

CAUSE NO. _____

**MARGARITA FLORES, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF FRANK FLORES,
DECEASED, MAGGIE RIVERA and
FABIAN FLORES**

IN THE DISTRICT COURT OF

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Plaintiffs,

vs.

HARRIS COUNTY, TEXAS

**WATSON VALVE SERVICES, INC.,
WATSON GRINDING AND
MANUFACTURING CO., KMHJ, LTD.,
and KMHJ MANAGEMENT COMPANY,
LLC**

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Defendants.

_____ JUDICIAL DISTRICT

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

COME NOW, Margarita Flores, Individually and as Personal Representative of the Estate of Frank Flores, Deceased, Maggie Rivera and Fabian Flores (collectively “Plaintiffs”), and file this Original Petition, Request for Disclosure and Temporary Restraining Order and Temporary Injunction against Watson Valve Services, Inc., Watson Grinding and Manufacturing Co., KMHJ, Ltd. and KMHJ Management Company, LLC (collectively “Defendants”), and would respectfully show this Honorable Court the following:

I.
DISCOVERY CONTROL PLAN

Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiffs file this petition under a Level 3 Discovery Control Plan.

II.
PARTIES

Plaintiff, Margarita Flores, Individually and as Personal Representative of the Estate of Frank Flores, Deceased, is a resident of Harris County, Texas.

Plaintiff, Maggie Rivera is a resident of Harris County, Texas.

Plaintiff, Fabian Flores is a resident of the State of Texas.

Defendant, Watson Valve Services, Inc. is a domestic for-profit corporation doing business in the State of Texas. Defendant's principal place of business is located in Harris County, Texas. Defendant may be served through its registered agent: John M. Watson at 4525 Gessner Road, Houston, Texas 77401, or wherever he may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of "Watson Valve Services" 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 or of the Court.

Defendant, Watson Grinding and Manufacturing Co. is a domestic for-profit corporation doing business in the State of Texas. Defendant's principal place of business is located in Harris County, Texas. Defendant may be served through its registered agent: John M. Watson at 4525 Gessner Road, Houston, Texas 77401, or wherever he may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of "Watson Grinding and Manufacturing" 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 or of the Court.

Defendant, KMHJ, Ltd. is a domestic limited partnership doing business in the State of Texas. Defendant's principal place of business is located in Harris County, Texas. Defendant may be served through its registered agent: KMHJ Management Company, LLC at 1400 McKinney Street, Suite 1212, Houston, Texas 77010.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of "KMHJ Limited" 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 or of the Court.

Defendant, KMHJ Management Company, LLC is a domestic limited liability company doing business in the State of Texas. Defendant's principal place of business is located in Harris County, Texas. Defendant may be served through its registered agent: Kelly Lee Watson at 1400 McKinney Street, Suite 1212, Houston, Texas 77010, or wherever she may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of "KMHJ Management 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 or of the Court.

III. JURISDICTION AND VENUE

The Court has jurisdiction of the subject matter of this lawsuit and the amount in controversy is above the minimum jurisdictional limits of this Honorable Court as Plaintiffs seek aggregate monetary relief over \$1,000,000.00. Additionally, removal to federal court would be

improper because this lawsuit does not involve a federal question, this lawsuit lacks diversity and/or because of the forum defendant rule.

Pursuant to Texas Civil Practice and Remedies Code section 15.002(a)(1) and (a)(3), Harris County is the proper venue because it is the county where a substantial part of the events giving rise to this case occurred and because the principal places of business for the Defendants are located.

IV.
FACTUAL BACKGROUND

Around 4:25 a.m. on the morning of Friday, January 24, 2020, a massive explosion rocked the city of Houston awake and caused the death of Frank Flores. The explosion occurred at Defendants' facility, which is located at 4525 Gessner Road in Houston. That morning, decedent Frank Flores arrived at the premises where he worked, but had not clocked in, when the explosion occurred and killed him along with Gerardo Castorena. The explosion was so violent that the Houston Chief of Police, Art Acevedo, labeled the site and surrounding areas a "disaster area" because of the widespread destruction that resulted in two (2) deaths, dozens of injuries, over 50 homes that were completely destroyed and hundreds of homes that sustained significant damage.

Houston fire officials identified propylene as the chemical involved in the explosion. Propylene is a hazardous chemical and the Houston Fire Department advised that HazMat crews secured a 2,000 gallon tank of propylene gas that was leaking at the blast site. Propylene is a gas at room temperature but becomes a liquid when placed under great pressure. With a flash point of 162 degrees Fahrenheit, propylene is highly flammable and can react vigorously with other materials to produce explosive mixtures.

While currently unknown how much propylene was stored at Defendants' facility, if a company has more than 10,000 pounds of propylene it is required to file a Risk Management Plan

with the EPA. Defendants do not have an RMP on file. Additionally, under the Emergency Planning and Community Right to Know Act, companies with more than 10,000 pounds of propylene have to include it in its Tier II chemical inventory. Companies have to file those inventories with the state, its local emergency planning committee and the local fire department. On its 2015 inventory, Defendants did not include propylene; they only listed liquefied oxygen.

V.
CAUSES OF ACTION AGAINST DEFENDANTS

A. NEGLIGENCE

At the time and on the occasion in question, Defendants committed acts and omissions, which collectively and separately constituted negligence. Defendants had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendants breached that duty in one or more of the following ways:

- a. Failing to create and/or enforce safety rules and guidelines;
- b. Failing to have properly functioning monitors and alarms on the premises;
- c. Failing to properly maintain the propylene tanks on site to prevent leaks;
- d. Failing to provide adequate training;
- e. Failing to provide a safe workplace;
- f. Failing to warn of a known hazard and dangerous condition;
- g. Violating governmental regulations and standards including, but not limited to OSHA and the EPA;
- h. Failing to recognize and remediate hazards with an extreme degree of risk;
- i. Failing to read, understand, and follow published safe work policies and procedures; and
- j. Other acts or omissions deemed negligent.

These breaches, among others, constituted negligence. Such negligence was a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiffs herein.

B. PREMISES LIABILITY

Defendants owned, occupied, and/or controlled the area where Frank Flores was killed. The condition of the area where Frank Flores was killed posed an unreasonable risk of harm, and Defendants had actual knowledge, or reasonably should have known, of the unreasonably dangerous condition. Moreover, Frank Flores did not have actual knowledge of the unreasonably dangerous condition.

Frank Flores was an invitee who entered Defendants' premises with their knowledge and for their benefit. Defendants had a duty to either warn of this unreasonably dangerous condition or make the unreasonably dangerous condition reasonably safe. Defendants breached this duty by failing to warn of this known unreasonably dangerous condition. Defendants also breached this duty by failing to make this known unreasonably dangerous condition reasonably safe. Defendants' breach of these duties proximately caused Plaintiffs' injuries and damages.

C. GROSS NEGLIGENCE

Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendants, taken singularly or in combination, constitute gross negligence and were the proximate cause of Plaintiffs' injuries and damages. Defendants' acts and/or omissions, when viewed objectively from Defendants' standpoint at the time such acts and/or omissions occurred, 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, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross

negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

VI.
SURVIVAL ACTION

As a result of the wrongful conduct of Defendants as described above, Decedent Frank Flores suffered physical pain and mental anguish prior to his deaths. Additionally, his Estate incurred medical and funeral expenses, for which Defendants are liable. The Representative of Decedent's Estate, Margarita Flores, asserts the above-pled causes of action against Defendants on behalf of Decedent's Estate pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021.

As a result of the wrongful conduct of Defendants, this survival action is brought for the following damages sustained by Frank Flores, which survives his untimely death:

- a. Past physical pain and mental anguish;
- b. Funeral expenses; and
- c. Medical expenses.

VII.
WRONGFUL DEATH

Because the wrongful conduct of Defendants, and their agents and employees described above, caused the death of Decedent, and because Decedent would have a cause of action against Defendants for his injuries had he lived, Plaintiffs Margarita Flores, Maggie Rivera and Fabian Flores have a cause of action against Defendants to recover damages for the wrongful death of Frank Flores pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.002 and 71.003. These damages include:

- a. Past and future pecuniary losses;
- b. Past and future loss of companionship and society;

- c. Past and future mental anguish; and
- d. Loss of inheritance.

VIII.
DAMAGES

As a result of Defendants' actions and/or inactions, Plaintiffs bring this lawsuit for the following damages:

- a. Past physical pain and suffering of Decedent;
- b. Past mental anguish of Decedent;
- c. Decedent's medical and funeral expenses;
- d. Past and future medical expenses;
- e. Past and future pecuniary and nonpecuniary wrongful death damages including the loss of companionship and society, mental anguish, and loss of inheritance;
- f. Court costs;
- g. Exemplary damages; and
- h. Any and all other damages, both general and special, at law and in equity, to which Plaintiffs may be justly entitled.

Plaintiffs also seek both prejudgment and post judgment interest as allowed by law, for all costs of court, actual damages, and all other relief, both at law and in equity, to which Plaintiffs may be entitled.

IX.
PRESERVATION OF EVIDENCE

Plaintiffs hereby request and demand that Defendants and their agents, attorneys, and insurers preserve and maintain all evidence pertaining to any claim or defense to the incident made the basis of this lawsuit, or the damages resulting therefrom, including but not limited to photographs; videotapes; audiotapes; recordings; business records, memoranda; files; facsimiles;

e-mails; voicemails; text messages; sales receipts; invoices; commission records; tax records; telephone messages; telephone calling card transactions; calendar entries; diary entries; any incident report; and any electronic image, data or information related to the referenced incident. Failure to maintain such items, including but not limited any other items previously requested and demanded to be preserved before the subject lawsuit ensued, will constitute a “spoliation” of the evidence and may subject Defendants to sanctions.

X.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

Based on reasonable information and belief, Plaintiffs assert that the Defendants may change, alter, destroy or modify the evidence related to the explosion, including, but not limited to, the premises of Defendants, located at 4525 Gessner, where Frank Flores was killed, unless this Court enters a Temporary Restraining Order, restraining Defendants from changing, altering, destroying or modifying any physical evidence, as the evidence constitutes tangible, relevant evidence materially related to the incident complained of having resulted in severe injuries to Plaintiffs. In order for Plaintiffs to properly investigate and pursue their claim, and recover damages and see that justice is done, this Court should restrain 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 or modifying the evidence related to the explosion, including, but not limited to, Defendants facility where Frank Flores was killed, which is located at 4525 Gessner, Houston, Texas.

If Defendants are permitted to change, alter, destroy or modify any evidence related to the explosion, Plaintiffs in this lawsuit will lose the opportunity to properly inspect the evidence, and will be unable to prosecute their claim and thus will be deprived of adequate remedies at law.

There is no adequate remedy at law available to Plaintiffs to prevent Defendants from changing, altering, modifying, or destroying the evidence at issue, unless the Court grants immediate relief restraining such conduct. Plaintiffs pray that this Court enter a Temporary Restraining Order preserving the status quo by restraining Defendants from in any way changing, altering, destroying or modifying, the evidence related to the explosion, including, but not limited to, Defendants' facility where Frank Flores was killed, as well as moving, removing, or altering any and all tangible evidence from site in question. Plaintiffs also seek an order preserving:

- (1) Any and all photographs and videotapes of the scene of the incident, parties or equipment involved in the incident;
- (2) Any and all stickers, safety slogans, warnings, etc. attached to or placed on any equipment involved in the incident;
- (3) Any and all documents/communications regarding the scene of the incident, parties or equipment involved in the incident;
- (4) Any and all documents/records relating to investigations of the incident, including but not limited to OSHA records;
- (5) 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
- (6) Any and all records, inspection reports, policies and procedures, actual audiotape recording or any transcript of any recorded statements, mobile radio and dispatch records pertaining to the incident.

The foregoing tangible and physical evidence is relevant and reasonably necessary to determine the cause of the incident made the basis of this suit, the loss of which would irreparably harm Plaintiffs.

XI.

REQUEST FOR HEARING ON TEMPORARY RESTRAINING ORDER

Plaintiffs further pray for this Court to set a hearing on Plaintiffs' Application for Temporary Restraining Order and subsequent injunctive relief in this matter.

XII.
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 incident scene and area where the building collapse occurred to inspect, photograph, and film the scene. Such access for the purpose of inspection, photographing and filming is essential in order for Plaintiffs to prepare their case and to see that justice is done.

XIII.
TRCP 193.7

Pursuant to Texas Rule of Civil Procedure 193.7, Defendants are hereby put on actual notice that any documents produced in response to written discovery will be used in pretrial proceedings and at trial and will be deemed authentic unless they make valid objections to authenticity pursuant to this rule.

XIV.
REQUEST FOR DISCLOSURE

Pursuant to Rule 194.1 *et seq.* of the Texas Rules of Civil Procedure, Plaintiffs hereby request that Defendants disclose the information or material described in Rule 194.2 within **fifty (50) days** of the service of this request at the office of the undersigned.

XV.
PREJUDGMENT INTEREST

Plaintiffs seek prejudgment interest pursuant to § 304.102 of the TEXAS FINANCE CODE.

XVI.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Plaintiffs recover damages from Defendants in accordance with the evidence; that Plaintiffs recover costs of the court herein expended; that Plaintiffs recover interest to which Plaintiffs are justly entitled under

the law, both prejudgment and post-judgment; that Plaintiffs recover actual damages; that Plaintiffs are entitled to recover compensatory damages; that Plaintiffs recover punitive damages; and for such other further relief, both general and specific, both in law and in equity to which Plaintiffs may be justly entitled.

Respectfully submitted,

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

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