

CAUSE NO. _____

ARTURO MARTINEZ

Plaintiff,

VS.

KMCO LLC and ORG CHEMICAL HOLDINGS

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

- JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER & TEMPORARY INJUNCTION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE COURT:

COMES NOW ARTURO MARTINEZ, Plaintiff herein, and files his Original Petition, Application for Temporary Restraining Order & Temporary Injunction And Request for Disclosure against KMCO, LLC, and ORG CHEMICAL HOLDINGS, Defendants herein, and respectfully show this Honorable Court the following:

**I.
DISCOVERY CONTROL PLAN**

1. Plaintiff requests a Level 3 Discovery Control Plan pursuant to Rule 190.4 the Texas Rules of Civil Procedure.

**II.
PARTIES**

2. Plaintiff ARTURO MARTINEZ is a resident of Harris County, Texas. Plaintiff's social security number is XXX-XX-8299. Plaintiff's Texas Driver's License No. is 41485863

3. Defendant KMCO, LLC (hereinafter referred to as "KMCO") is a Delaware corporation authorized to conduct business in the State of Texas. KMCO maintains its principal office address at 221 West 6th Street, Ste 2000, Austin, Texas 78701. This Defendant may be served with process through its registered agent for service of process in the State of Texas by serving Jeff L. McFerrin, at 16503 Ramsey Road, Crosby, Texas 77532.

4. ORG CHEMICAL HOLDINGS (hereinafter referred to as "OWNER") is a private equity firm, and has specialty chemical manufacturing and tolling facilities in Crosby and Port Arthur, TX (KMTEX). ORG CHEMICAL HOLDINGS maintains its principal office address at 600 Congress Avenue, Suite 200, Austin, Texas 78701. This Defendant may be served process through its registered agent for service of process in the State of Texas by serving Jonathan D. Gormin, 221 W. 6th Street, Suite 2000, Austin, Texas 78701.

5. KMCO and OWNER are jointly referred to as "Defendants."

III.

JURISDICTION AND VENUE

6. Plaintiff seeks damages within the jurisdictional limits of this Court.

7. This Court has personal jurisdiction over Defendants because Defendants engaged in foreseeable, intentional, continuous, and/or systematic contacts within Texas, so that there is both general and specific personal jurisdiction.

8. Furthermore, This Court has jurisdiction over this matter for the reason that the amount in controversy exceeds the jurisdictional minimum of this court, exclusive of costs and interest, and for the reason that one or more Defendants are citizens of the State of Texas, maintain their principal place of business in Texas and/or are doing business in the State of Texas.

9. Although Plaintiff seeks damages in excess of \$75,000.00, exclusive of interest and costs, federal courts lack subject matter jurisdiction over this action as there is no federal question and there is incomplete diversity of citizenship due to the presence of Plaintiff and a Defendant who are both

residents and citizens of the State of Texas. Removal would be improper.

10. No party is asserting any claims arising under the Constitution, treaties or laws of the United States.

11. Venue is proper in Harris County, Texas pursuant to Texas Civil Practice & Remedies Code §15.0002 because a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas.

IV.
BACKGROUND FACTS

12. KMCO is a “Custom Chemical Processing and Specialty Chemical Manufacturing” facility in Crosby, Texas. KMCO delivers specialty chemical manufacturing and toll processing services to many of the world’s largest chemical companies, with batch and continuous distillation and multiple reaction capabilities, producing over 900 million pounds per year of toll manufacturing products. KMCO is a producer of various glycol products including Monoethylene Glycol, Diethylene Glycol, Triethylene Glycol, and Tetraethylene Glycol, and a host of other products. It has 180 full time employees, over 600 storage tanks, 28 reactors and 250 rail storage spots, and upon information and belief, a horrific safety record. On April 2, 2019, Plaintiff suffered serious and permanent injuries when an explosion occurred at KMCO Chemical Plant in Crosby, Texas.

V.
CAUSE OF ACTION - NEGLIGENCE

13. On the occasion in question, all Defendants, either individually or collectively, by and through its officers, employees, agents and representatives, committed acts or omissions, which collectively and severally constituted negligence as that term is known in Texas. Defendants were negligent in:

- a. Failing to provide Plaintiff with a safe place to work, and requiring Plaintiff to work in unsafe conditions;
- b. Failing to provide sufficient personnel to perform operations;
- c. Failing to properly follow protocols and policies, proper safety monitoring and control

practices;

- d. Failing to exercise due care and caution;
 - e. Failing to avoid this incident;
 - f. Failing to maintain the plant equipment;
 - g. Creating an environment and condition that allowed an explosion and fire at the KMCO Chemical Plant;
 - h. Failing to comply with OSHA 1910.119 Process Safety Management regulations;
 - i. Failing to make sure that the plant was a safe work environment;
 - j. Failing to provide workers, including but not limited to Plaintiff, had proper safety equipment;
 - k. Failing to make sure that any risk to the public was promptly assessed and authorities were notified;
 - l. Failing to have instituted changes and repairs at this plant that had been plagued with recurring maintenance problems;
 - m. Failing to coordinate planning and scheduling of maintenance to provide a safe work environment;
 - n. Other acts of negligence which will be shown more fully at trial.
14. Said acts or omissions resulted in Plaintiff's injuries and damages.

VI.
CAUSE OF ACTION - GROSS NEGLIGENCE

15. Plaintiff incorporates by reference the foregoing as if set forth at length herein.
16. Defendants' acts and omissions that caused the explosion and subsequent fire described herein involved an extreme degree of risk to Plaintiff and others, considering the probability and magnitude of the potential harm to others, especially in light of certain facts which were known to Defendants

before Plaintiff sustained severe injuries. Further, Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others.

17. Defendants' acts and omissions are of such a character as to lead to the conclusion that they not only constitute negligence, but rise to the level of gross negligence/malice. Defendants acted with conscious indifference to the rights, safety, and welfare of Plaintiff, and proximately caused their death through the enumerated acts or omissions.

VII.
DAMAGES

18. As a direct and proximate result of the above Defendants' negligence, Plaintiff suffered damages. As a result of the incident, Plaintiff suffered the following damages, all of which are within the jurisdictional limits of this court:

- a) Medical expenses in the past and future;
- b) Physical pain and suffering in the past and future;
- c) Physical impairment in the past and future;
- d) Mental anguish in the past and future;
- e) Loss of earning capacity in the past and future; and
- f) Disfigurement in the past and future

19. The Defendants have been guilty of reckless disregard for the rights of others, have acted intentionally and with malice towards others and engaged in conduct life-threatening to humans. Plaintiff is, therefore, entitled to an award of punitive damages.

VIII.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND APPLICATION TO ENTER PREMISES TO INSPECT, FILM & PHOTOGRAPH

20. Plaintiff asserts that Defendants may change, alter or destroy documents or physical evidence related to or involved in the incident made the basis of this lawsuit, or unless this Court enters a Temporary Restraining Order (“TRO”) restraining Defendants from changing, altering, or destroying any tangible evidence related to the incident.

21. In order for Plaintiff to properly investigate and pursue his claims, recover damages and see that justice is done, this Court should restrain Defendants and their agents, corporate parents, servants, employees, contractors, independent contractors and other contract employees attorneys and those acting in concert with the foregoing Defendants from changing, altering and/or destroying and/or moving evidence of any kind.

IX.

REQUEST FOR TEMPORARY INJUNCTION

22. Plaintiff ask the Court to set his application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants.

X. CONDITIONS PRECEDENT

23. All conditions precedent to Plaintiff's right to recover herein and to Defendants' liability have been performed or have occurred.

XI.

NOTICE OF DEMAND FOR PRESERVATION OF ELECTRONICALLY STORED INFORMATION

24. Plaintiff demands that ALL DEFENDANTS named preserve all documents, tangible things and electronically stored information potentially relevant to the issues in this cause, in accordance with specific notice provisions as if same was set forth herein for all purposes.

XII.
REQUEST FOR DISCLOSURE

25. Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

XIII.
REQUIREMENT UNDER RULE 47 OF THE TEXAS RULES OF CIVIL PROCEDURE

26. Discovery in this case is in its infancy, and Plaintiff believes it is the sole province of the jury to determine the amount of monetary compensation that is appropriate in this case. However, under the newly established Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff is required to specifically plead the amount of monetary compensation being sought. In an abundance of caution, and with deference to the right of the jury to determine the amount of monetary compensation to be awarded, Plaintiff respectfully pleads for monetary compensation over \$1,000,000 under Rule 47(c), subsection 5 of the Texas Rules of Civil Procedure.

XIV.
DEMAND FOR JURY TRIAL

27. Plaintiff asserts his right to a trial by jury, under Texas Constitution article 1, §15, and makes this demand for a jury trial in accordance with Texas Rule Civil Procedure 216.

XV.
CONCLUSION AND PRAYER

WHEREFORE, PREMISES, CONSIDERED Plaintiff prays that Defendants be cited to appear and answer for their conduct, that this case be set for trial, and that Plaintiff recovers a judgment against all Defendants, both jointly and severally, for damages in such amount as the evidence may show and the trier of fact may determine to be proper, in addition to pre-judgment interest, post-judgment interest, costs, and all other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Robert A. Schwartz

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