

CAUSE NO. 2012-03767

DARRYL MCKNIGHT

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IN THE DISTRICT COURT

v.

HARRIS COUNTY, TEXAS

TEAM INDUSTRIAL SERVICES, INC.  
and TEAM, INC.

80th JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND DISCOVERY REQUESTS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW DARRYL MCKNIGHT (hereinafter "Plaintiff") filing this *Original Petition*, complaining of TEAM INDUSTRIAL SERVICES, INC. and TEAM, INC., and would respectfully show the Court as follows:

**I. DISCOVERY CONTROL PLAN LEVEL**

1. Plaintiff intends that discovery be conducted under Discovery Level 2. TEX. R. CIV. P. 190.3.

**II. PARTIES**

2. Plaintiff Darryl McKnight is an individual residing in Brazoria County, Texas. At all times material to this lawsuit, Plaintiff was an employee of defendant TEAM INDUSTRIAL SERVICES, INC. and defendant TEAM, INC.

3. Defendant TEAM INDUSTRIAL SERVICES, INC. is a domestic for-profit corporation whose registered office is located at 200 Hermann Drive, Alvin, Brazoria County, Texas 77511-5596. Defendant TEAM INDUSTRIAL SERVICES, INC. may be served with process by serving its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

4. Defendant TEAM INDUSTRIAL SERVICES, INC. will hereinafter be referred to as "TIS" or "Defendant TIS" for all purposes.

5. Defendant TEAM, INC. is a Delaware business corporation doing business in Texas. Defendant TEAM, INC. is engaged in business in this state within the meaning of that term as defined by § 17.042, TEX. CIV. PRAC. & REM. CODE, and whose principal office is located at 200 Hermann Drive, Alvin, Brazoria County, Texas 77511. Defendant TEAM, INC. is authorized to do business in Texas and may be served with process by serving its Director and Chief Executive Officer, Philip J. Hawk, at 200 Hermann Drive, Alvin, TX 77511-5596.

6. Defendant TEAM, INC. will hereinafter be referred to as “TEAM” or “Defendant TEAM” for all purposes.

7. TEAM INDUSTRIAL SERVICES, INC., and TEAM, INC. will hereinafter collectively be referred to as “Defendants” for all purposes.

### **III. JURISDICTION AND VENUE**

8. The Court has jurisdiction over this lawsuit because the amount in controversy exceeds this Court’s minimum jurisdictional requirements.

9. The Court has jurisdiction over Defendant TEAM, a nonresident, because TEAM purposefully availed itself of the privileges and benefits of conducting business in Texas, and maintains its principal office in Texas pursuant to § 17.042, TEX. CIV. PRAC. & REM. CODE.

10. Venue is mandatory in Harris County, Texas, pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE Section 15.002(a)(1), because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas.

### **IV. FACTS**

11. This is a wrongful termination case brought under the Texas Common Law principals established by *Sabine Pilot Services v. Hauck*, 687 S.W.2d 733, 735 (Tex. 1985).

12. In approximately June of 2011, Plaintiff was hired as an “at-will” employee by Defendants. Plaintiff was a full-time employee working as a machinist in Defendants’ manufacturing facility located at 9116 Lambright, Houston, Texas 77075 (“Defendants’ Premises”).

13. Defendants own and operate the largest specialized industrial services company in North America. With more than 100 U.S. and international locations, Defendants provide an array of specialty services related to the maintenance, inspection, and construction of mechanical and piping systems. Defendants’ services include leak repair, hot tap, field machining, technical bolting, valve repair, field heat treating, NDE/NDT inspection, and emissions control.

14. Defendants’ manufacturing facilities comprise over 100,000 square feet of shop space filled with machines to perform most any fabrication need. The manufacturing equipment includes, 14 engine lathes, 8 milling machines, 5 horizontal boring machines, vertical turret lathe capable of machining parts up to 106 inches, multiple CNC machines, 3 stress relief ovens with chart recorders, and multiple automatic/semi automatic welding stations (“Defendants’ Equipment”).

15. In approximately December of 2011, Plaintiff observed a firearm silencer designed for an AK-47 assault rifle on his supervisor’s desk, and also noticed aluminum shavings in various areas of Defendants’ Premises.

16. Shortly thereafter, Plaintiff’s supervisor approached him and asked Plaintiff to manufacture a firearm silencer designed for an AK-47 assault rifle using the Defendants’ Equipment on Defendants’ Premises.

17. The NATIONAL FIREARMS ACT (“NFA”) definition of “firearm” includes “any silencer.” *See* 26 U.S.C. §§ 5845(a)(7). According to the NFA, all firearms, including silencers,

must be registered in the National Firearms Registration and Transfer Record maintained by the Secretary of the Treasury. *See* 26 U.S.C. § 5841. Section 5861(d) makes it a crime, punishable by up to 10 years in prison, for any person to possess a firearm or silencer that is not properly registered. *See* 26 U.S.C. §§ 5861(d), 5871.

18. Any person intending to manufacture firearms or silencers shall, before commencing manufacture, obtain the license required by the GUN CONTROL ACT OF 1968 (“GCA”) and pay the required occupational tax imposed by the NFA. *See* 18 U.S.C. § 923; 27 C.F.R. § 478.41.

19. A “person” is defined by the GCA to include “any individual, corporation, company, association, firm, partnership, society, or joint stock company.” *See* 18 U.S.C. § 921(a)(1). Any person who willfully violates a § 922 of the GCA shall be imprisoned not more than five years. *See* 18 U.S.C. § 924.

20. Plaintiff refused to commit the illegal act of manufacturing a firearm silencer, and told his supervisor he would not participate in the manufacture of firearm silencers.

21. Plaintiff was alarmed and deeply concerned that firearm silencers designed for an AK-47 assault rifle were being illegally manufactured by his supervisor and Defendants’ employees.

22. On or about January 13, 2012, Defendants terminated Plaintiff’s employment solely for his refusal to commit the illegal act of manufacturing a firearm silencer.

23. Plaintiff’s refusal to commit the illegal act was the sole reason for his termination.

24. As a direct and proximate cause of Defendants’ wrongful termination, Plaintiff has suffered humiliation, mental anguish, emotional distress, degradation of his value as an employee, lost pay and benefits in the past, present, and future.

25. Although Plaintiff is diligently seeking other employment, he has been unable to find a job with comparable pay and benefits, and will incur additional expenses in seeking other employment.

## **V. CAUSES OF ACTION**

### **A. COUNT ONE – WRONGFUL TERMINATION FOR REFUSING TO ENGAGE IN AN ILLEGAL ACT**

26. Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Original Petition as if fully and completely set forth herein.

27. Plaintiff was an at-will employee of Defendants at all times relevant to this lawsuit.

28. Defendants illegally manufactured firearm silencers designed for an AK-47 assault rifle using Defendants' Equipment, on Defendants' Premises, and failed to register the firearm silencers with the National Firearms Registration and Transfer Record.

29. Defendants unlawfully possessed unregistered firearm silencers designed for an AK-47 assault rifle.

30. Defendants failed to obtain the license required by GCA before manufacturing the firearm silencers, and failed to pay the required occupational tax imposed by the NFA.

31. Defendants asked Plaintiff to illegally manufacture a firearm silencer designed for an AK-47 assault rifle using the Defendants' Equipment on Defendants' Premises.

32. Plaintiff refused to commit the illegal act of manufacturing a firearm silencer, and told his supervisor he would not participate in the manufacture of firearm silencers.

33. Defendants intentionally and maliciously terminated Plaintiff's employment solely because Plaintiff refused to commit the illegal act.

34. As a direct and proximate result of Defendants' conduct, Plaintiff suffered the following injuries and damages:

- a. Plaintiff was discharged from employment with Defendants, suffering lost pay and benefits in the past, present, and future. Although Plaintiff has diligently sought other employment, he has been unable to find a job with comparable pay and benefits. In addition, Plaintiff has incurred expenses in seeking other employment.
- b. Plaintiff has suffered mental anguish, emotional distress, and humiliation as a result of Defendants' conduct, his loss of employment and livelihood.
- c. Plaintiff has suffered and will continue to suffer mental anguish and humiliation as a direct and proximate result of Defendants' outrageous conduct. By engaging in this conduct, Defendants acted with oppression and malice with the purpose and intent of intimidating Plaintiff into engaging in an illegal act and/or to prevent him from reporting it.
- d. Plaintiff is, thus, entitled to punitive damages in an amount sufficient to deter Defendants from such wrongful conduct in the future.

#### **B. COUNT TWO – DAMAGES**

35. Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Original Petition as if fully and completely set forth herein.

36. Defendants' conduct and actions discussed above proximately caused injury to Plaintiff, which resulted in the following damages:

- a. Back pay including lost wages and benefits that would have been paid from the date of the retaliation until the trial date;
- b. Future pay including future lost earnings and benefits;
- c. Loss of employment;
- d. Loss of employment benefits;
- e. Mental anguish in the past;
- f. Mental anguish in the future;
- g. Prejudgment interest;

- h. Costs of court; and
- i. Injunction and injunctive relief.

37. Plaintiff also seeks unliquidated damages within the jurisdictional limits of this Court.

### **C. COUNT THREE – EXEMPLARY DAMAGES**

38. Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Original Petition as if fully and completely set forth herein.

39. Plaintiff also seeks exemplary damages caused by the gross negligence, fraud and/or malice of Defendants for damages and losses relating to its actions listed above.

40. Plaintiff's injuries resulted from Defendants' gross negligence, malice, or actual fraud, which entitles Plaintiff to exemplary damages under TEXAS CIVIL PRACTICE & REMEDIES CODE § 41.003(a).

41. The conduct of Defendants' actions or omissions described above, when viewed from the standpoint of Defendants at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and 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 and others.

42. Plaintiff intends to show that the factors the jury may consider in determining the amount of exemplary damages which should be awarded include:

- a. the nature of the wrong committed by Defendants;
- b. the character of Defendants' conduct;
- c. the degree of culpability of Defendants;

- d. the situation and sensibilities of the parties concerned; and
- e. the extent to which Defendants' conduct offends a public sense of justice and propriety.

43. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendants.

#### **VI. JURY DEMAND**

44. Plaintiff demands a jury trial and tenders the appropriate fee with this Petition.

#### **VII. CONDITIONS PRECEDENT**

45. All conditions precedent have been performed or have occurred pursuant to Rule 54 of the TEXAS RULES OF CIVIL PROCEDURE.

#### **VIII. REQUEST FOR DISCLOSURE TO ALL DEFENDANTS**

46. Under rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests that Defendant TEAM INDUSTRIAL SERVICES, INC. and Defendant TEAM, INC. disclose, within fifty (50) days of the service of this request, the information or material described in Rule 194.2 attached to this Petition as **Exhibit A**.

#### **IX. REQUEST FOR PRODUCTION TO DEFENDANT TIS**

47. Under rule 196 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests that Defendant TEAM INDUSTRIAL SERVICES, INC. produce, within fifty (50) days of the service of this request, the documents and tangible things requested contained in *Plaintiff's First Request for Production* attached to this Petition as **Exhibit B**.

#### **X. REQUEST FOR PRODUCTION TO DEFENDANT TEAM**

48. Under rule 196 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests that Defendant TEAM, INC. produce, within fifty (50) days of the service of this request, the



documents and tangible things requested contained in *Plaintiff's First Request for Production* attached to this Petition as **Exhibit C**.

#### **XI. INTERROGATORIES TO DEFENDANT TIS**

49. Under rule 197 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests that Defendant TEAM INDUSTRIAL SERVICES, INC. respond, within fifty (50) days of the service of this request, to the interrogatories contained in *Plaintiff's First Set of Interrogatories* attached to this Petition as **Exhibit D**.

#### **XII. INTERROGATORIES TO DEFENDANT TEAM**

50. Under rule 197 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests that Defendant TEAM, INC. respond, within fifty (50) days of the service of this request, to the interrogatories contained in *Plaintiff's First Set of Interrogatories* attached to this Petition as **Exhibit E**.

#### **XIII. REQUESTS FOR ADMISSIONS TO DEFENDANT TIS**

51. Under rule 198 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiffs request that Defendant TEAM INDUSTRIAL SERVICES, INC. admit or deny, within fifty (50) days of the service of this request, the requests contained in *Plaintiff's First Request for Admissions* attached to this Petition as **Exhibit F**.

#### **XIV. REQUESTS FOR ADMISSIONS TO DEFENDANT TEAM**

52. Under rule 198 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiffs request that Defendant TEAM, INC. admit or deny, within fifty (50) days of service, the requests contained in *Plaintiff's First Request for Admissions* attached to this Petition as **Exhibit G**.

**XV. DEMAND FOR PRESERVATION OF EVIDENCE TO  
DEFENDANT TIS AND DEFENDANT TEAM**

53. Plaintiff hereby requests and demands that Defendants TEAM INDUSTRIAL SERVICES, INC. and TEAM, INC. preserve and maintain all evidence pertaining to any claim or defense related to the facts and allegations making the basis of this lawsuit, or damages resulting therefrom. Plaintiff's Demand Letter for Preservation of Evidence to Defendants is attached to this Petition as **Exhibit H**. The letter is to provide notice that Defendants must immediately take the necessary steps to issue a litigation hold and preserve all "electronically stored information" ("ESI") and other documents, on whatever storage media, device or location, in your their possession or control (including third parties) that contain potential ESI relating to the claims and defenses contained in this Petition, and that Defendants avoid spoliation of this ESI. The letter also includes a demand for Defendants to suspend all document retention or destruction policies, including but not limited to backup, restoration, deletion, destruction, and tape recycling.

**XVI. PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff Darryl McKnight respectfully prays that Defendant TEAM INDUSTRIAL SERVICES, INC. and Defendant TEAM, INC. be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally, for (1) the damages and injuries specifically pled herein, (2) damages in an amount within the jurisdictional limits of the Court, (3) exemplary damages excluding interest, (4) unliquidated damages within the jurisdictional limits of this Court, (5) together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law, (6) post-judgment interest at the legal rate, (7)

costs of court, and (8) such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully Submitted,

**HUGHES ELLZEY, LLP**

A handwritten signature in black ink, appearing to read 'W. Craft Hughes', is written over a horizontal line.

W. Craft Hughes

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**DARRYL MCKNIGHT**