

churning out massive plumes of toxic smoke across the communities of Jefferson County. These massive plumes of toxic smoke and ash caused injury and damages to Plaintiff and the Class Members.

III. PARTIES AND SERVICE

3. Plaintiff Brian Lange is an individual who resides in Harris County, Texas.

4. The Class Members constitute all individuals working and/or residing in and around Port Neches, Texas at any time from November 27, 2019 to November 29, 2019. Included in the class are parents, spouses, children, guardians, and legal representatives of such persons with direct or derivative claims.

5. TPC Group Inc. is a Texas Company doing business in the State of Texas for monetary profit. Based upon information and belief, said Defendant is the owner of the property and facility located in Port Neches, Texas where the fire started on November 27, 2019. As detailed in the Texas Secretary of State records, TPC Group Inc. maintains a corporate office in Texas, located at 8600 Park Place, Houston, Harris County, Texas 77017. TPC Group Inc. has availed itself of the jurisdiction and laws of the State of Texas. Said 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., Ste. 900, Dallas, Texas 75201.

6. TPC Group LLC is a Texas Limited Liability Company doing business in the State of Texas for monetary profit. Based upon information and belief, said Defendant is the owner of the property and facility located in Port Neches, Texas where the fire started on November 27, 2019. As detailed in the Texas Secretary of State records, TPC Group Inc. maintains a corporate office in Texas, located at 500 Dallas St., Ste. 1000, Houston, Harris

County, Texas 77002. TPC Group Inc. has availed itself of the jurisdiction and laws of the State of Texas. Said 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., Ste. 900, Dallas, Texas 75201.

7. Plaintiff invokes the right to institute this suit against any other entity conducting business of the common or trade name "TPC Group" with regard to the events described in Plaintiff's Petition. Pursuant to Rule 28 of the Texas Rules of Civil Procedure, Plaintiff invokes the right to add or substitute this party at a later date.

IV. JURISDICTION AND VENUE

8. The subject matter in controversy is within the jurisdictional limits of this Court. Plaintiff 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)(3) because it is the county where Defendants' principal office is located. Venue is proper as to Plaintiff and Defendants under Texas Civil Practice & Remedies Code § 15.005.

9. This Court has subject matter jurisdiction over this cause of action because Plaintiff seeks damages exceeding the Court's minimum jurisdictional limits.

10. This Court has personal jurisdiction over Defendants because they are domestic companies with their headquarters in Houston, Texas.

11. Federal courts lack jurisdiction over this cause of action since there are no federal questions raised in this matter and there is incomplete diversity of citizenship. The Plaintiff, proposed Class Members and Defendants are all residents of Texas. Additionally, Plaintiff does not seek relief under any federal statute or regulation. Moreover, Plaintiff's rights do not depend upon the resolution of a substantial question of federal law. Thus, any attempt to remove this cause

of action to federal court would therefore be improper.

V. FACTS

12. This lawsuit arises out of a series of explosions that occurred on Wednesday, November 27, 2019, at the TPC chemical facility located in Port Neches, Jefferson County, Texas.

13. The TPC chemical facility is a refinery/plant that contains several volatile chemicals which are used to make different chemical and petroleum-based products.

14. On November 27, 2019, around 1:00 a.m., the first explosion occurred at the TPC facility sending a powerful blast wave that shattered windows, released harmful debris, and caused property damage to buildings in the surrounding area. The explosion also caused a large fire at the TPC facility. As emergency personnel worked to contain the blaze, a second explosion occurred later in the afternoon around 2:00 p.m. Over the course of the next 36 hours, the industrial fire continued, resulting in additional explosions to occur.

15. The Environmental Protection Agency has cited TPC Group in the past for violations of the Clean Air Act as well as violations for excessive emissions and pollution. TPC Group was also required to spend \$275,000.00 on a fence-line monitoring system to track and record the level of butadiene in the air.

16. The explosions occurred in an area of the plant that contains butadiene. The explosions caused a large fire across the facility, releasing toxic and noxious fumes, including butadiene, in the surrounding neighborhoods and area. Butadiene is a known carcinogenic chemical used in the manufacture of synthetic rubber and other products. Exposure to butadiene is known to cause irritation to the eyes, throat, nose and lungs. Prolonged exposure to butadiene is known to cause blurred vision, vertigo, headaches, nausea, and fainting.

17. On November 29, 2019, Texas Commission of Air Quality (TCEQ) air quality monitoring reported the presence of “volatile organic compounds” known as VOCs. Elevated levels of VOCs from TPC are odorous. Short-term exposure to high concentrations of VOCs can cause eye, nose, and throat irritation, shortness of breath, headaches, and nausea. The TCEQ air quality monitoring reports contained undisclosed VOC levels measuring 5900 parts per billion (ppb).

18. As a result of the explosions and subsequent release of toxic and noxious fumes, the authorities issued a mandatory evacuation order for everyone within four miles of the TPC facility from November 27, 2019 until November 29, 2019. Approximately 60,000 people were forced to evacuate under the order, and were displaced from their homes for two days until the order was lifted at 10:00 a.m. on November 29, 2019. Plaintiff lives near the TPC facility and suffered personal injuries and property damage. Plaintiff was also evacuated and displaced. Plaintiff sues on behalf of himself and others similarly situated.

VI. CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action as a class action pursuant to Rule 42 of the Texas Rules of Civil Procedure on behalf of the Class Members which is comprised of:

All individuals working and/or residing in and around Port Neches, Texas at any time from November 27, 2019 to November 29, 2019 that were evacuated. Included in the class are parents, spouses, children, guardians, and legal representatives of such persons with direct or derivative claims.

23. Excluded from the Plaintiff Class are the Defendants and all officers, members, partners, managers, directors and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

24. Numerosity. The number of members in the Class is believed to be in the thousands. This volume makes bringing the claims of each individual member of the class before this Court impracticable. Likewise, joining each individual member of the Class as a plaintiff in this action is impracticable. While the identities of each Class Member are not known at this time, their identity can be discovered by using publicly available property records, including those maintained by Jefferson County. As such, a class action is a reasonable and practical means of resolving these claims. To require individual actions would prejudice the Court, the Class and Defendants.

25. Typicality. Plaintiff's claims are typical of the Class because like the members of the Class, Plaintiff was subject to Defendants' negligent acts and omissions which caused the fires at the Defendants' site. Further, Plaintiff was exposed to the same toxins that were released from the fires as the Class Members. Moreover, Plaintiff suffered injuries that were common to the Class due to the exposure to the toxins from the fire, including breathing difficulty, headaches, and an increased risk of cancer. Due to the latency period and the potentially concealed nature of the complications due to the exposure to carcinogens, medical monitoring, testing or treatment is necessary for each member of the Class. Plaintiff and the Class have been harmed as a result of Defendants' negligent acts. It was Defendants' common acts that caused the injuries to Plaintiff and the Class Members. As such, Plaintiff's claims are typical of the claims of the Class. Plaintiff and all members of the Class sustained damages arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein.

26. Adequacy. Plaintiff is a representative party who will fairly and adequately protect the interests of the Class because it is in her interest to effectively prosecute the claims

herein alleged in order to obtain the relief required under Texas law. Plaintiff has retained attorneys who are competent in both class actions and complex personal injury litigation. Plaintiff's Counsel are experienced in complex litigation and have served as class counsel in class actions and/or collective actions. Plaintiff does not have any interest which may be contrary to or in conflict with the claims of the Class she seeks to represent.

27. Commonality. Common issues of fact and law predominate over any individual questions in this matter. The common issues of fact include, but are not limited to:

- Whether Defendants failed to properly store chemicals at their facility;
- Whether Defendants failed to develop, implement, and maintain proper procedures for storage at their facility;
- Whether Defendants failed to develop, implement, and maintain proper safety procedures and protocol concerning the safe maintenance of the highly toxic and inherently dangerous chemicals maintained at their facility;
- Whether Defendants failed to have adequate procedures in place to protect the safety and welfare of the community in the event of a catastrophe;
- Whether Defendants failed to provide the public accurate information on the chemicals being released;
- Whether Defendants failed to properly mitigate exposure once the fire started;
- Whether Defendants failed to properly warn the public concerning the risks and dangers associated with the highly toxic and inherently dangerous chemicals maintained at the their; and
- Whether Defendants failed to implement and maintain proper procedures, as

established by them and governmental agencies regarding the safe and proper handling of chemicals at your facility.

28. The common issues of law include, but are not limited to:

- Whether Defendants are liable for the fire that started at the their facility;
- The measure of damages for the Plaintiff and Class Members; and
- Whether Defendants are liable for punitive damages.

29. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this lawsuit. Individual litigation would magnify the delay and expense to all parties and flood the court system with duplicative lawsuits. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying judicial results and establish incompatible standards of conduct for Defendants.

30. A class action, by contrast, presents far fewer management difficulties and affords the benefits of uniform adjudication of the claims, financial economy for the parties, and comprehensive supervision by a single court. By concentrating this litigation in one forum, judicial economy and parity among the claims of individual Class Members are promoted. Additionally, class treatment in this matter will provide for judicial consistency. Notice of the pendency and any resolution of this action can be provided to the Class by mail, electronic mail, text message, print, broadcast, internet and/or multimedia publication. The identity of members of the Class is readily identifiable from public records.

31. Moreover, many of the Class Members may be unaware of their plight and the full extent of their injuries. They require identification, screening, and education. Class Certification is appropriate as Plaintiff also seeks equitable relief in the form of notification and medical monitoring so that each Class Member can be advised of their increased risk of

cancer and be examined and monitored for potential, long term adverse effects.

32. This type of case is well-suited for class action treatment because: (1) Defendants' practices, policies, and/or procedures were uniform; (2) Defendants' conduct caused the fire; and (3) the fire led to the injuries to the Plaintiff and Class Members. Ultimately, a class action is a superior form to resolve the claims detailed herein because of the common nucleus of operative facts centered on the continued failure of Defendants to properly maintain their facility in Port Neches, Texas.

VII. CAUSES OF ACTION

33. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

FIRST CAUSE OF ACTION NEGLIGENCE - CLASS ACTION

34. On the occasion in question, as more fully described above in Section V, Defendants committed acts of omission and the commission of direct conduct, 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:

- In failing to properly store chemicals at their facility;
- In failing to develop, implement, and maintain proper procedures for storage of chemicals stored at their facility;
- 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 their facility;
- In failing to have adequate procedures in place to protect the safety and welfare

of the community in the event of a catastrophe;

- In failing to provide the public accurate information on the chemicals being released;
- In failing to properly warn the public concerning the risks and dangers associated with the highly toxic and inherently dangerous chemicals maintained at their facility;
- In failing to properly contain the fire and toxic chemicals once the fire started;
- In failing to implement and maintain proper procedures, as established by them and governmental agencies regarding the safe and proper handling of chemicals at your facility; and
- In failing to adequately prepare for a major fire event, having had the knowledge that such an event was foreseeable.

35. Defendants' breaches were a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiff and the Class Members herein.

**SECOND CAUSE OF ACTION
GROSS NEGLIGENCE - CLASS ACTION**

36. 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 Class Members from the unreasonably dangerous condition it created. These acts of omission and commission included, but were not limited to, those as described herein.

37. 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. Plaintiff and the

Class Members seek exemplary damages as allowed by law in an amount to be determined at trial.

**THIRD CAUSE OF ACTION
NEGLIGENT MISREPRESENTATIONS - CLASS ACTION**

38. Defendants gave misleading information to the public and failed to exercise reasonable care when it gave information. Plaintiff and the Class Members justifiably and detrimentally relied on the information provided by Defendants.

39. Defendant's negligent misrepresentations to Plaintiff and the Class Members proximately caused the injuries and harm they suffered. Plaintiff is entitled to recover all damages caused by Defendants' tortious representations.

**FOURTH CAUSE OF ACTION
TRESPASS TO REAL PROPERTY – CLASS ACTION**

40. Plaintiffs owned, or had a legal right, to possess real property.

41. Defendants are liable for trespass as a result of migration or transport of an air contaminant or contaminants, which was other than just an odor, the result of which caused actual and substantial damages to the Plaintiffs, as described in Texas Civil Practice and Remedies Code 75.002(h).

42. By releasing toxic chemicals, including the black ash, residue and other chemicals into the air and/or water, Defendants entered Plaintiffs' land, and the entry was physical, intentional and voluntary.

43. The toxic chemicals released by Defendants from your facility were not produced by a natural process.

44. Defendants' trespass caused injury to Plaintiffs' right of possession and constituted a trespass and nuisance.

45. Defendants' actions constituted grossly negligent, outrageous, malicious, or

otherwise morally culpable conduct, warranting exemplary or punitive damages sufficient to deter such conduct in the future.

**FIFTH CAUSE OF ACTION
NUISANCE – CLASS ACTION**

46. The Plaintiffs are persons of ordinary sensibilities that were attempting to use and enjoy land at the time of the fire.

47. The Defendants' conduct related to the fire created a condition that substantially interfered with the Plaintiffs' use and enjoyment of land

48. The Defendants' substantial interference caused unreasonable discomfort and/or annoyance to the Plaintiffs, including loss of use and evacuation.

49. The Defendants' conduct related to the fire was negligent, intentional, unreasonable, or abnormal and out of place of its surroundings.

50. Plaintiffs did not consent to Defendants' conduct related to the fire.

51. The Defendants' conduct related to the fire constituted a nuisance.

52. Defendants' actions related to the fire constituted grossly negligent, outrageous, malicious, or otherwise morally culpable conduct, warranting exemplary or punitive damages sufficient to deter such conduct in the future.

VIII. PROXIMATE CAUSE

53. Plaintiff incorporates all factual allegations made above.

54. Each and every, all and singular, of the foregoing acts and omissions, on the part of Defendants, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

IX. DAMAGES SOUGHT

55. Plaintiff incorporates all factual allegations made above.

56. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff and the Class Members were caused to suffer permanent injury.

57. Plaintiff and the Class Member seek the following:

a. Declaring and certifying this case as a class action, appointing Plaintiff as the class representative, and Plaintiff's Counsel as Class Counsel;

b. Award of damages or mechanism for recovery to compensate the Class for the harm caused;

c. Establishing and funding a medical monitoring program, at Defendants' expense, to notify the Class Members of the dangers of the chemicals that were released into the air, and to monitor and test the health of each Class Member for future health risks, including cancer;

d. Establishing a common fund on behalf of Plaintiff and Class Members so as to distribute any and all funds necessary to reimburse them for their medical expenses, treatments, and economic losses;

e. Punitive damages; and

f. Judgment against Defendants in the full amount awarded by the jury.

X. EXEMPLARY DAMAGES

58. Plaintiffs incorporate all factual allegations made above.

59. Defendants' acts or omissions, which when viewed objectively from the standpoint of Defendants at the time of occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had

actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff, the Class Members, and others. Therefore, for such malice on behalf of Defendants, Plaintiff sues for exemplary damages in an amount to be determined at trial.

XI. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

60. In light of the above described facts, Plaintiff seeks recovery from Defendants.

61. Plaintiff is likely to succeed on the merits of this lawsuit. Plaintiff is concerned that Defendants will change, alter, destroy, convert, or even transport evidence involved in this incident. Unless this Honorable Court immediately restrains the Defendants, Plaintiff 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, Plaintiff will show the court that the harm to Plaintiff and Class Members is imminent. This imminent harm will cause irreparable injury in that the Plaintiff will lose the opportunity to inspect and photograph the evidence and will be unable to prosecute the claims. There is no adequate remedy at law which will give Plaintiff complete, final and equal relief.

62. In order for Plaintiff to properly investigate and pursue the claims, and recover damages and see that justice is done, this Court should restrain the Defendants, their 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. Plaintiff is willing to post a reasonable temporary restraining order bond and request the court to set such bond. Plaintiff has met her burden by establishing each element which must be present before injunctive relief can be granted by this Court, therefore Plaintiff is

entitled to the requested temporary restraining order.

63. In order to preserve the status quo during the pendency of this action, Plaintiff prays the Court restrain and/or enjoin Defendants from in any way changing, altering, destroying, modifying, converting, selling, or transporting the below described evidence.

Plaintiff also seeks 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 November 27, 2019 to November 29, 2019, incident at your facility in Port Neches, Texas;

b. Any and all stickers, safety slogans, warnings, etc. attached to or placed on the premises and/or equipment located at your facility in Port Neches, 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 your facility in Port Neches, 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 your facility in Port Neches, Texas on November 27, 2019 to November 29, 2019;

e. Any and all documents, records, communications, samples, protocols and/or measurements relating to any testing of the air in or within a fifty (50) mile radius of your facility in Port Neches, Texas, for the presence of toxic and/or hazardous chemicals from November 27, 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 your facility in Port Neches, Texas, from November 27, 2019 to the present;

g. Any and all documents, records, communications, samples, and/or measurements relating to any testing of debris emitted from your facility located in Port Neches, Texas from November 27, 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 your facility located in Port Neches, Texas from November 27, 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 Port Neches and Harris County fire departments, any emergency responders who responded to the fires at your facility located in Port Neches, Texas, and any other state or federal regulatory agency or organization;

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 your facility in Port Neches, Texas;

k. Once the fire started, any and all recordings, 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 ending/mitigating/containing the fires and/or the chemicals being emitted;

l. 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 your facility in Port Neches, Texas; and

m. Samples of any and all chemicals maintained at your facility in Port Neches, Texas as of November 27, 2019 to the present.

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

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

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

XIII. REQUEST FOR INSPECTION

66. Plaintiff also prays that this Court issue an Order permitting Plaintiff's 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 Plaintiff to prepare her case and to see that justice is done.

XIV. PRESERVING EVIDENCE - SPOILIATION NOTICE

67. Plaintiff hereby requests and demands that Defendant 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, audio recordings, 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

XV. REQUESTS FOR DISCLOSURE

68. Pursuant to Tex. R. Civ. P. 194, Plaintiff hereby requests all Defendants disclose the material describe in Rule 194.2(a) through (1). Per Rule 194.3(a), this material must be disclosed within 50 days of the date of service of this petition.

JURY TRIAL DEMAND

69. Plaintiff hereby requests trial by jury on all issues of fact.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff XXXX respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiff and the Class Members against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Defendant per Section 41.006, Chapter 41, Texas Civil Practice & Remedies Code; together with pre-judgment at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of court; and such other and further relief to which Plaintiff may be entitled at law or in equity.

Dated: November 29, 2019

Respectfully submitted,

MCDONALD WORLEY, PC

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**ATTORNEYS FOR PLAINTIFF
AND CLASS MEMBERS**

Unofficial Copy Office of Marilyn Burgess District Clerk

VERIFICATION

STATE OF TEXAS

COUNTY OF HARRIS

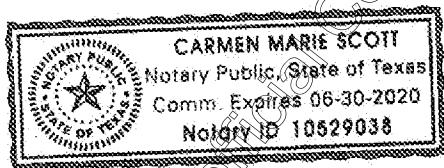
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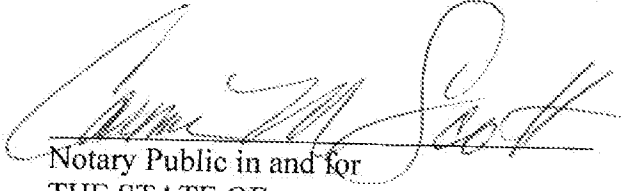
On this 2ND day of December, 2019, the affiant, William Rey Ogden, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears on this document. According to the affiant's statement under oath, all the statements in Plaintiff's Original Class Action Petition and Application for Temporary Restraining Order and Temporary Injunction and Requests for Disclosures are true and correct according to the affiant's personal knowledge.



William Rey Ogden

SWORN AND SUBSCRIBED TO BEFORE ME on this the 2nd day of December, 2019, to certify which witness my hand and official seal.





Notary Public in and for
THE STATE OF _____

Printed Name of Notary

My Commission Expires: _____