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Chris Daniel - District Clerk Harris County
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By: Justina Lemon
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NO. _____

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

2017-58465 / Court: 333

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PLAINTIFFS' ORIGINAL 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, and Adan Trejo, Jr., named Plaintiffs in the above-entitled and numbered cause, and files this Original Petition and Application for Temporary Restraining Order and Temporary Injunction and Request for Disclosure, and shows the Court:

I. DISCOVERY CONTROL PLAN

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

Plaintiff, Christy Graves, is an Individual whose address is 2118 Iron Ore Rd., Huffman, 77336.

Plaintiff, David Klozik, is an Individual whose address is 3621 Chocktaw, La Porte, Texas 77571.

Plaintiff, Edward Ariel Mejia, is an Individual whose address is 10121 Windmill Lakes

Blvd. #621, Houston, Texas 77075.

Plaintiff, Brice Owens, is an Individual whose address is 2323 Bay Area Blvd. #510, Webster, Texas 77598.

Plaintiff, Steven Schreiber, is an Individual whose address is 511 Runneburg, Crosby, Texas 77532.

Plaintiff, Brad Sweetman, is an Individual whose address is 8603 Morning Dove Lane, Baytown, Texas 77521.

Plaintiff, Adan Trejo, Jr., is an Individual whose address is 4203 Woodhampton Drive, Pasadena, Texas 77505.

Arkema, Inc., Defendant herein, is a Pennsylvania Corporation doing business in the State of Texas and may be served with process through its registered agent, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701. 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"). Arkema, Inc. has a corporate headquarters in Pasadena, Texas and has availed itself of the jurisdiction and laws of the State of Texas.

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.

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

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Bend, New Caney, Texas 77357, or wherever he may be found. Service of said Defendant as described above can be effected by personal delivery.

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.

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 as more fully described below in Harris County, Texas.

III. VENUE AND JURISDICTION

The subject matter in controversy is within the jurisdictional limits of this court. Plaintiff seeks monetary relief over $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.

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

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

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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.

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 torts as more fully described herein in Harris County, Texas.

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

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 as more fully described herein in Harris County, Texas.

Although Plaintiffs seek damages in an amount exceeding the $75,000.00, federal courts lack jurisdiction over this suit. There is incomplete diversity of citizenship, and Plaintiffs' claims raise no federal question. 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.

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IV. FACTS

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.

As a result of Arkema's failure to prepare, its employees were forced to 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 was going to undoubtedly cause the chemicals to break down and ignite. Knowing this, and upon information and belief it having happened before at this very facility, 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.

Subsequent to having its employees abandon the facility, an arbitrary 1.5 mile radius was drawn around the Crosby facility, and all persons in that radius were mandatorily evacuated from their homes and businesses. Everyone was made to sit and wait, waiting for the inevitable

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explosion of toxic chemicals into the air in and around Crosby, Texas. In the interim, 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. Plaintiffs relied upon these representations and suffered serious bodily injuries as a result.

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 in the middle of the road. Calls for medics were made, but still no one from Arkema warned of the toxic fumes in the air. Emergency medical personnel arrived on scene, and even before exiting their vehicle, they became 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 an ambulance, and were driven to the hospital. Each of the Plaintiffs herein were subjected to that scene, that chaos, and those toxic fumes.

Several more days passed, and residents were still 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

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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.

As a result of Arkema's conduct, Plaintiffs were caused to suffer, and did suffer, severe bodily injuries.

V. CAUSES OF ACTION

A. NEGLIGENCE

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;

b. In failing to have proper procedures for backup refrigeration of chemicals;

c. In failing to have adequate procedures in place to protect the safety and welfare of the community in the event of a catastrophe;

d. In failing to provide the public and first responders accurate information on the chemicals at risk of exploding;

e. In failing to implement procedures put in place by Arkema, Inc. as well as governmental agencies regarding the handling of chemicals; and

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f. In failing to adequately prepare for a major flood event, having had the knowledge that such an event was foreseeable.

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

At all times material hereto, all of the agents, servants, and employees for Arkema, Inc. who were connected with the occurrence made the subject of this cause of action were acting within the course and scope of their employment or agency relationship or official duties and in furtherance of the duties of their employment or agency or office; and these agents, servants, and employees were acting in a managerial capacity or as vice-principals, and the acts committed by them, were authorized, approved and ratified by Arkema, Inc.

B. GROSS NEGLIGENCE

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).

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.

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C. NEGLIGENCE *PER SE*

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.

VI.
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

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.

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

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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.

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:

1. 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;
2. 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;
3. 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;
4. 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;
5. 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;

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6. 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;
7. 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;
8. 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;
9. 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;
10. 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

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11. 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.

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

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

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

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

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:

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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;

K. Mental anguish in the past; and

L. Mental anguish in the future.

X. PRESERVING EVIDENCE

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,

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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

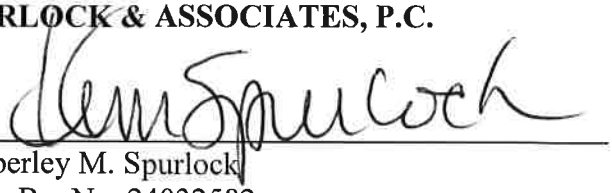
WHEREFORE, Plaintiffs pray that:

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.

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Respectfully submitted,

SPURLOCK & ASSOCIATES, P.C.

By: 

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ATTORNEYS FOR PLAINTIFFS

PLAINTIFFS HEREBY DEMAND TRIAL BY JURY

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VERIFICATION

BEFORE ME, the undersigned authority, personally appeared Kimberley M. Spurlock, who, on oath, stated that the statements made in the foregoing Original Petition and Application for Temporary Restraining Order and Temporary Injunction and Request for Disclosure are true and correct.

Kimberley M. Spurlock

SUBSCRIBED AND SWORN TO BEFORE ME on September 7, 2017, by Kimberley M. Spurlock.

VALERIE FITZGERALD
Notary Public, State of Texas
Comm. Expires 10-18-2021
Notary ID 125449451

Notary Public, State of Texas

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