

NO. _____

NORMA MOTTU, Individually and As	§	IN THE DISTRICT COURTOF
Next Friend of NMG and VMG, Minors,	§	
JOHN M. GARZA, JR., JOHN M. GARZA	§	
III, ROSE MARY MOTTU, and AMANDA	§	
MORALES,	§	
<i>Plaintiffs</i>	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
INTERCONTINENTAL TERMINALS	§	
COMPANY LLC, and ALICE	§	
RICHARDSON,	§	
<i>Defendants.</i>	§	_____ JUDICIAL DISTRICT

**PLAINTIFFS’ ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION,
AND REQUEST FOR DISCLOSURE**

NOW COME Plaintiffs Norma Mottu, Individually and As Next Friend for NMG and VMG, Minors, John M. Garza, Jr., John M. Garza, III, Rose Mary Mottu and Amanda Morales and file this Original Petition and Application for Temporary Restraining Order and Temporary Injunction, and Request for Disclosure, and respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

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

II. PARTIES

2. Plaintiff, Norma Mottu, is an individual who resides is in Harris County.

3. Plaintiff NMG is a minor and suit is being brought on his behalf by his natural mother, Norma Mottu.

4. Plaintiff VMG is a minor and suit is being brought on his behalf by his natural mother, Norma Mottu.

5. Plaintiff, John M. Garza, Jr., is an individual who resides is in Harris County.

6. Plaintiff, John M. Garza, III, is an individual who resides is in Harris County.

7. Plaintiff, Rose Mary Mottu is an individual who resides is in Harris County.

8. Plaintiff, Amanda Morales, is an individual who resides is in Harris County.

9. Intercontinental Terminals Company LLC (“ITC”), Defendant herein, is a Delaware Company doing business in the State of Texas for monetary profit. Based upon information and belief, ITC is the owner of the property and facility located in Deer Park, Texas, hereinafter (“ITC facility”). As detailed in the Texas Secretary of State records, Intercontinental Terminals Company LLC maintains a corporate office in Texas, located at 1021 Main St. #1150, Houston, Texas 77002-6508. ITC has availed itself of the jurisdiction and laws of the State of Texas. Defendant may be served with process by and through its registered agent for service of process in the State of Texas: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

10. Alice Richardson is an individual who may be served with process at her place or employment or her residence.

11. Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Intercontinental Terminals Company” 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

12. 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.

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

14. The Court has specific and general personal jurisdiction over Defendant Intercontinental Terminals Company LLC, because Defendant owns property located in Texas, and this Defendant has purposely availed itself of the privilege of conducting business and activities within Texas for monetary profit; 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. This Defendant has corporate headquarters in Houston, Texas pursuant to the Texas Secretary of State's records.

15. 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.

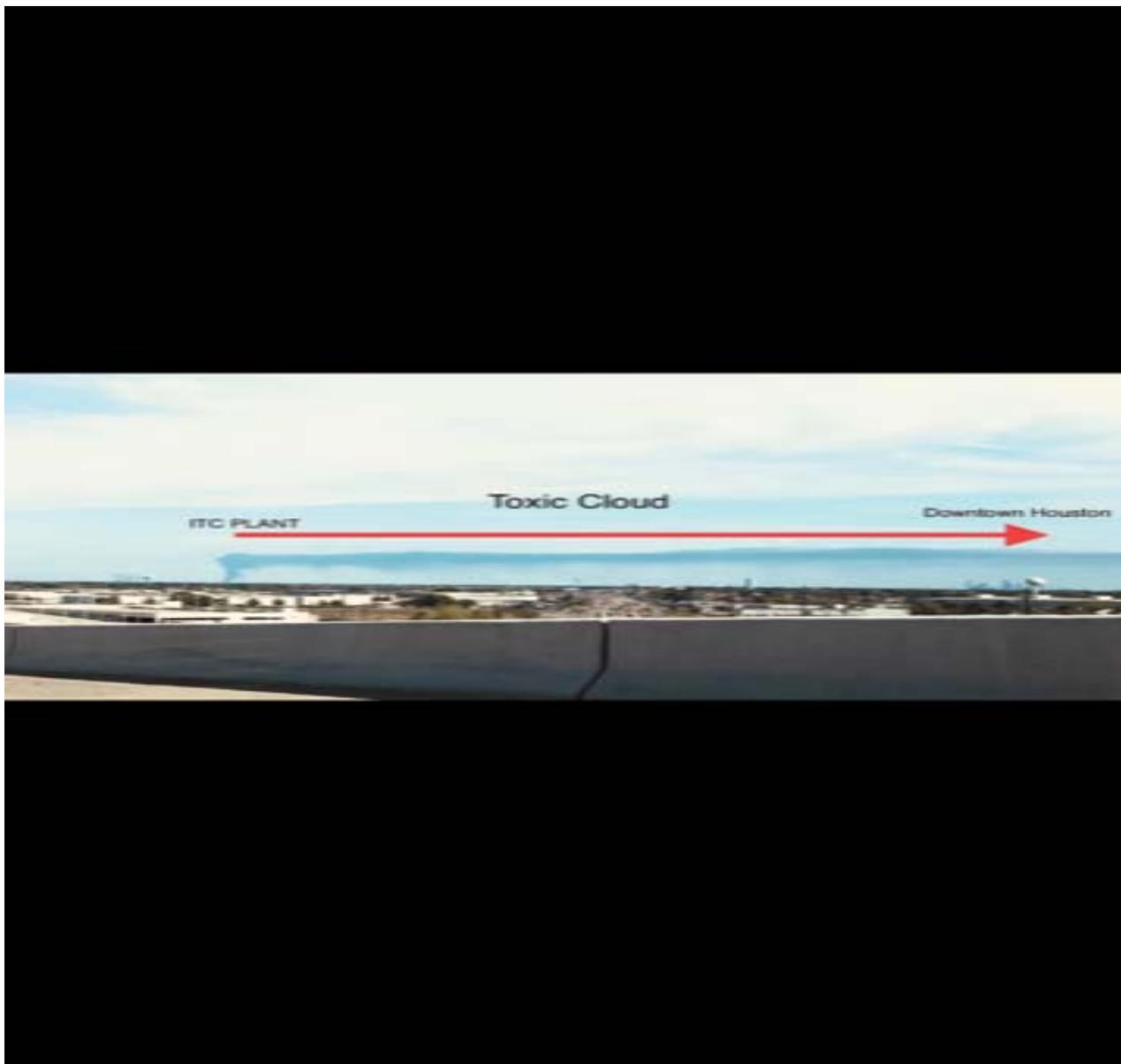
IV. FACTS

16. On or about 10:30 a.m. on Sunday, March 17, 2019, a fire started in the ITC tank yard and first ignited a tank containing naphtha. That fire continued to spread throughout the

ITC terminal, engulfing at least eight tanks and sending massive plumes of black smoke over and into the communities of southeast Texas. This massive cloud, containing toxic chemicals, ash and fumes, continued to spread and cause injuries and damages to Plaintiffs. After burning for three straight days, the fire was finally extinguished in the early morning hours of Wednesday, March 20th, only to reignite hours later.



The fire was again extinguished. There was another flare-up on Thursday, March 21st, causing a release of benzene into the atmosphere, in addition to all of the other chemicals both previously released and continually being released from the ITC tanks. On Friday, March 22, 2019, there was yet another re-ignition of one of the tanks, forcing another shelter-in-place for the Plaintiffs.



17. Upon information and belief, the fire may have been started when a tank overheated, and the safety mechanism did not work properly and was unable to prevent the fire. As a result, from March 17, 2019 through the date of this filing, ITC has released the following toxic chemicals (among others) into the atmosphere: Toluene, Xylene, Naphtha, and Benzene. Plaintiffs have been exposed and re-exposed several times over with these toxic chemicals, causing them severe injuries and damages.

18. Local news agencies, relying on information given by ITC officials, reported that the air was safe and no dangerous chemicals had been released by the initial fire on March 17, 2019.

19. ITC has a long history of state and federal environmental violations. According to the Texas Commission on Environmental Quality, Intercontinental Terminals Company (ITC) has been fined for multiple infractions that could have been avoided. In 2008, ITC was fined when a relief valve failed causing 6,745 pounds of unauthorized butadiene to be released into the atmosphere due to the facility's failure to prevent an increase in pressure. The Commission said the event was "avoidable by better operational practices." Butadiene is a carcinogen to humans and is used to make plastics.

20. In 2009, ITC was fined for failing to "prevent the overloading of a railcar resulting in the unauthorized release of 1,452 pounds of toluene, a hazardous air pollutant, during a four-hour emissions event." This event was also said to be avoidable because the release was due to an operator failing to tighten a bolt on a hatch.

21. Additionally, ITC has been the subject of repeated water violations. In 2017, The Texas Commission on Environmental Quality fined ITC for releasing cyanide into the San Jacinto River basin in an amount more than ten times the permitted levels. In 2016, ITC released more than three times the limit for sulfide, and in 2015 ITC was found over the limit for chlorine discharge. Since July 2017, ITC has also failed to file monitoring reports on its chemical services, as required by federal regulations.

22. Residents, including plaintiffs herein, who had no health issues before the ITC fire, 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 ITC facility and illnesses resulting from and exacerbated by the subsequent fires and chemical releases at the ITC facility.

23. As result of the fire and chemical releases, 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

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

A. NEGLIGENCE

25. 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 ITC facility;
- b. In failing to develop, implement, and maintain proper procedures for the backup refrigeration of chemicals stored at the ITC 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 ITC 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 accurate information on the chemicals being released;
- f. In failing to properly warn the public concerning the risks and dangers associated with the highly toxic and inherently dangerous chemicals maintained at the ITC facility;
- g. In failing to implement and maintain proper procedures, as established by ITC and governmental agencies regarding the safe and proper handling of chemicals at the ITC facility; and
- h. In failing to adequately prepare for a major fire event, having had the knowledge that such an event was foreseeable.

26. As to Defendant Alice Richardson, she failed to properly disclose and warn the public in general and specifically your Plaintiffs of the high levels of dangerous chemicals and carcinogens being released into the atmosphere as a result of the burning tanks at the ITC facility.

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

B. GROSS NEGLIGENCE

28. 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 Harris County, Texas and surrounding communities (including, but not limited to Deer Park, Pasadena, Sheldon, Channelview, Galena Park and Jacinto City) 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).

29. 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*

30. 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 and damages described herein.

D. NEGLIGENT MISREPRESENTATION

31. Defendant Alice Richardson made representations to Plaintiffs, the residents of the affected communities, and public at large concerning the ITC facility, the risk and consequences of the fires and the emission of toxic chemicals into the atmosphere. Defendants downplayed the risks associated with the fires and toxicity of the chemicals at issue. On or about March 18, 2019, Defendant Richardson released statements that the "risk of explosion remained minimal" and "the air quality around the facility was below levels that would represent a health concern."

32. Defendants ITC and Richardson supplied this misleading information and failed to exercise reasonable care when doing so. Plaintiffs relied upon these representations to their detriment. Plaintiffs justifiably relied upon these representations.

33. 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 – INTERCONTINENTAL TERMINALS COMPANY LLC

34. 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 Defendant Intercontinental Terminals Company LLC will change, alter, destroy, convert, or even transport evidence involved in this incident. Unless this Honorable Court immediately restrains the Defendant, Plaintiffs will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiffs 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.

35. 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 Defendant, its agents, servants, employees, contractors, contract employees, attorneys and those acting in concert with or in representation of said Defendant 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 request 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.

36. In order to preserve the status quo during the pendency of this action, Plaintiffs pray the Court restrain and/or enjoin Defendant 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(s), parties or equipment involved, including but not limited to the subject tanks and any other equipment involved in the March 17, 2019 to March 22, 2019, incident at the ITC facility in Deer Park, Texas;
- b. Any and all stickers, safety slogans, warnings, etc. attached to or placed on the premises and/or equipment located at the ITC facility in Deer Park, 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 ITC facility in Deer Park, Texas from January 1, 2008 to the present;
- d. Any and all documents/communications regarding the chemicals involved in the fires and emissions events at the ITC facility in Deer Park, Texas on March 17 – 22, 2019;
- e. Any and all documents, records, communications, samples, protocols and/or measurements relating to any testing of the air in or within a twenty (20) mile radius of the ITC facility in Deer Park, Texas, for the presence of toxic / hazardous chemicals from March 17, 2019 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 twenty (20) mile radius of the ITC facility in Deer Park, Texas, from March 17, 2019 to the present;
- g. Any and all documents, records, communications, samples, and/or measurements relating to any testing of debris emitted from the ITC facility located in Deer Park, Texas from March 17, 2019 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 ITC residents within a twenty (20) mile radius of the ITC facility located in Deer Park, Texas from March 17, 2019 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 ITC, 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 Deer Park and Harris County fire departments, any emergency responders who responded to the fires at the ITC facility located in Deer Park, 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 fires and/or emissions events at the ITC facility in Deer Park, Texas;
- 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 fires and/or emissions events at the ITC facility in Deer Park, Texas; and
- l. Samples of any and all chemicals maintained at the ITC facility in Deer Park, Texas as of March 17, 2019 to the present.

37. 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 Defendant and conducting a hearing on the matter, so as to adequately preserve the status quo.

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

38. 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.

VII. REQUEST FOR INSPECTION

39. 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.

VIII. DAMAGES

40. 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.

IX. PRESERVING EVIDENCE

41. Plaintiffs hereby request and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incidents 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.

X. REQUEST FOR DISCLOSURE

42. 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.

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that:

- a. Defendants be cited to appear and answer herein,
- b. a temporary restraining order will issue without notice to Defendant Intercontinental Terminals Company, LLC restraining Defendant as described herein,
- c. the Court set a reasonable bond for the temporary restraining order,

- d. after notice and hearing, a temporary injunction will issue enjoining and restraining Defendant from the conduct described herein,
- e. Plaintiffs be awarded their damages from Defendants herein, jointly and severally, as more fully described in Section IX above;
- f. Plaintiffs be awarded their costs of suit;
- g. Pre-judgment and post-judgment interest on all applicable amounts be awarded to Plaintiffs at the maximum non-usurious rate as allowed by law;
- h. Plaintiffs be awarded exemplary damages; and
- i. Plaintiffs be awarded such other and further relief, both at law and in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

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

By: /s/ Benny Agosto, Jr.

Benny Agosto, Jr.
Texas Bar. No. 00794987
bagosto@awtxlaw.com
800 Commerce Street
Houston, Texas 77002
Tel. (713) 222-7211
Fax. (713) 225-0827

ATTORNEY FOR PLAINTIFFS

PLAINTIFFS HEREBY DEMAND TRIAL BY JURY