

CAUSE NO. \_\_\_\_\_

FREDERICK NICHOLAS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
INHANCE TECHNOLOGIES, LLC,	§	
<i>Defendant,</i>	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION  
and REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff FREDERICK NICHOLAS (“Mr. Nicholas”), files this Original Petition against Defendant, INHANCE TECHNOLOGIES, LLC, (“Inhance”), and would show the Court as follows:

**Introduction**

1. This case arises from an employment dispute that culminated in a *Sabine Pilot*-type wrongful termination. Mr. Nicholas was the former Director of Health Safety and Environment for Inhance Technologies LLC, a chemical manufacturing company that uses a proprietary technology to produce fluorine to treat plastic containers and other articles at several facilities.

2. The nature of the processes and chemicals (hydrogen fluoride and fluorine) used at Inhance’s numerous facilities are extremely dangerous. Introducing this chemical into the air can have catastrophic outcomes for employees and neighboring residential and commercial communities.

3. Inhance has been the target of EPA enforcement actions in which proposed penalties were in the amount of \$520,400 and resulted in the assessment of actual penalties exceeding \$235,000. During your plaintiff’s employment with Inhance (subsequent to the period of EPA scrutiny though the litigation continued during his employ), he was required by law to make regular reports to local, state, and federal regulatory authorities.

4. Mr. Nicholas was terminated from his position for the sole reason that he insisted on making reports as required by law against the wishes of senior management who attempted to bully, misrepresent facts, coerce and otherwise interfere with his legal obligations to not make material misrepresentations, and report non-compliance, to government authorities.

#### **Jurisdiction and Venue**

5. This Court has jurisdiction of this suit because Mr. Nicholas seeks damages within the jurisdictional limits of this court and because the cause of action asserted here is not subject to exclusive jurisdiction in another court. This Court has personal jurisdiction over the defendant because the defendant maintains continuous and systemic ties to Texas and because the cause of action herein arose under activities and omissions in Texas.

6. The events forming the basis of this suit occurred in Harris County, Texas. Venue is therefore proper in this county pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 15.002 (a)(1) and (3).

#### **Agency**

7. Whenever in this petition it is alleged that defendant did any act or thing, it is meant that defendant's officers, agents, servants, employees or representatives did such act or thing and that at the time such act or thing was done, it was done with the full authorization or ratification of or by defendant and was done in the normal and routine course and scope of employment of defendant's officers, agents, servants, employees or representatives.

#### **Discovery Control Plan**

8. Plaintiff intends to conduct discovery under Discovery Control Plan Level 2.

### **Parties**

9. Plaintiff Frederick Nicholas is a natural person who, at all times relevant to this suit, resides in Harris County, Texas.

10. Defendant Inhance Technologies LLC, is a foreign limited liability corporation organized under the laws of Delaware, registered to do business in the State of Texas and actually conducting business in the state of Texas. Defendant may be served with citation through its registered agent for service, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

### **Material Facts**

11. Frederick Nicholas is a highly respected Health, Safety, Environmental and Security expert.

12. On or about June 10, 2013, Mr. Nicholas was hired by Inhance as its Director of Health Safety and Environment, reporting directly to Michael Koma, Executive Vice President of Manufacturing.

13. Inhance uses Fluorine gas to treat the surface of plastic and/or plastic containers for surface modification, barrier technology and as a performance additive. The gases that fill the treatment chambers, in which this process occurs, must be evacuated through a scrubbing system prior to removing the treated products. The entire process must be monitored for any emissions because of the highly toxic, corrosive and dangerous effects of contact with individuals not wearing protective garments and breathing apparatus.

14. Mr. Nicholas's first several months of employment were preoccupied with responding to multiple OSHA notices of violations.

15. In September 2013, at the request of Michael Koma, Mr. Nicholas performed a regulatory applicability review and determined that a permit to construct was required for the pilot plant, proposed to be constructed within Inhance corporate headquarters in Houston.

16. Upon Mr. Nicholas advising Mr. Koma that a permit would be required, Mr. Koma verbally assaulted Mr. Nicholas in an attempt to coerce him into turning a blind eye to the regulatory requirement and approve construction and operation of the pilot plant without authorization by the Texas Commission on Environmental Quality (“TCEQ”) through the permitting process. As the construction of the pilot plant was part of Inhance’s business and marketing strategy, Mr. Nicholas was subject to further coercion and intimidation by his employer’s president, Andrew Thompson, placing him under enormous stress.

17. At or about this same time, Mr. Nicholas also advised Mr. Koma that following a review of the permit status of Inhance’s facilities throughout the country, he had discovered a letter from the City of Houston concerning the Houston facility indicating that it was also being operated without authorization from the TCEQ. He then discovered that the Kirbyville facility was also being operated without authorization from the TCEQ. Inhance had misrepresented the manufacturing process to regulating authorities in order to claim a standard exemption for its Houston facility and a “permit by rule” for its Kirbyville facility. Mr. Nicholas was exposed to criminal liability for not reporting these violations.

18. Within months of notifying Inhance executive management of the permitting issues at the two Texas facilities, Mr. Nicholas was informed by the Houston facility Plant Manager that the Houston Fire Department had observed what appeared to be evidence of a discharge on the roof of the facility. Mr. Nicholas and the Plant Manager investigated the issue by going up on the roof

of the facility and it was determined that plastic pellets had been discharged onto the surface of the roof from a process reactor. Mr. Nicholas advised Mr. Koma of this issue.

19. Within weeks of this notification by Houston Fire Department, Mr. Nicholas visited the Houston site and encountered a strong odor of hydrogen fluoride and/or fluorine immediately upon stepping out of his car. Mr. Nicholas entered the facility and in speaking and assessing the plant's processes with the Plant Manager, determined that the initial reactor heating stage and the final cooling stage reactor emissions were bypassing the process scrubbers, resulting in hydrogen fluoride being emitted to the atmosphere unabated. This reactor was installed subsequent to the facility's improper claim for exemption from permitting.

20. Mr. Nicholas advised Mr. Koma of this issue. Mr. Koma once again coerced, intimidated and provided false information to Mr. Nicholas in defendant's continued attempts to have Mr. Nicholas turn a blind eye to his legal obligations and the requirements of law.

21. The unabated emissions from the Houston facility posed a serious risk of danger to nearby residents, including a nearby community college and assisted living complex – not to mention Inhance's own employees.

22. In response to Mr. Nicholas's push back on this blatant illegality, Mr. Koma compounded his recklessness by removing him, Inhance's Health Safety Environmental expert from all existing facility permit reviews – forbidding him to discharge his responsibilities through disclosure of non-compliance to the relevant agencies, as required by law, thereby making him an accomplice to these crimes.

23. Mr. Nicholas was proved correct when TCEQ ultimately cited the Houston and Kirbyville facilities for both operating without a permit and the unauthorized discharge of contaminants.

24. In addition, defendant informed Mr. Nicholas that modifications were planned for the Troy, Alabama facility manufacturing process and sought approval and authorization from the Alabama Department of Environmental Management (“ADEM”) for the modifications. Because the Troy plant had commenced the modifications to its manufacturing process without first seeking agency authorization to do so, the facility was not in compliance with State and Federal regulations. Mr. Nicholas would not authorize the plant to begin modifications and began attempts to bring the Troy facility into compliance.

25. Even though Mr. Nicholas is the expert on these matters, Mr. Koma went around Mr. Nicholas and directed that the facility could begin modifications without authorization from the ADEM. Mr. Koma misrepresented that he had received verbal authorization. This placed Mr. Nicholas in direct violation of law, maintaining silence regarding same exposing him to severe personal civil and criminal penalties. Specifically, pursuant to Alabama law, Inhance could not begin modifications without prior authorization and Mr. Nicholas’s knowing this obligated him to report the lack of authorization or seek to stop the operations until the authorization could be obtained. If convicted of violating this law, Mr. Nicholas could have been punished by a fine not to exceed ten thousand dollars (\$10,000) for the violation and an additional penalty not to exceed ten thousand dollars (\$10,000) for each day thereafter during which the violation continued and he could also have been sentenced to “hard labor for the county for not more than one year.” The stress imposed on Mr. Nicholas by this reckless conduct was substantial and impacted his physical health.

26. In response to Mr. Nicholas’s push back on this blatant disrespect for the regulatory process, Mr. Koma compounded his recklessness by removing him, Inhance’s HSE Expert from the

project – forbidding him further contact with ADEM thereby making him an accomplice to this potential crime.

27. In addition, Mr. Nicholas certified compliance required as a permit condition for the Yuma, Arizona facility for 2010 through 2012 that his predecessor, Paul Crook, had not completed as required by the Arizona Department of Environmental Quality. Mr. Nicholas subsequently learned, after having been provided with erroneous information at the time of his certifications, that the stack monitor was not measuring stack emissions as required by the permit but rather was measuring nitrogen in a nitrogen pipe, instead of hydrogen fluoride emissions to the atmosphere. Mr. Nicholas formally advised defendant that he would not be certifying compliance, for the past calendar year, 2013, for the Yuma facility. Pursuant to Arizona law, it is a felony crime to fail to monitor and report its facility discharges.

28. Tensions continued to mount between Mr. Nicholas and defendant's management until he was ultimately terminated on February 4, 2014.

#### **Sabine Pilot Wrongful Termination**

29. Plaintiff realleges and incorporates paragraphs 1 - 28 of this Petition by reference, as if reproduced in full.

30. The termination of Frederick Nicholas was in violation of Texas common law as enunciated *Sabine Pilot Service, Inc. v. Hauck*, 687 S.W. 2d 733 (Tex. 1985); and *Johnston v. Del Mar Distributing Co.*, 776 S.W. 2d 768 (Tex. App.--Corpus Christi 1989, writ denied). An employer cannot take adverse action against a person for refusing to commit an illegal act.

31. Prior to construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit

from the commission as required by Section 382.0518(a) of the Health and Safety Code (Texas Clean Air Act). Inhance was operating its Houston and Kirbyville Facilities without a permit and received notices of violation from Texas Commission on Environmental Quality (TCEQ). The Houston facility had also allowed unauthorized and unabated emissions.

32. Mr. Nicholas was required to report both of these violations; the operations without permit and unauthorized emissions. The Texas Clean Air Act provisions, located in the Texas Water Code at Section 7.180, makes it a crime to fail to notify or report. Specifically, it states:

(a) A person commits an offense if the person intentionally or knowingly does not notify or report to the commission as required by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or an order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

33. Mr. Nicholas would have been subject to criminal penalties for violating this law. The cited Section 7.180 declares that

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both: “(1) a fine, as imposed under the section creating the offense, of .... (C) not **less than \$1,000 or more than \$100,000**” and “(2) confinement for a period, as imposed by the section creating the offense, not to exceed: ... (D) **one year**.”

34. In addition, Mr. Nicholas was urged to make false representations in violation of the Clean Air Act in order to claim permit exemption for the Headquarter’s Pilot Plant. Pursuant to Section 7.179(a),

“[a] person commits an offense if the person intentionally or knowingly makes or causes to be made a **false material statement**, representation, or certification in, or omits material information from, or knowingly alters, conceals, or does not file or maintain a notice, application, record, report, plan, or other document required to be filed or maintained by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.”



The criminal penalties for violating this section mirrors those for failing to notify stated in paragraph 33 above.

35. Under the Federal Clean Air Act, an operator of a source of Hydrogen fluoride who knowingly constructs a new source, modifies an existing source, emits a hazardous pollutant, or fails to comply with a design, equipment, work practice, or operational standard in violation of an applicable National Emission Standard for Hazardous Air Pollutants, could be penalized by imprisonment for five years and/or fines pursuant to 18 U.S.C. 3571. *See* 40 C.F.R. 61.

36. Inhance violated the Federal Clean Air Act by allowing dangerous chemicals to be released unabated to the atmosphere from its facility in Houston.

37. Mr. Nicholas was required by law to report violations of the Federal Clean Air Act pursuant to 42 U.S.C. 7413(1). The penalty for failing to do so is two (2) years of imprisonment and/or fines pursuant to 18 U.S.C. 3571. *See* 40 C.F.R. 50-97.

38. There were several other violations of law that Mr. Nicholas was required to report that contributed to knowing and/or negligent endangerment including but not limited to making false statements in Clean Air Act documents, tampering with monitor device or method, and violations of operating permit provisions.

39. Mr. Nicholas was terminated for refusing to commit illegal acts and as a direct result has suffered general and special damages in the form of lost wages and benefits and mental anguish in a sum within the jurisdictional limits of the Court.

#### **Damages and Relief**

40. Each of the preceding paragraphs is incorporated herein as if reproduced in full.

41. Mr. Nicholas is entitled to an award of compensatory damages in an amount that exceeds the minimum jurisdictional limits of this court. Mr. Nicholas believes that the range of his

wage loss through the end of his anticipated work life exceeds \$1,000,000. He also seeks an award of compensatory damages for his mental anguish and the loss he has suffered to his professional reputation. He is unable to put a dollar value on these items.

### **Punitive Damages**

42. Because the defendant's acts and omissions were committed with malice and/or with reckless disregard of the consequence, they justify the imposition of exemplary damages in addition to the compensatory damages to which Mr. Nicholas is entitled. A reasonable amount for exemplary damages in this case would compensate Mr. Nicholas for the out-of-pocket expenses, attorney's fees, and costs of court he will have incurred in this action and should also take into consideration the need to deter future conduct of this type. Mr. Nicholas believes that a jury, rather than him, should put a dollar value on these damages after it hears the evidence.

### **Jury Demand**

43. Plaintiff pursuant to Rule 38(b) demands jury trial on all issues triable to the jury.

### **PLAINTIFF'S REQUEST FOR DISCLOSURES**

44. Pursuant to Rule 194, Plaintiff requests Defendant to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a)-(c) and (e), as set forth below:

- 194.2(a) Disclose the correct names of the parties to the lawsuit;
- 194.2(b) Disclose the name, address, and telephone number of any potential parties;
- 194.2(c) Disclose the legal theories and, in general, the factual bases of your claims or defenses;
- 194.2(d) Disclose the amount and any method of calculating economic damages;
- 194.2(e) Disclose the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

- 194.2(f) Disclose for any testifying expert:
- (1) The expert's name, address, and telephone number;
  - (2) The subject matter on which the expert will testify;
  - (3) The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
  - (4) If the expert is retained by, employed by, or otherwise subject to the control of the responding party:
    - (A) Disclose and/or produce all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
    - (B) Disclose and/or produce the expert's current resume and bibliography;
- 194.2(g) Produce copies of any indemnity and insuring agreements described in Rule 192.3(f);
- 194.2(h) Produce copies of any settlement agreements described in Rule 192.3(f);
- 194.2(i) Produce any witness statements described in Rule 192.3(f);
- 194.3(l) Disclose the name, address, and telephone number of any person who may be designated as a responsible third party.

**Prayer**

WHEREFORE, Plaintiff prays that this Court advance this case on the docket, order a speedy trial at the earliest possible date, cause this action in every way to be expedited, and upon such hearing:

- a. A judgment against the defendant for lost income and employee benefits;
- b. A judgment against the defendant for mental anguish damages and loss of reputation;

- c. A judgment against the defendant for exemplary damages;
- d. A judgment against the defendant for costs of court in this matter;
- e. A judgment against the defendant for prejudgment interest at the highest rate allowed by law;
- f. A judgment against the defendant for post-judgment interest at the highest rate allowed by law; and
- g. Such other relief, legal or equitable, as may be warranted.

Dated: November 9, 2015

Respectfully submitted,  
ARMSTRONG & ASSOCIATES

\_\_\_\_/s/ *Jacqueline A. Armstrong* \_\_\_\_  
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