

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

HAMILTON FONTENOT, DIONNE	§	
RAMIREZ, WILLIE WILLIS, JALISHA	§	
ARD, EDWARD MONTROSE, LYDIA	§	
MONTROSE, ROBERT SARVER, ROBERT	§	
SUKIENNIK, ARCHIE FLOWERS, and	§	C.A. No.: _____
MARCOM PHILLIPS,	§	
each Individually and on behalf	§	
of those similarly situated, together with all	§	
individuals whose names appear on the	§	
attached "Exhibit A"	§	JURY TRIAL DEMANDED
	§	
Plaintiffs,	§	
	§	
V.	§	
	§	
BP PRODUCTS NORTH AMERICA, INC.	§	
	§	CLASS ACTION PURSUANT TO
Defendant.	§	FED. R. CIV. P. 23

**PLAINTIFFS’ ORIGINAL CLASS ACTION COMPLAINT,
APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND
REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiffs, HAMILTON FONTENOT, DIONNE RAMIREZ, WILLIE WILLIS, JALISHA ARD, EDWARD MONTROSE, LYDIA MONTROSE, ROBERT SARVER, ROBERT SUKIENNIK, ARCHIE FLOWERS, and MARCOM PHILLIPS (“Plaintiffs”), individually and as representatives of the class defined herein (the “Class”), the Worker Sub-class defined herein (the “Worker Sub-class”), and the Texas City Sub-class herein (the “Texas City Sub-class”), together with the 2212 individuals whose names appear on the attached “Exhibit A” (collectively “Plaintiffs”), bring this action and request for injunctive relief against Defendant BP PRODUCTS NORTH AMERICA, INC. (“Defendant” or “BP”) and respectfully shows this Honorable Court the following:

I.
SUMMARY OF THE CASE

1. Profits over the safety of people. In order to avoid losing the profit from shutting down an operating unit, and in an attempt to avoid the publicity such a shutdown would have garnered in the financial press, the Defendant instead spewed thousands of pounds of one of the most deadly and nastiest carcinogens into the atmosphere, exposing unsuspecting onsite workers and nearby residents.

2. This is a class action, brought pursuant to Rule 23 of the Federal Rules of Civil Procedure, that deals with a large-volume release of 538,000 pounds¹ of chemicals and compounds, including an estimated 17,000 pounds of Benzene², that occurred from April 6, 2010 to May 16, 2010 at the BP Texas City Refinery (hereafter the “Refinery” or the “Facility”); although, such event must be viewed in light of BP’s long and tortured history of failure in the area of Process Safety Management. In this case, tens of thousands individuals were injured and had his or her long-term health put in jeopardy after being exposed to extremely high levels of Benzene and other toxic chemicals while working at the BP Texas City Refinery or by simply living or working in Texas City. Plaintiffs and all members of the Class, the Worker Sub-class and the Texas City Sub-class seek remedy for this exposure, and also attempt to do, through this case, what none of the authorities thus far has been able to do—put an end to BP’s continuous pollution of the air, ground, and water, and the continued exposure to harmful substances of workers at the BP Texas City Refinery. In this effort, Plaintiffs seek punitive damages against BP in excess of **\$10 billion**.

¹ These numbers are based on BP’s own estimates.

² Each day, more than 400 pounds of benzene, a known human carcinogen, were released; a number 40 times the state reportable levels. BP estimates that, in addition to the Benzene, 37,519 pounds of nitrogen oxides, 189,000 pounds of carbon monoxide, 61,000 pounds of propane and 34,645 pounds of isobutene were released during this 40-day period.

3. BP's Texas City Refinery, with a refining capacity of more than 460,000 barrels per day, is the third largest petroleum refinery in the United States. It has also been found to be the largest single polluter in the United States. On March 23, 2005, a series of fires and explosions at the refinery killed fifteen workers and injured more than 1,000 people. The incident was investigated by the United States Chemical Safety Board, which found that the explosion was caused by organizational and safety deficiencies at all levels of BP and multiple problems with Process Safety Management "PSM" (PSM simply means: "keeping the product in the pipes"). The various investigations that occurred also resulted in an enforcement action by the Occupational Safety and Health Administration (OSHA), resulting in a \$21 million fine, and an OSHA settlement agreement. As part of BP's settlement with OSHA, BP was to undergo a process safety management audit and to incorporate the recommendations of the auditor. Further, as a result of the explosion, BP also ultimately pled guilty to one violation of the Clean Air Act, and agreed to a \$50 million fine.

4. Since the 2005 explosion, **four more** people have died at the BP Texas City Refinery: one in 2006, one in 2007, and two in 2008. All of these deaths were related to failure to implement and follow proper procedures, failure to inspect and maintain equipment, or failures of PSM. In addition to the four additional people who were killed at the BP Texas City Refinery since the 2005 explosion, BP's history of failure to inspect and maintain, and failure at PSM have continued without abatement. For example:

- In just a four-year period, there were over 500 hundred leaks, spills, and releases at the BP Texas City Refinery. The great majority of these leaks, spills, or releases were the result of improper operation, poor maintenance, and lack of inspection of BP's piping and pumping system—otherwise known as PSM.

- According to BP's own Fire Chief, the BP Texas City Refinery averages one fire per week.
- From its own internal documents, BP averages 200 leaks and releases per year from valves, pumps, and connectors at the BP Texas City Refinery. These are just the leaks and releases that BP chooses to report.
- BP faced more than forty-five enforcement actions for pollution from the Texas Commission of Environmental Quality ("TCEQ"), as a result of unlawful quantities of pollutants released at the BP Texas City Refinery.
- On April 19, 2007, 110 workers were sent to the hospital following a release in or around the CAT3B and SRU Units at the BP Texas City Refinery. Yet, BP never identified what was released.

5. BP has an especially significant problem at its BP Texas City Refinery with Benzene releases and exposures. Following the 2005 explosion and fire, the Environmental Protection Agency ("EPA") conducted a series of inspections to determine BP's compliance with the terms of a 2001 Consent Decree. That Decree had required that the BP Texas City Refinery comply with various Clean Air Act requirements. As a result of the investigation, the EPA concluded that BP had completely failed to live up to the terms of the 2001 Decree. The EPA thereafter began another enforcement action, ultimately reaching yet another agreement with BP in 2009. The new, 2009 agreement dealt specifically with the violations related to the mismanagement of Benzene, as well as two other categories of substances. In addition to a \$12 million fine, the 2009 settlement required BP, among other things, to improve management controls to minimize Benzene wastes, plus implement major upgrades to the Facility and

equipment. As the incident in this case proves, BP failed to live up to this agreement, like it has failed to live up to other agreements it has made with the various authorities.

6. BP's 2009 settlement with the EPA recognized the particularly dangerous nature of Benzene. Benzene is a hazardous air pollutant, and is a byproduct of the petroleum refining process. Benzene wastes are typically managed in a refinery's wastewater collection and treatment system, which is designed to prevent the Benzene contained in the wastewater from volatilizing to the atmosphere before the wastes are safely treated. The health effects related to Benzene exposure are many. The acute effects are drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and anemia in occupational settings. Further, reproductive effects have been reported for women exposed by inhalation of high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidences of leukemia have also been observed in humans occupationally exposed to Benzene. Because of the many potentially adverse effects from exposure, the EPA has classified Benzene as a Group A human carcinogen. Some studies have shown that individuals exposed to high levels of Benzene may develop cancer many years later, as a result of a single exposure.

7. However, as this case demonstrates, despite BP's promises to prevent Benzene exposure, such exposures routinely continue to occur at the BP Texas City Refinery. Prior to the incident made the basis of this suit, on August 19, 2009, a group of contract workers were working at the Refinery when a vapor and strong odor completely enveloped their work area. Attempting to locate the source of the offending vapor, the workers discovered chemicals spewing out of a broken pipe – like water from a fire hydrant. Upon seeing the source of the

leak, the workers quickly evacuated the area. After experiencing various symptoms, the workers sought medical treatment and were taken to a hospital. It was only then that the workers learned that they were exposed to Benzene.

8. In late 2009, BP was again cited by OSHA for more than 700 safety, health and PSM violations, many of which had been outstanding for more than four years. These violations included 411 instances of “individual relief device deficiencies,” 28 instances of “failure to provide operating limits in procedures,” and 28 instances of “failure to perform relief device studies.” Several of these violations dealt specifically with underreporting, or failing to report, leaks, spills, and releases. The majority of the violations dealt specifically with the failure to inspect and maintain piping at the BP Texas City Refinery, which in turn fails to prevent leaks, spills, and releases. Based on BP’s conduct and failure to comply with the earlier settlement agreement, OSHA levied a fine of more than \$87 million, by far the largest in the agency’s history.

9. Just this past weekend, another release of Benzene occurred at BP's plant, sending at least two individuals to the hospital.

10. Despite the efforts of the EPA, OSHA, TCEQ, and other federal and state agencies, including even the United States Justice Department, and despite the massive fines that these agencies have assessed, BP simply has not changed, and continues to pollute the ground, water, and air, and continues to put both the workers, and nearby residents at risk. One can only fathom the death and sorry that will result when these toxic chemicals wreak their ultimate havoc on those exposed in the future. The Plaintiffs named in this Complaint have all experienced the symptoms classically associated with Benzene exposure. The minor Plaintiffs have already

developed more serious maladies. Plaintiffs and all members of the Class, the Worker Sub-class and the Texas City Sub-class in this case bring this case seeking change.

II.
PARTIES

11. Plaintiff, HAMILTON FONTENOT, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

12. Plaintiff, DIONNE RAMIREZ, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

13. Plaintiff, WILLIE WILLIS, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

14. Plaintiff, JALISHA ARD, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

15. Plaintiff, EDWARD MONTROSE, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

16. Plaintiff, LYDIA MONTROSE, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

17. Plaintiff, ROBERT SARVER, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

18. Plaintiff, ROBERT SUKIENNIK, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

19. Plaintiff, ARCHIE FLOWERS, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

20. Plaintiff, MARCOM PHILLIPS, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

21. The remaining 2212 Plaintiffs, who are all named in the annexed listing of additional Plaintiffs, attached to this Complaint as “Exhibit A,” are, upon information and belief, citizens of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

22. Defendant BP PRODUCTS NORTH AMERICA, INC. is a Maryland corporation doing business in Texas and may be served process by serving its registered agent, Prentice Hall Corporation System, 211 East 7th Street, Suite 620, Austin, Texas 78701.

III. **JURISDICTION AND VENUE**

23. This Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds the sum or value of \$5,000,000, exclusive

of interest and costs, and it is a class action brought by citizens of a state that is different from the state where the Defendant is incorporated or does business.

24. Further, the Court has jurisdiction over Plaintiffs' individual claims pursuant to 28 U.S.C. § 1332 because, for each of the Plaintiffs' claims, the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and this suit is between citizens of different states.

25. The case is properly brought in this District and Division because all of the acts and omissions that form the basis of this suit occurred in this District and Division and Defendant does business in this District and Division.

IV. FACTUAL ALLEGATIONS

26. The forty (40) day chemical release that is the subject of this suit began on April 6, 2010 when the hydrogen compressor in the Ultracracker unit went offline at the Refinery. The hydrogen compressor is responsible for trapping noxious chemicals and, without it working, BP opted to send the gasses to a flare. BP did this, even though it knew the flaring process would be, at best, incomplete and allow some chemicals to escape into the atmosphere. BP followed this "procedure" until May 16, 2010 when the compressor was repaired or restarted; however, during this time period, BP continued to operate the Refinery's Ultracracker.

27. The Ultracracker processes 65,000 barrels of oil per day and each barrel during this time period would have resulted in \$5 to \$10 in profit for BP. With this much money at stake, shutting down the Ultracracker, even for just a brief 24 hour period, would have garnered attention from the financial press and investors. Instead, BP continued operations in the Ultracracker while releasing over 500,000 pounds of chemical and compounds, including 17,000

pounds of benzene, into the environment. Amazingly, BP did not inform Texas City officials of the scale of the release until after the forty day release was over.

28. Regrettably, the Refinery has a long and tragic history of violations that have resulted in nearly 20 deaths since 2005, hundreds of injuries, hundreds of toxic releases and numerous environmental and safety violations.

29. Since BP's acquisition of the Refinery, there have been hundreds, if not thousands, of leaks, spills and releases at the Refinery. Many, if not all, of these events were the result of failures in process safety management and BP management was well aware of these releases. Further, prior to April 2007, internal investigations revealed to BP and its senior managers that repeated safety violations were occurring and that the company repeatedly disregarded safety and environmental rules. In addition, BP's management has repeatedly neglected the aging equipment at the Refinery. Most troubling, there are numerous accounts of BP pressuring employees and contractors to not report problem and to cut short or delay inspections to reduce production costs and intimidating workers who raise safety or environmental concerns.

30. The following are just a sampling of the numerous release events that have been reported at the Refinery:

- a. On March 15, 2002, numerous chemicals, including 365 pounds of Hydrogen Sulfide and 17,603 pounds of Sulfur Dioxide, were released when a thermocouple in the high pressure reactor section of the Ultracracker blew out.
- b. From May 3, 2002 to May 8, 2002, 58,344 pounds of Sulfur Dioxide were released as a result of improperly working and degraded equipment.
- c. On February 8, 2003, three different incidents resulted in the combined release of 139,473 pounds of Sulfur Dioxide.

- d. On March 23, 2003, BP failed to report the emission of thousands of pounds of chemicals and compounds, including 29,260 pounds of Volatile Organic Compounds (“VOCs”).
- e. On May 16, 2003, failed to prevent a compressor to trip that caused a power outage that resulted in the release of 1144 pounds of Hydrogen Sulfide, among other chemicals and compounds, in six minutes.
- f. On September 8, 2003, BP failed to promptly detect and hydrocarbons in a cooling tower and repair a gas exchanger, as a result, 69,063 pounds of VOCs were released over a 702 hour period.
- g. On December 20, 2003, 1551 pounds of benzene and 455 pounds of toluene were released in to the atmosphere after BP failed to prevent a chemical spill during a barge unloading operation at the Refinery Docks.
- h. On May 28, 2004, BP released 106,706 pounds of Sulfur Dioxide and 222 pounds of nitrogen oxides over a 192 hour period after a release valve opened when BP failed to prevent an over pressurization.
- i. On April 1, 2005, a suction valve assembly malfunctioned and 56,949 pounds of Sulfur Dioxide were released over a 63 hour period.
- j. After a fire and explosion the previous day, 1,518 pounds of Hydrogen Sulfide, 142,834 pounds of Sulfur Dioxide and other chemicals were released on July 29, 2005 over a 97 minute period after a pressure controller failed in the open position.
- k. On April 10, 2007, there was a power dip that caused the shutdown of the FCCU3. During the restart, BP forgot to close an emergency bypass valve³ that was opened just two hours prior. Immediately after restart, the unit started spewing spent catalyst and other materials in to the environment. Ninety three percent (93%) opacity, over 4.5 times what was allowable under the operating permit, was reached nearly instantaneously yet BP’s operators treated the restart as “normal” and took no emergency action for more than 45 minutes. By the time this problem was resolved, 795 pounds of spent catalyst, 6,932 pounds of Sulfur Dioxide, 359.32 pounds of Nitrogen Oxides, 216.67 pounds of Nitrogen Oxide, 26.95 pounds of Nitrogen Dioxide, 1,830.94 pounds of Carbon Monoxide and thousands of pounds of other chemicals were released into the atmosphere.
- l. On March 1, 2009, an emission lasting roughly 129 hours pumped 103,602 pounds of Sulfur Dioxide into the atmosphere.

³ The operator manual in effect at the time did not have a step to ensure that the emergency bypass was closed prior to restart. BP changed the manual after the April 10, 2007 incident.

- m. On April 4, 2009, an “upset” at the Coker C unit resulted in a “brief” 10 minute release that pumped 3900 pounds of Hydrogen Sulfide and hundreds of pounds of other chemicals into the environment.

31. Unfortunately, BP’s poor safety record and practices are hardly isolated to the Refinery. The “Baker Report,” authored by former U.S. Secretary of State James Baker, investigated the 2005 ISOM explosion and other BP facilities, identified a number of systemic process safety issues at BP facilities in the U.S. BP’s similar conduct at its other facilities demonstrate a companywide pattern and practice of paying only lip service to safety and the environment:

- a. BP’s operations in Alaska have been particularly problematic. A 2001 BP report noted that BP had neglected key equipment needed for an emergency shutdown, including shutoff valves and gas and fire detectors. The report to BP noted that it faced a fundamental culture of mistrust by its workers. The report found that managers used aging equipment long after the equipment should have been replaced. A 2004 report found that pipelines were badly maintained. The report also noted claims of BP’s falsification of inspection data. The report also noted a pattern of BP’s intimidation of workers who raised safety concerns. However, BP did not heed the warnings in these reports. As a result, its Prudhoe Bay pipeline ruptured, spilling more than 200,000 gallons of oil into the environment. With the exception of the *Exxon Valdez* disaster, this was the largest spill in Alaska’s history and caused America’s largest oil field to shut down. The spill occurred as a result of BP’s lack of maintenance on the pipeline even though, two years prior to the spill, BP had been advised about corrosion problems in its pipes. In November 2007, BP was fined \$20 million for the discharge pursuant to the Clean Water Act. But, even after that, reports have come out that BP’s management criticized an employee who had stopped “hot work” around a cracked pipeline. It was thus no surprise when, in September 2008, another BP gas line exploded in Alaska, and three more incidents hit BP’s Alaska operations in 2009.
- b. BP’s Carson refinery in the area of Los Angeles, California had similar problems, particularly with falsification of reports. From 199 to 2002, that refinery reported no tank problems and no repairs to state regulatory officials. After the regulatory agency obtained a search warrant, it found equipment in severe disrepair.

- c. More recently, BP was the operator of the *Deepwater Horizon* when it caught fire, exploded and, ultimately, sank on April 20, 2010. The fire and explosion killed 11 workers aboard the rig and severely injured dozens of other workers. However, the damage went beyond the deaths and injuries as an oil started pouring from the well after the *Deepwater Horizon* sank. As of the filing of this suit, it is estimate that upwards of 5.2 million barrels of oil has flowed into the Gulf. The effects of this spilled oil will impact the wildlife and the economies of the Gulf Coast for years to come. Further, despite multiple efforts, BP has yet to fully contain the leak. While the investigation is still ongoing, early reports indicate that BP officials demanded that drilling operations continue even after the well failed multiple critical safety tests.

V.

CLASS, WORKER SUB-CLASS AND TEXAS CITY SUB-CLASS DEFINITIONS

32. Plaintiffs bring this action on behalf of themselves and all others similarly situated, who are members of the following Class:

“All persons who, between April 6, 2010 and May 16, 2010, worked at the BP Texas City Refinery and/or resided and/or worked within the city limits of Texas City, Texas.”

33. Further, Plaintiffs HAMILTON FONTENOT, DIONNE RAMIREZ, WILLIE WILLIS, JALISHA ARD, EDWARD MONTROSE, LYDIA MONTROSE, ROBERT SARVER, ROBERT SUKIENNIK, ARCHIE FLOWERS, and MARCOM PHILLIPS bring this action on behalf of themselves and all other similarly situated, who are members of the following Worker Sub-class:

“All persons who worked at the BP Texas City Refinery between April 6, 2010 and May 16, 2010.”

34. Further, Plaintiffs HAMILTON FONTENOT, DIONNE RAMIREZ, WILLIE WILLIS, JALISHA ARD, EDWARD MONTROSE, LYDIA MONTROSE, ROBERT SARVER, ROBERT SUKIENNIK, ARCHIE FLOWERS, and MARCOM PHILLIPS bring this action on behalf of themselves and all other similarly situated, who are members of the following Texas City Sub-class:

“All persons who resided and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010.”

35. Plaintiffs reserve the right to designate additional subclasses, as appropriate.
36. Excluded from the Class, the Worker Sub-class, and the Texas City Sub-class are:
 - a. the officers and directors of the Defendant;
 - b. any judge or judicial officer assigned to this matter and his or her immediate family; and
 - c. any legal representative, successor, or assign of any excluded persons or entities.

VI. CLASS ACTION ALLEGATIONS

A. THE CLASS

1. Numerosity of the class.

37. The proposed Class is so numerous that joinder is impractical. While the exact number of individuals has yet to be determined, it is believed that there are literally thousands of persons who worked at the Refinery and/or resided in Texas City, Texas between April 6, 2010 and May 16, 2010. The disposition of the claims asserted herein through this class action will be more efficient and will benefit the parties and the Court.

2. Predominance of Common Questions of Fact and Law.

38. There is a well-defined community of interest in that the questions of law and fact common to the Class predominate over questions affecting only individual Class Members and include, but are not limited to, the following:

- a. Whether Defendant caused and/or contributed to release of chemicals and compound between April 6, 2010 and May 16, 2010;
- b. Whether Defendant was negligent;
- c. Whether Defendant's actions constitute assault;

- d. Whether Defendant's actions constitute private nuisance;
- e. The amount of damages Plaintiffs and the Class Members should receive in compensation.

3. Typicality.

39. Plaintiffs and the Class Members have suffered similar harm as a result of Defendant's actions.

4. Adequacy of Representation.

40. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class because their interests do not conflict with the interests of the Class Members they seek to represent. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs have retained counsel competent and experienced in complex class actions and maritime and environmental litigation.

5. Superiority.

41. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to this Court in which individual litigation of thousands of cases would proceed. Individual litigation presents a potential for inconsistent or contradictory judgments, and the prospect of a race for the courthouse and an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation increases the expenses and delay to all parties and the court system in resolving the legal and factual issues common to all claims related to the Defendant's conduct alleged herein. By

contrast, a class action presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

B. THE WORKER SUB-CLASS

1. Numerosity of the class.

42. The proposed Worker Sub-class is so numerous that joinder of all parties is impractical. While the exact number of individuals has yet to be determined, it is believed that there are hundreds, if not thousands, of people that worked at the Refinery between April 6, 2010 and May 16, 2010. The disposition of the claims asserted herein by the Sub-class through this class action will be more efficient and will benefit the parties and the Court.

2. Predominance of Common Questions of Fact and Law.

43. There is a well-defined community of interest in that the questions of law and fact common to the Worker Sub-class predominate over questions affecting only individual Worker Sub-class Members and include, but are not limited to, the following:

- a. Whether Defendant caused and/or contributed to release of chemicals and compound between April 6, 2010 and May 16, 2010;
- b. Whether Defendant was negligent;
- c. Whether Defendant's actions constitute assault;
- d. The amount of damages Plaintiffs and the Class Members should receive in compensation.

3. Typicality.

44. Plaintiffs and the Worker Sub-class Members have suffered similar harm as a result of Defendant's actions.

4. Adequacy of Representation.

45. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Worker Sub-class because their interests do not conflict with the interests of the Worker Sub-class Members they seek to represent. Plaintiffs have no claims antagonistic to those of the Worker Sub-class. Plaintiffs have retained counsel competent and experienced in complex class actions and maritime and environmental litigation.

5. Superiority.

46. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Worker Sub-class Members is impracticable. Even if every Worker Sub-class Member could afford individual litigation, the court system could not. It would be unduly burdensome to this Court in which individual litigation of thousands of cases would proceed. Individual litigation presents a potential for inconsistent or contradictory judgments, and the prospect of a race for the courthouse and an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation increases the expenses and delay to all parties and the court system in resolving the legal and factual issues common to all claims related to the Defendant's conduct alleged herein. By contrast, a class action presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

47. Alternatively, the various claims asserted in the action by Plaintiffs and members of the Class and Worker Sub-class are also certifiable under the provisions of Rules 23(b)(1) and/or 23(b)(3) of the Federal Rules of Civil Procedure because:

- a. The prosecution of separate actions by thousands of individual Class and Worker Sub-class members would create a risk of inconsistent or varying

adjudications with respect to individual Class and Worker Sub-class members, thus establishing incompatible standards of conduct for Defendants;

- b. The prosecution of separate actions by individual Class and Worker Sub-class members would also create the risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class and Worker Sub-class members who are not parties to such adjudications and would substantially impair or impede their ability to protect their interests; and
- c. The questions of law or fact common to the Members of the Class predominate over any questions affecting only individual Members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

C. THE TEXAS CITY SUB-CLASS

1. Numerosity of the class.

48. The proposed Texas City Sub-class is so numerous that joinder of all parties is impractical. While the exact number of individuals has yet to be determined, there are an estimated 44,000 residents of Texas City, Texas and numerous other individuals who worked within the city limits of Texas City, Texas during this 40-day period. The disposition of the claims asserted herein by the Sub-class through this class action will be more efficient and will benefit the parties and the Court.

2. Predominance of Common Questions of Fact and Law.

49. There is a well-defined community of interest in that the questions of law and fact common to the Texas City Sub-class predominate over questions affecting only individual Texas City Sub-class Members and include, but are not limited to, the following:

- a. Whether Defendant caused and/or contributed to release of chemicals and compound between April 6, 2010 and May 16, 2010;
- b. Whether Defendant was negligent;
- c. Whether Defendant's actions constitute assault;

- d. Whether Defendant's actions constitute private nuisance;
- e. The amount of damages Plaintiffs and the Class Members should receive in compensation.

3. Typicality.

50. Plaintiffs and the Texas City Sub-class Members have suffered similar harm as a result of Defendant's actions.

4. Adequacy of Representation.

51. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Texas City Sub-class because their interests do not conflict with the interests of the Texas City Sub-class Members they seek to represent. Plaintiffs have no claims antagonistic to those of the Texas City Sub-class. Plaintiffs have retained counsel competent and experienced in complex class actions and maritime and environmental litigation.

5. Superiority.

52. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Texas City Sub-class Members is impracticable. Even if every Texas City Sub-class Member could afford individual litigation, the court system could not. It would be unduly burdensome to this Court in which individual litigation of thousands of cases would proceed. Individual litigation presents a potential for inconsistent or contradictory judgments, and the prospect of a race for the courthouse and an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation increases the expenses and delay to all parties and the court system in resolving the legal and factual issues common to all claims related to the Defendant's conduct alleged herein. By contrast, a class action presents far fewer management difficulties and

provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

53. Alternatively, the various claims asserted in the action by Plaintiffs and members of the Class and Texas City Sub-class are also certifiable under the provisions of Rules 23(b)(1) and/or 23(b)(3) of the Federal Rules of Civil Procedure because:

- a. The prosecution of separate actions by thousands of individual Class and Texas City Sub-class members would create a risk of inconsistent or varying adjudications with respect to individual Class and Texas City Sub-class members, thus establishing incompatible standards of conduct for Defendant;
- b. The prosecution of separate actions by individual Class and Texas City Sub-class members would also create the risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class and Texas City Sub-class members who are not parties to such adjudications and would substantially impair or impede their ability to protect their interests; and
- c. The questions of law or fact common to the Members of the Class predominate over any questions affecting only individual Members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VII. CAUSES OF ACTION

A. NEGLIGENCE

54. Plaintiffs re-allege each and every allegation set forth above.

55. Upon information and belief, Plaintiffs aver that the numerous release events, and the injuries suffered by Plaintiffs and the members of the Class, the Worker Sub-class and the Texas City Sub-class, were caused by the negligence and fault of the Defendant in the following non-exclusive particulars:

- a. causing or permitting to be caused a release of numerous toxic substances, including benzene, at the Refinery between April 6, 2010 and May 16, 2010;

- b. failure to maintain a safe work place;
- c. failure to have a reliable system or device at its Refinery to prevent the release or warn of the release;
- d. failure to perform work in a safe and prudent manner;
- e. failure to exercise reasonable and prudent care in the operations which were occurring at the Refinery on the date of the incident in question;
- f. failure to implement, follow and enforce proper operations procedures;
- g. failure to implement, follow and enforce proper safety procedures; and
- h. failure to implement, follow, and enforce proper hazard analysis.

56. Plaintiffs and the Class, the Worker Sub-class and the Texas City Sub-class members also specifically plead the doctrine of *res ipsa loquitur*. The character of the release is such that it would not ordinarily happen in the absence of negligence and the acts or omissions of the equipment and personnel that led to the release were under the control of Defendant at all relevant times.

B. COMMON LAW ASSAULT AND BATTERY

57. Plaintiffs re-allege each and every allegation set forth above.

58. Plaintiffs, on behalf of themselves and the members of the Class, further allege that Defendant's conduct was committed purposefully, or was committed with substantial knowledge that harm would result to the Plaintiffs and the Class. Defendant purposefully contacted Plaintiffs' (and the Class') bodies, or had substantial knowledge that its actions would cause such contact, and the resulting harm that occurred. Such contact harmed the Plaintiffs and the Class. Plaintiffs seek all damages allowed by law for such assault and battery, on behalf of themselves, individually, and the Class.

C. PRIVATE NUISANCE

59. Plaintiffs re-allege each and every allegation set forth above.

60. Plaintiffs, on behalf of themselves and the Class, further allege that Defendant's acts and omissions with respect to the 40-day release of chemicals have caused and continue to cause a material, substantial and unreasonable interference with Plaintiffs' and the Texas City Sub-class' use and enjoyment of their properties and have materially diminished and will continue to diminish the value thereof.

61. Defendant's material, substantial and unreasonable interference with Plaintiff's and the Texas City Sub-class' use and enjoyment of their properties, and the continuing material, substantial and unreasonable interference with such use and enjoyment constitutes a private nuisance.

62. Defendant's creation and continuing creation of private nuisance proximately caused and continues to cause damage to Plaintiffs and the Texas City Sub-class, in the form of property damage, physical harm and emotional distress.

**VIII.
PUNITIVE DAMAGES**

63. Plaintiffs re-allege each and every allegation set forth above.

64. Defendant routinely underreports, or fails to report, to the authorities and victims, as it did with regard to Plaintiffs, the nature and quantity of chemical spilled at its Refinery. To avoid a more thorough investigation by authorities, Defendant falsified its own documents, and provided false information to the authorities to avoid formal investigations of the events leading up to the leak or spill—such was what occurred with regard to Plaintiffs and Class. The injuries sustained by Plaintiffs and the Class resulted directly from Defendant's gross negligence and malice. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(a).

65. Any caps on punitive damages, under state or federal law, should not be applied because Defendant's conduct disqualifies it from any caps on exemplary damages. Specifically, Defendant's actions constitute the state law felony of aggravated assault, and, further, Defendant's actions arose as a result of securing a document by deception, a state law felony. *See id.* at § 41.008(c).

IX.
REQUEST FOR INJUNCTIVE RELIEF

66. Plaintiffs re-allege each and every allegation set forth above.

67. Plaintiffs, on behalf of themselves and the Class, seek a temporary restraining order and a preliminary injunction pursuant to Section 65(b)(1) of the Federal Rules of Civil Procedure, which provides that:

a temporary restraining order may be granted without written or oral notice to the adverse party or its attorneys if:

- (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
- (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

FED. R. CIV. P. 65(b)(1).

68. Plaintiffs are authorized to obtain an injunction to prevent Defendant from destroying or altering any evidence of the leak or the substance leaked in the subject release. Plaintiffs will suffer irreparable injury if the injunctive relief is not granted. This harm is imminent. The injury to the Plaintiffs and the Class will be irreparable and there is no adequate remedy at law.

69. There is a substantial likelihood of success that the Plaintiffs will prevail on their claims against Defendant. Furthermore, the injury faced by the Plaintiffs and the Class far outweighs the injury that would be sustained by the Defendant, if injunctive relief is granted. This injunctive relief would not adversely affect public policy or the public interest.

70. The temporary restraining order should be heard *ex parte* because the Plaintiffs and the Class will suffer immediate and irreparable injury if the restraining order is not granted immediately, and notice should not be required because it would be impractical to wait for Defendant to retain trial counsel. Moreover, Plaintiffs will forward this Complaint to Defendant and counsel who has represented Defendant in the past on similar matters, immediately upon filing. Plaintiffs are willing to post a bond.

X.
PRAYER

WHEREFORE, Plaintiffs and the Class, Worker Sub-class members and Texas City Sub-class members demand judgment against Defendant BP Products North America, Inc. as follows:

- a. An order certifying the Class for the purpose of going forward with any one or all of the causes of action alleged herein; appointing Plaintiffs as Class and Sub-class Representatives; and appointing undersigned counsel as counsel for the Class , the Worker Sub-class and Texas City Sub-class;
- b. Economic and compensatory damages in amounts to be determined at trial, but not less than the \$5,000,000.00 required by the Class Action Fairness Act which establishes one of this Court's bases of jurisdiction to hear this case;
- c. Punitive damages;
- d. Pre-judgment and post-judgment interest at the maximum rate allowable by law;
- e. Attorneys' fees and costs of litigation;
- f. The injunctive relief sought; and
- g. Such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate.

Plaintiffs demand a trial by jury.

Respectfully submitted,

THE BUZBEE LAW FIRM

/s/ Anthony G. Buzbee

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