

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

MONICA GARICA,  
*Plaintiff,*

V.

THE CITY OF HOUSTON.  
*Defendant.*

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IN THE DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT

OF HARRIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION;**  
**REQUEST FOR DISCLOSURES;**  
**REQUEST FOR PRODUCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MONICA GARICA, Plaintiff, (thereafter referred to as "Monica") and files this Original Petition against THE CITY OF HOUSTON. This action is to remedy retaliation brought pursuant Texas Whistleblower Act.

**DISCOVERY PLAN**

1. The Plaintiff intends discovery to be conducted under Texas Rule of Civil Procedure 190 Level 2.

**NATURE OF THE CASE**

2. This is an unlawful employment practices case involving termination of employment in violation of the Texas Whistleblower Act.

**PARTIES**

3. MONICA GARCIA (referred to as "Monica") is an individual who resides in City of Houston, Texas at the time the cause of action asserted herein accrued and who continues to reside in City of Houston, Texas. The last 3 digits of her driver's license are

543. The last 4 digits of her social security number are 6454.

4. THE CITY OF HOUSTON (the “the City”) is a political subdivision of the State of Texas. Service of citation upon the City of Houston shall be made on the Pat J. Daniel, Interim City Secretary, City Secretary Department, 900 Bagby St, Rm. P101, Houston, TX 77002.

#### **SUBJECT MATTER JURISDICTION**

5. The Court has original subject matter jurisdiction, under the Texas Constitution Article V § 8, over the claim asserted herein because no other court has exclusive original jurisdiction over that claim and because damages are within the jurisdictional limits of this Court.

#### **PERSONAL JURISDICTION**

6. This Court has personal jurisdiction over City of Houston because (1) the City of Houston was formed in Texas, is located in Texas, and maintains continuous and systematic ties to Texas, and (2) the cause of action asserted herein arose from activities and omissions occurring in Texas.

#### **VENUE**

7. Venue proper under Texas Government Code § 554.007(a) because the cause of action asserted herein arose in Harris County.

**CLAIM FOR RELIEF:  
TEXAS WHISTLEBLOWER ACT**

**Purposes and rules**

8. The Texas Whistleblower Act (“TWA”) is intended to enhance openness in government, compel the government’s compliance with law, and deter the government’s violation of law. It is designed to keep open the communication lines between public employees — who are often in the best position to discover illegal conduct — and those who are in a position to remedy the illegal conduct. It is intended to prevent harm to the physical safety and the financial safety of the public. It represents an important confidence in the ability of individuals to make a difference in that regard to protect the well-being of their community.

9. Both state and local governmental entities must comply with the TWA<sup>1</sup> to prevent harm to the physical safety and the financial safety of the public. If a state or local governmental entity violates the TWA, it is responsible for the consequences. To comply with the TWA, a state or local governmental entity (1) must allow its employees to report to any appropriate law enforcement authority what the employee reasonably believes to be a violation of law and (2) must not suspend, terminate, or take other adverse personnel action against its employee for making such a report.<sup>2</sup>

10. The TWA expressly waives and abolishes immunity from suit and liability to the extent of liability for the relief provided under it.<sup>3</sup>

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<sup>1</sup> See Tex. Gov’t Code § 554.002 (retaliation prohibition).

<sup>2</sup> See Tex. Gov’t Code §§ 554.001(3) (definition of personnel action) & 554.002 (retaliation prohibition); Tex. PJC Employment § 107.4.

<sup>3</sup> See *id.* at § 554.0035 (waiver of immunity).

### **Local governmental entity and public employee**

11. The City of Houston is a local governmental entity that must comply with the TWA.

12. The City of Houston was required to protect its employees under the TWA. The City of Houston employed Monica Garcia as a Senior Human Resources Generalist within the Employee Relations Division. The City of Houston treated the working relationship as that of employer and employee. For example, it reported wages for services performed for it on an IRS Form W-2 and otherwise documented the relationship as one of “employment.”

### **Reports under the TWA**

13. As stated under A.P. No. 2-21 (Revised), the City of Houston knows that it must comply with the general duty clause from the Texas Labor Code, Title 5. Texas Workers’ Compensation Act, Chapter 411.103, “Duty of Employer to Provide Safe Workplace,” which states, “Each employer shall:

(1) provide and maintain employment and a place of employment that is reasonably safe and healthful for employees;

(2) install, maintain, and use methods, processes, devices, and safeguards, including methods of sanitation and hygiene, that are reasonably necessary to protect the life, health, and safety of the employer's employees; and

(3) take all other actions reasonably necessary to make the employment and place of employment safe.”

14. This case involves reports from Monica Garcia to an “appropriate law enforcement authority.” An “appropriate law enforcement authority” includes any part

of any state or local governmental entity that the employee in good faith believes is authorized to:

- (1) regulate under the law alleged to be violated in the report **or**
- (2) enforce the law alleged to be violated in the report.”<sup>4</sup>

15. An “appropriate law enforcement authority” includes, in this case, Houston City Council and Council Member Abbie Kamin because they can “regulate under or enforce the law alleged to be violated in the report.”

16. On March 29, 2020, Monica emailed Council Member Abbie Kamin about the City’s failure to use the telecommuting policy to curtail the spread of the virus in order to keep City employees safe as required under Texas Labor Code, Title 5. Texas Workers’ Compensation Act, Chapter 411.103. Monica explained, “It has been messaged to City employees that everyone is expected to show-up to work, even if telecommuting is a viable alternative for those who are high-risk for contracting the virus (over 65, auto-immune compromised, etc.), or even for employees who have been exposed to the virus, or are experiencing symptoms.” Monica further indicated that, “the lack of transparency and oversight of policies that could protect/save lives for City employees is something that needs to be elevated to someone in your position.” Monica further noted that she believed that her employment may be in jeopardy. “I bring this to City knowing that it could negatively impact my employment within the City. However, I believe that there are people at risk of getting sick – or making others sick, and there are things that could be done to limit that risk.”

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<sup>4</sup> See Tex. Gov’t Code § 554.002(b) (appropriate law enforcement authority); Tex. PJC Employment § 107.4, at comment on appropriate law enforcement authority.

17. On April 7, 2020, Monica appeared before the Houston City Council and reiterated these same concerns expressed to Council Member Kamin. Monica explained that the then current telecommuting policy had been applied inconsistently between various departments, exposing inequity and “employment and benefits at risk.” While the current policy states that working from home is a privilege and not a right, Monica emphasized that these are not normal circumstances and that the policy should be treated as a right. After Monica concluded her presentation, Monica received a few questions from Mayor Turner. The conversation ended with Mayor Turner appearing to be visibly upset by Monica’s presentation. Mayor Turner ended with a statement, “these are my policies,” indicating to Monica that Mayor Turner did not take Monica’s presentation well.

18. On April 8, 2020, Monica followed up with Council Member Abbie Kamin and further indicated that she believed that she was going to be “terminated for going public.”

### **The termination and presumption of causation**

19. On June 19, 2020, Mayor Turner issued a voluntary furlough program that stressed the need for employees to take furlough in order to address the “largest budgetary shortfall in our history - \$169 million.” In light of that policy, Monica indicated that she was interested in taking furlough, and requested on July 14, 2020 what information she needed to process her request from Nancy Yue, Paul Prado, and Darien Helton. She did not request a furlough at that time, only information as to how the request needed to be processed.

20. Instead of giving Garcia more information, as requested, Nancy Yue, Paul Prado, Jane E. Cheeks, as well as Darien Helton terminated Garcia on July 15, 2020 and

denied her furlough request by indicating that she “did not indicate how long you would be out and when you are able to return to work.” As indicated in her July 14, 2020 correspondence, this statement is false because Garcia had not yet submitted a furlough request. The City’s stated reasons for Garcia’s termination were, therefore, not a legitimate business decision but were pretextual.

21. City of Houston fired Monica Garcia within 90 days after she reported violations of law to the Houston City Council and to Council Member Kamin. As a result, a legal presumption arises that City of Houston terminated Monica Garcia because of that report to the Houston City Council and Council Member Kamin.<sup>5</sup>

22. As a result of City of Houston’s unlawful conduct, Monica Garcia suffers harms and losses in an amount within the jurisdictional limits of this Court.

### **GRIEVANCE PROCESS**

#### **City claims it has no applicable grievance process and refuses to respond to grievance and appeal letter**

23. Monica Garcia’s termination correspondence indicates that the appeal process before the Civil Service Commission, upon which she can contest her termination, was not available to her.

24. In an abundance of caution, Monica Garcia hereby demands use of the grievance process and use of any procedure to appeal her termination before the Civil Service Commission.

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<sup>5</sup> See Tex. Gov’t Code § 554.004(a) (burden of proof and presumption).

25. The TWA, however, does not require initiation of a grievance process that the employer claims does not exist. In this case, the City has already determined that the appeal process is unavailable to her (as another example of animus). Monica Garcia timely files suit not later than the 90th day after the date the City of Houston unlawfully terminated her employment.

### **CONDITIONS PRECEDENT**

26. All conditions precedent to filing suit and to recovery on the cause of action asserted herein have occurred, been performed, or been waived.

### **ATTORNEYS' FEES**

27. As a result of the conduct described above, Monica Garcia hired an attorney to pursue the claims asserted herein. Monica Garcia seeks to recover reasonable attorneys' fees in connection with this case, including all appeals, pursuant to the TWA.

28. Pursuant to Rule 192.3 of the Texas Rules of Civil Procedure, Monica Garcia hereby designates R. Scott Poerschke as an expert to testify to the reasonable and necessary attorney's fees incurred relative to this lawsuit (and any appeals thereof), and they may also testify as to any other party's fees. Mr. Poerschke will testify regarding not only the reasonableness and necessity of the fees, but also to the factors related to the reasonableness and necessity. Mr. Poerschke is familiar with attorney's fees charged in Harris County, Texas, and in cases involving the TWA cases. He has testified as an expert on attorney's fees in multiple cases previously. With respect to the fees, Mr. Poerschke is expected to testify about the application of the factors outlined in Tex. Disc. R. Prof'l Conduct 1.04(b) and pertinent case law (including *Arthur Anderson & Co. v. Perry Equip. Corp.*, 945 S.W. 2d 812 (Tex. 1997)). Mr. Poerschke's biographical information is



available on his website: <http://www.rsplegal.com>. If any counsel cannot access same, a copy and/or resume will be provided to them upon request. Mr. Poerschke reserves the right to provide an opinion at the time of trial as to the total fees and expenses incurred in the period leading up to and through trial, and the amounts estimated for various stages of appeal. Redacted copies of their attorney's fees invoices are available during business hours upon reasonable request.

### **REQUEST FOR DISCLOSURE**

31. Under Texas Rule of Civil Procedure 194, Monica Garcia requests that the City disclose, within 50 days of the service of this request, the information or material described in Tex. Rule Civ. Pro. 194.2.

### **REQUEST FOR PRODUCTION**

32. The City of Houston is also requested to respond to the attached requests for production within fifty (50) days, in accordance with the instructions stated therein.

### **ACTS OF CITY OF HOUSTON**

33. The individuals involved in the adverse action at issue were agents and vice principals of the City of Houston.

### **JURY DEMAND**

34. Monica Garcia requests a jury trial on all issues triable of right or choice to a jury.

### **NO FEDERAL CLAIMS**

35. Monica Garcia asserts no claims in this petition for violation of any federal law or for remedies under any federal law.

### **RELIEF REQUESTED**

36. Texas Rule of Civil Procedure 47 requires Monica Garcia pleads one or more of five categories of relief set forth in the rule, even when losses continue to accrue and the defendant controls information that is material to the calculation. So, based on additional discovery to date, Monica Garcia states that she seeks non-monetary relief and monetary relief in the range stated in Rule 47(c)(4) excluding costs and attorneys' fees, but that evidence obtained to date may result in a legally and factually sufficient, just, and fair verdict and judgment after trial in the range of Rule 47(c)(5). She reserves the right to amend her petition as discovery proceeds. She notes that these ranges do not consider the statutory damages caps at issue in this case.

37. Monica Garcia prays for all relief, in law and equity, to which she may be justly entitled under the TWA and Texas Rules of Civil Procedure, including but not limited to:

- A. any and all appropriate injunctive relief to help protect against future City violations of the TWA, to the extent permitted under the TWA; examples of such relief may include appropriately tailored injunctions: (1) preventing City of Houston from violating the TWA, (2) requiring City of Houston to train its employees about compliance with the TWA, (3) requiring City of Houston to address compliance with the TWA in its personnel policy and procedures manual, and (4) requiring City of Houston to post the required notice about the TWA in a place that its employees are likely to see the notice;
- B. any and all appropriate injunctive relief to help protect against future City violations of Texas Labor Code, Title 5. Texas Workers' Compensation Act, Chapter 411.10, OSHA Regulations and Guidance, American National

Standards Institute (ANSI), National Fire Protection Association (NFPA), National Institute for Occupational Safety and Health (NIOSH), National Electric Code (NEC), the American Water Works Association, the Chlorine Institute, or the Compressed Gas Association (collectively, “safety laws”), all to the extent permitted under the TWA; examples of such relief may include appropriately tailored injunctions: (1) preventing City of Houston from violating the safety laws, (2) requiring City of Houston to train its employees about the safety laws, (3) requiring City of Houston to address compliance with the safety laws in its personnel policy and procedures manual specially as they relate to emergency situations;

- C. any and all appropriate injunctive relief to help restore his professional and personal standing to what City of Houston had truthfully described — before he reported violations of law in order to protect the citizens of Houston — as “highly respected ... due to his ethics, diligence, and integrity,” to the extent permitted under the TWA;
- D. judgment on the TWA claim asserted herein;
- E. reinstatement to her former position with City of Houston or an equivalent position with City of Houston, including reinstatement of lost fringe benefits and lost seniority rights; or, alternatively, compensation for the value of those reinstatement rights; all such relief to the extent permitted under the TWA;
- F. past lost compensation due to the termination and before the reinstatement date or equivalent, to the extent permitted under the TWA;
- G. any and all appropriate actual damages for other losses to the extent permitted under the TWA; examples of such compensation may include other past and future: pecuniary losses [such as harm to career], emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses [such as harm to professional and personal standing];
- H. court costs and attorneys’ fees to the extent permitted under the TWA, including attorneys’ fees for all appeals, whether interlocutory or otherwise, and expert witness fees;
- I. court costs under the Texas Rules of Civil Procedure;
- J. pre-judgment and post-judgment interest as allowed by law.

**THE PLAINTIFF DEMANDS A JURY TRIAL**

Respectfully submitted,

**THE POERSCHKE LAW FIRM, PC**

/s/ R. Scott Poerschke, Jr.

R. SCOTT POERSCHKE, JR.

State Bar. No. 24067822

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**ATTORNEY FOR PLAINTIFF,  
MONICA GARCIA**

## INSTRUCTIONS FOR REQUEST FOR PRODUCTION

In connection with the Requests for Production propounded, City are requested to answer in accordance with the following instructions:

1. In producing documents, furnish all information that is within City knowledge, possession, or control; or within the knowledge, possession, or control of City attorneys, agents, or other representatives, not previously produced in this matter.

2. If any document is not provided under claim of privilege or work product, then state with respect to the document:

- (a) The privilege under which the document is not being provided;
- (b) A description of the type of document involved;
- (c) A general description of the subject matter of the document;
- (d) The date the document was prepared;
- (e) The author or signatory of the document;
- (f) The persons to whom the document is addressed and persons to whom copies thereof were furnished;
- (g) The present depository of the document; and
- (h) City willingness to make the document available for in camera inspection by the Court.

3. If any documents requested have been lost, discarded, or destroyed, the documents so lost, discarded or destroyed shall be identified as completely as possible, including the following information: (a) author; (b) date; (c) subject matter; (d) date of disposal; (e) manner of disposal; (f) reason for disposal; (g) person authorizing the disposal; and (h) person disposing of the document.

4. If there is any issue regarding the meaning or wording of any request for production, please confer with Scott Poerschke regarding same. Scott Poerschke can provide the City with any assistance and clarify any issues that City may have before making an objection regarding same. Scott Poerschke will be happy to provide City with any clarification in writing to supplement the discovery request.

5. Please be advised that the rules generally require the City to state its objection and respond by answering. If the City does not actually answer the discovery request, the City run the risk of having the objection waived. For example, if the City objects to the timeframe, City must state the timeframe that City believe is relevant and then produce the documents that City believe fall within this timeframe.

6. Please be advised that the rules require City to produce the documents in one of two ways. City may produce the documents as they are found in the ordinary course of business. This means that generally City will produce the documents as they are housed in the ordinary course of business and it will be my responsibility to review the documents and notify City of certain documents that need to be pulled for duplication. City may also produce the documents organized in accordance with the production request. If City chose

to do it this way, Monica Garcia requests that City organize the documents by PDF file, so that all of the documents responsive to one production requests are contained on one PDF file.

7. Please bates stamp the City's production requests.
8. For any individuals that are referenced in the actual discovery requests, City may assume that Monica Garcia has amended her disclosures and that City have been placed on notice that Monica Garcia may call the individual at trial or obtain an affidavit from this individual to be used in response to City's motion for summary judgment or Monica Garcia's own summary judgment against the City's affirmative defenses.

## **II. DEFINITIONS TO REQUESTS FOR PRODUCTION**

In connection with the Requests for Production propounded, the following definitions apply:

1. The terms "City," "your," and "Defendant," mean or refer to the City of Houston, and each of its past and present officers, agents, employees, attorneys, and all other persons acting or purporting to act on its behalf.
2. The terms "Plaintiff," "Monica Garcia" mean the Plaintiff Monica Garcia and all other persons acting or purporting to act on her behalf.
3. The term "Lawsuit" means this case.
4. The terms "Person" or "Persons" mean all individuals and all natural persons and entities, including, without limitation, a firm, corporation, association, partnership, business, public agency, department, bureau, board or any other form of public, private or legal entity, whether formed for business or other purposes.
5. The term "meeting" shall mean and include any contemporaneous presence of any natural persons, whether by chance or prearranged, and whether formal or informal, or in connection with some other activity.
5. The term "document(s)" and/or "thing(s)" is used in its broadest sense and refers to any means of retaining information, including any handwritten, printed, or typewritten material, reported, recorded, and pictorial and graphic matter, which is now, or was at any time, in the possession, custody, or control of the Defendant. The term "documents and things" includes, but is not limited to the following categories of information:
  - a. originals, copies and, drafts: including copies, however produced, duplicate original counterparts, nonconforming copies, copies with deletions, insertions, interlineations, or handwritten notes or comments, and drafts or final versions not seat or otherwise communicated to other parties;

- b. any form of communication with a third party: including correspondence, memoranda, bulletins, telegrams, telexes, wire messages, facsimiles, electronic mail, teletypes, speeches, and any type of interoffice or interdepartmental communications, whether formal or informal;
- c. financial records: including bank checks, whether canceled or not, bank drafts, deposit and withdrawal slips, credit and debit memoranda, bank statements, financial statements, financial projections, calculations, letters of credit, promissory notes, statements or bills for goods or services, appraisals, income tax returns, tax records, and pay stubs;
- d. legal documents: including pleadings, contracts, agreements, proposals, affidavits, transcripts, and exhibits;
- e. any type of analysis or compilation of data: including reports, studies, investigations, charts, graphs, and summaries;
- f. personal records: including calendars, date books, notes (including notes of conversations and conferences), diaries, journals, appointment books, agenda, itineraries, schedules and application forms;
- g. medical records: including all documents in a physician, psychiatrist, psychologist or health care provider's file, prescriptions, x-rays, diagnoses, prognoses, evaluations, medical files, notes, bills or statements from health care providers of any kind, test results, correspondence, and insurance claims;
- h. non-documentary means of information retention: including photographs, prints, slides, negatives, undeveloped film, videotapes, audiotapes, microfiche, transcripts, and any means of storing computer data, such as hard disks, floppy disks, laser disks, and magnetic tape, and any other depository from which information may be obtained; and
- i. electronic or magnetic data: any data stored on computer or computer media such as hard disks, floppy disks, laser disks, and magnetic tape must be produced in the form requested by requesting party.

10. The terms “relate to,” “refer to,” and “relative to,” mean constituting, in whole or in part; concerning; regarding; discussing; describing; identifying; measuring; analyzing; explaining; stating; dealing with; reflecting; alluding to; responding to; embodying or embodied within; containing or contained within; pertaining to; connected with; communicating or communicated about; commenting on; in respect of; pertinent in any manner whatsoever to; mentioning; supporting; or evidencing.

11. The term “knowledge” in reference to a person means the knowledge of each of his/her/its agents or employees, or any other person whose duties and responsibilities

include the subject to which the knowledge relates.

12. The term “employment” means any employment or self-employment, occupation, business, or job, whether full-time or part-time.

13. The terms “communication” or “communications” mean any transmittal of information, or request for information, by document as defined herein or otherwise, and includes any oral communication in person, by telephone, by recording, or by any other means

14. The term “oral communication(s)” means any verbal conversation or other statement from one person to another, including any interview, conference, meeting, or telephone conversation.

15. “And” and “or” shall be construed either conjunctively or disjunctively.

16. A singular form noun or pronoun shall be considered to include within its meaning the plural form of a noun or pronoun so used, and vice-versa; the use of the masculine form of a pronoun shall also be considered to include within its meaning the feminine form of the pronoun so used, and vice-versa; and the use of any tense of any verbs shall also be construed to include within its meaning all other tenses of the verb so used.

17. City are advised that pursuant to Tex. R. Civ. P. 193.7, Plaintiff intends to use all documents exchanged and produced between the parties, including but not limited to correspondence and discovery responses during the trial of the above-entitled and numbered cause.



**III.**  
**PRODUCTION REQUESTS**

**REQUEST FOR PRODUCTION NO. 1:** Produce all communications concerning the factual allegations or claims at issue in this lawsuit among or between:

- i. The plaintiff and the defendant;
- ii. The plaintiff's manager(s), and/or supervisor(s), and/or the defendant's human resources representative(s).

**REQUEST FOR PRODUCTION NO. 2:** Produce responses to claims, lawsuits, administrative charges, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.

**REQUEST FOR PRODUCTION NO. 3:** Produce all documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.

**REQUEST FOR PRODUCTION NO. 4:** Produce all the personnel records of the plaintiff's personnel file, in any form, maintained by the defendant, including files concerning the plaintiff maintained by the plaintiff's supervisor(s), manager(s), or the defendant's human resources representative(s), irrespective of the relevant time period.

**REQUEST FOR PRODUCTION NO. 5:** Produce all the plaintiff's performance evaluations and formal discipline.

**REQUEST FOR PRODUCTION NO. 6:** Produce all documents relied upon to make the employment decision(s) at issue in this lawsuit.

**REQUEST FOR PRODUCTION NO. 7:** Produce all documentation of the workplace policies or guidelines in effect at the time of plaintiff's termination, those may include policies or guidelines that address:

- i. Discipline;
- ii. Termination of employment;
- iii. Promotion;
- iv. Discrimination;
- v. Performance reviews or evaluations;
- vi. Misconduct;
- vii. Retaliation; and
- viii. Nature of the employment relationship.

**REQUEST FOR PRODUCTION NO. 8:** Produce the table of contents and index of any employee handbook, code of conduct, or policies and procedures manual in effect at the time of plaintiff's termination.

**REQUEST FOR PRODUCTION NO. 9:** Produce all documentation of the Job description(s) for the position(s) that the plaintiff held.

**REQUEST FOR PRODUCTION NO. 10:** Produce all documentation showing the plaintiff's compensation and benefits. Those normally include retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and summaries of compensation.

**REQUEST FOR PRODUCTION NO. 11:** Produce all documentation concerning investigation(s) of any complaint(s) about the plaintiff or made by the plaintiff, if relevant to the plaintiff's factual allegations or claims at issue in this lawsuit and not otherwise privileged.

**REQUEST FOR PRODUCTION NO. 12:** Produce all insurance policies, agreements, contracts, including but not limited to, so-called "umbrella" excess or reinsurance coverage or policies of any other type of liability or co-insurance coverage by and through which the Defendants were or may be insured or covered in any manner to any extent for any cause of action for injuries claimed against in this action.