the present;
  - i. Any and all documents or records relating to the incident and subject containers, including but not limited to any records, communications, documents, emails, text messages, by and between Arkema, its agents, directors, employees, and assigns, and: the Department of Justice, the Occupational & Safety Health Administration, the Chemical Safety Board, the Environmental Protection Agency, the Texas Center for Environmental Quality, the Crosby and Harris County fire departments, any emergency responders who responded to the explosions at the Arkema facility located at Crosby, Texas, and any other state or federal regulatory agency;
  - j. Any and all emails, electronic data, documents, statements, diaries, calendar entries, memos, incident reports, call slips or telephone messages, text messages, facsimiles, voicemail messages and correspondence related to the incident and/or explosions at the Arkema facility in Crosby, Texas, hurricane and flood preparations in advance of Hurricane Harvey; and
  - k. Any and all log books, maintenance logs, cargo logs, maintenance and repair records,



inspection reports, annual inspection reports, operating manuals, actual audiotape recordings or any transcript or any recorded statements, mobile radio and dispatch records pertaining to the incident and/or explosions at the Arkema facility in Crosby, Texas.

1. Samples of any and all chemicals maintained at the Arkema facility in Crosby, Texas as of August 29, 2017 to the present.

61. The foregoing tangible and physical evidence is relevant and reasonably necessary to determine the cause of Plaintiffs' injuries, the loss of which would be irreparably harmful to Plaintiffs. It is essential that the court act immediately, prior to giving notice to Defendants and a hearing on the matter, so as to adequately preserve the status quo.

**VII. REQUEST FOR HEARING ON TEMPORARY RESTRAINING ORDER AND  
SUBSEQUENT INJUNCTIVE RELIEF**

62. Plaintiffs would further pray for this Court to set a hearing on Plaintiffs' Application for Temporary Restraining order and subsequent injunctive relief in this matter.

**VIII. REQUEST FOR INSPECTION**

63. Plaintiffs also pray that this Court issue an Order permitting the Plaintiffs' attorneys and investigative staff, including but not limited to consulting experts, to have access to the premises in question to inspect, photograph, and film said premises. Such access for the purpose of inspection, photographing and filming is essential in order for the Plaintiffs to prepare their cause and to see that justice is done.

**IX. DAMAGES**

64. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiffs were caused to suffer severe bodily injuries, and to incur the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were

incurred by Plaintiffs for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Harris County, Texas;

- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Physical impairment in the past;
- F. Physical impairment which, in all reasonable probability, will be suffered in the future;
- G. Loss of earnings in the past;
- H. Loss of earning capacity which will, in all probability, be incurred in the future;
- I. Disfigurement in the past;
- J. Disfigurement in the future;
- K. The cost of future medical monitoring;
- L. Mental anguish in the past;
- M. Mental anguish in the future;
- N. Injury to the land that resulted in cost of repairs, loss of use, or any combination thereof;
- O. Injury to improvements cost of repairs, loss of use, or any combination thereof; and
- P. Injury to business that resulted in lost profits, loss of credit or reputation thereof, loss of goodwill, or any combination thereof.

#### **X. PRESERVING EVIDENCE**

65. Plaintiffs hereby request and demand that Defendants preserve and maintain all

evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting therefrom, including statements, photographs, videotapes, audiotapes, surveillance or security tapes or information, business or medical records, incident reports, tenant files, periodic reports, financial statements, bills, telephone call slips or records, estimates, invoices, checks, measurements, correspondence, facsimiles, email, voicemail, text messages, any evidence involving the incident in question, and any electronic image or information related to the referenced incident or damages. Failure to maintain such items will constitute “spoliation” of the evidence.

#### **XI. REQUEST FOR DISCLOSURE**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the information and material described in Rule 194.2 within fifty (50) days of the service of this request.

#### **XII. PRAYER**

**WHEREFORE**, Plaintiffs pray that:

1. Defendants be cited to appear and answer herein,
2. a temporary restraining order will issue without notice to Defendants restraining Defendants as described herein,
3. the Court set a reasonable bond for the temporary restraining order,
4. after notice and hearing, a temporary injunction will issue enjoining and restraining Defendants from the conduct described herein,
5. Plaintiffs be awarded their damages as more fully described in Section IX above;
6. Plaintiffs be awarded their costs of suit;
7. Pre-judgment and post-judgment interest on all applicable amounts be awarded to

- Plaintiffs at the maximum non-usurious rate as allowed by law;
8. Plaintiffs be awarded exemplary damages; and
  9. Plaintiffs be awarded such other and further relief to which Plaintiffs may show they are justly entitled.

Respectfully submitted,

**SPURLOCK & ASSOCIATES, P.C.**

By: /s/ Misty A. Hataway-Coné

Kimberley M. Spurlock

Texas Bar No. 24032582

[kspurlock@spurlocklaw.com](mailto:kspurlock@spurlocklaw.com)

Misty A. Hataway-Coné

Texas Bar No. 24032277

[MCone@spurlocklaw.com](mailto:MCone@spurlocklaw.com)

17280 West Lake Houston Pkwy.

Humble, TX 77346

Tel. (281) 548-0900

Fax. (281) 446-6553

**ABRAHAM, WATKINS, NICHOLS,  
SORRELLS, AGOSTO & AZIZ**

By: /s/ Muhammad S. Aziz

Muhammad S. Aziz

Texas Bar. No. 24043538

[maziz@abrahamwatkins.com](mailto:maziz@abrahamwatkins.com)

800 Commerce Street

Houston, Texas 77002

Tel. (713) 222-7211

Fax. (713) 225-0827

**ATTORNEYS FOR PLAINTIFFS**

**PLAINTIFFS HEREBY DEMAND TRIAL BY JURY**

### **CERTIFICATE OF SERVICE**

I certify that on September 20, 2017, a true and correct copy of the foregoing was served in accordance with the Texas Rules of Civil Procedure on the following:

**Hart Green**

Weller, Green, Toups, & Terrell L.L.P.

P.O. Box 350

Beaumont, Texas 77004

(409) 838-0101

(409) 838-7823 fax

[hartgr@wgttlaw.com](mailto:hartgr@wgttlaw.com)

Attorney for Intervenors Gay McCoy,

Kevin McCoy, Individually and Next

Friend for Kurtis T. McCoy

**Scott C. Lannie**

Law Office of Scott C. Lannie, P.C.

4000 Garth Road, Suite 150

Baytown, Texas 77521

[sclannie@aol.com](mailto:sclannie@aol.com)

Attorney for Intervenor David Baecker

/s/ Kimberley M. Spurlock

Kimberley M. Spurlock