

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

QUANTUM MATERIALS CORP.,

*Plaintiff,*

v.

K&L GATES, LLP,

*Defendant.*

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IN THE DISTRICT COURT

OF HAYS COUNTY, TEXAS

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

**QUANTUM MATERIALS CORPORATION’S ORIGINAL PETITION  
AND REQUEST FOR DISCLOSURE**

NOW COMES, Quantum Materials Corporation (“Quantum”), Plaintiff in the above-captioned cause, and submits this Original Petition against K&L Gates, LLP. In support of this Petition, Quantum shows as follows:

**I.  
DISCOVERY**

Quantum requests that this case be conducted as a "Level 2" case for the purposes of discovery in accordance with TEX. R. CIV. P. 190.3. Quantum reserves the right to move this Court to enter a discovery control plan order under TEX. R. CIV. P. 190.4.

**II.  
PARTIES**

Quantum is a corporation with its principal office located at 3055 Hunter Road, San Marcos, Texas 78666. Nearly all of Quantum’s employees reside in, or near, Hays County, Texas.

Defendant, K&L Gates, LLP, (“K&L Gates”), is a Delaware corporation that may be served through its registered agent, Corporation Service Company d/b/a CSC - Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620 Austin, TX 78701.

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

The Court has jurisdiction over this matter because the damages sought by Quantum exceed the minimum jurisdictional limits of the Court.

This action is properly brought in Hays County, Texas because all or a substantial part of the events or omissions giving rise to this claim occurred in Hays County. It was in Hays County, Texas where the Defendant's law firm, K&L Gates filed an appearance and argued in open court against their own client, the Petitioner herein.

**IV.**  
**FACTS**

**INTRODUCTION**

Quantum is a San Marcos company whose many local employees manufacture Tetrapod Quantum Dots for use in medical, display, solar energy, and lighting applications through an automated production process. Tetrapod Quantum Dot semiconductors enable a new level of engineered performance for the consumer and for industrial products. Quantum's volume manufacturing methods assure economies of scale, reliability and uniformity to drive innovative discovery to commercial success by addressing three (3) critical needs: lowering costs while improving efficiency and quality.

Many years ago, Quantum retained the legal services of Steve Morse (herein "Morse") as their corporate counsel. Sometime in late 2016, the prior Board of Directors for Quantum retained as additional counsel, the law firm of K&L Gates to handle virtually the same work that Morse was doing. K&L Gates also attended confidential board meetings and reviewed, *inter alia*, highly confidential corporate secrets. While Morse had charged approximately \$5,000 per month, K&L

Gates charged approximately \$100,000 a month. K&L Gates initially took the lead on drafting documents for a prospective lender.

Thereafter, the entire board was replaced and the lion's share of the corporate work was transferred back to Morse. However, K&L Gates, to this date, has never formally resigned from representing Quantum, and has remained legal counsel to Quantum.<sup>1</sup>

#### **DISPUTE ARISES BETWEEN QUANTUM AND TWO OF ITS LENDERS**

In March 2017, Quantum borrowed money from and issued promissory notes to SBI Investments, LLC, 2014-1 and L2 Capital LLC, and agreed that these two (2) lenders could convert this debt into equity in the event that Quantum defaulted under the terms of the notes. At the same time, Quantum signed unconscionable "irrevocable transfer agent instructions", drafted by the lenders to its stock transfer agent, Empire Stock Transfer Inc. (herein called "Empire") (the holder/transfer agent for the parties' agreements) authorizing and instructing Empire to "reserve a sufficient number of shares of common stock."<sup>2</sup>

After disputes arose between Quantum and SBI Investments, LLC, 2014-1 and L2 Capital LLC, (jointly referred to as "predatory lenders") over payments on the notes and other obligations of Quantum under the terms of the parties' agreements, Quantum filed an injunction suit in Hays County, Texas (428th Judicial District; Cause No. 17-2033; Judge Gary Steel presiding) against Empire at the end of September 2017, asserting the cause of action of conversion. The Trial Court entered a temporary restraining order on October 2, 2017, restraining Empire from conveying any shares that it held on behalf of Quantum to the predatory lenders. The Trial Court also set bond

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<sup>1</sup> One can debate whether or not, filing a suit against your own client is sufficient notice that the suing law firm has decided to no longer be retained.

<sup>2</sup> It is currently unknown if K&L Gates participated in crafting those insidious instructions. The speculative "sufficient numbers" was interpreted by the predatory lenders as 250 million shares out of a total of 750 million.

and October 12, 2017, as the date for the temporary injunction hearing. On October 16, 2017, the Trial Court entered a subsequent order extending the temporary restraining order and resetting the hearing for October 26, 2017.<sup>3</sup>

In March 2018, the subsequently entered injunction was upheld by the Third Court of Appeals, (03-17-00863-CV) effectively, but expansively defeating the last active pleading prepared by K&L Gates.<sup>4</sup> A failure to win the injunction would likely have destroyed Quantum.

**K&L GATES TAKES UP ARMS ON BEHALF OF THE TWO LENDERS AGAINST ITS CLIENT,  
QUANTUM**

On October 10, 2017, SBI Investments, LLC, 2014-1 and L2 Capital LLC intervened in the proceeding, asserted affirmative claims for monetary damages against Quantum, and opposed Quantum's request for temporary injunctive relief. All of this was done by Quantum's attorney (yes, Quantum's own law firm), K&L Gates, LLP. The two (2) attorneys who signed the Petition in Intervention were Gregory Sapire ("Sapire") and Jeffrey Quilici ("Quilici"). K&L Gates was thus in Court, in some capacity, simultaneously representing both sides of a dispute they had rendered previous (potentially negligent) legal work.

On October 12, 2017, when two (2) K&L Gates lawyers appeared at the courthouse in Hays County, Texas, they were asked not to take up arms against their own client. At first, the lawyers denied that Quantum had ever been or was currently a client of theirs. Next, the lawyers claimed K&L Gates had an infallible conflicts check system. Counsel for Quantum (presuming a clerical error of gross negligence and wanting to give the K&L Gates lawyers the benefit of a doubt),

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<sup>3</sup> Quantum was prepared to move forward and had its witnesses ready to go, including a retained expert witness. The expense of going forward on the temporary injunction was substantially increased by having everyone return.

<sup>4</sup> It is beyond dispute that Gates, acting as lawyer for the predatory lenders, initiated and engineered actions on Empire's behalf (without securing Empire's consent) that Empire would have otherwise not challenged. When Gates finally left, the baton was passed from firm-to-firm.

offered to let them leave the case and forgive the offense. But Sapire and Quilici doubled down.

The notes were eventually paid in full by Quantum (and all payments had at that point of the legal conflict been current), but SBI Investments, LLC, 2014-1 and L2 Capital LLC wanted stock in this small start-up company rather than an easy 50% return on their short-term investments, meaning less than nine (9) months.<sup>5</sup>

K&L Gates refused to voluntarily step down and demanded depositions and a hearing to argue their right to continue suing their own client. The Court denied them their depositions but gave them a hearing date and ordered both parties to file briefs arguing their conflict-of-interest positions. As a result of Gates' position, the injunction hearing was also postponed, creating uncertainty. Uncertainty is the enemy of a public stock.

It is presumed that that SBI Investments, LLC, 2014-1 and L2 Capital LLC had arrogated Quantum's information vis-a-vis their law firm, K&L Gates, which impelled them to demand stock (over good cash money) at predatory conditions.

Under the guidance of K&L Gates, SBI Investments, LLC, 2014-1 and L2 Capital LLC caused two-hundred and fifty million (250,000,000) shares to be seized and demanded that Empire, the custodian of the stock, make it available to them as security. The total of all the notes was slightly more than \$500,000. K&L Gates demanded 100% of the notes, a \$250,000 premium and twenty-million shares of stock (at 5 cents a share or over a million dollars total) as damages for note payments that were not late, alleging frivolous "defaults"<sup>6</sup> which were many times over the actual note principles. It appears that at least some of the alleged "defaults" may have actually been

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<sup>5</sup> This has led the board to wonder if insider trading information was available to the predatory lenders and if so, where it had come from. Management at the time was extremely optimistic.

<sup>6</sup> Examples: A payment due on a Sunday was paid on a Monday. "Late payment", with penalty. A payment due on Saturday was made on Friday. Prepayment penalty. The accountant quit and it was noticed on a public forum. Failure to make him not quit. Penalty.

started by K&L Gates when they did legal work for Quantum. In other words, K&L Gates was suing their client, Quantum, ostensibly arguing absurd technical "defaults" that were in part created by presumably legal malpractice or fiduciary violations possibly done by K&L Gates. K&L Gates was suing Quantum for the work initiated while K&L Gates was counsel for Quantum.

During this stressful procedure, for Quantum, its officers, employees and shareholders, K&L Gates had the audacity to continue to press their demand for \$300,000.00 in alleged legal fees. To this date, although K&L Gates has finally stepped down from their position of representing Quantum's enemy, they have still not formally resigned from Quantum.

K&L Gates then threatened Quantum with “repercussions” after Quantum responded by asking the Judge to remove their own law firm, K&L Gates, from the proceedings against them as advocates for their enemy. The Court extended the TRO and ordered each side to file briefs. Rather than voluntarily withdraw at that point, Gates forced Quantum to file briefs aimed at firing their own law firm, K&L Gates (from the opposition), and removing them from the case for conflict of interest. K&L Gates filed briefs aimed at staying on the case in spite of the law firms’ salient unethical conduct and even more salient conflicts.

#### **K&L GATES WITHDRAWS BEFORE QUANTUM’S MOTION TO DISQUALIFY CAN BE RULED ON**

The day before Quantum’s motion to disqualify was ruled on, K&L Gates withdrew in lieu of the Austin law firm Cleveland & Terrazas, surrendering on the conflicts issues after causing Quantum substantial damages before facing the inevitable judgment against them. No court would have allowed them to continue as an advocate in this case. The only possible explanation for K&L Gates' stubborn persistence appears to be an effort to make the litigation as expensive as possible to kill Quantum's resolve by death from a thousand expensive wounds. In fact, as soon as K&L Gates left the courthouse for its last moment at the throat of its soon to be former client, Quantum,

new counsel dismissed Gates' pleadings (except for the intervention and ultimately the unsuccessful appeal based on Gates' pleadings).

Either Gates shared all of its confidential information with the predatory lenders, in which case, they violated the fiduciary responsibility they had to all of Quantum's shareholders, and to Quantum, or they failed to share the information with the predators; in which case they violated the fiduciary responsibility they had to SBI Investments, LLC, 2014-1 and L2 Capital LLC. In either event, this scheme of litigation against their own client, Quantum, has caused Quantum substantial damages. K&L Gates has demeaned the character of the legal profession in a real life parody of lawyer jokes.

**K&L GATES HAS NEVER WITHDRAWN AS QUANTUM'S LAWYER AND IS STILL TRYING TO COLLECT LEGAL FEES**

On September 21, 2018, the self-proclaimed "Deputy General Counsel of K&L Gates,"<sup>7</sup> Mr. Charles Tea, sent a demand for payment of over \$300,000 to Quantum's CEO directly. He had previously sent it to counsel, but not obtaining legal tender he apparently decided going through counsel was an unnecessary impediment. It necessarily follows that this claimed debt remains publically reflected on the books of Quantum, a requirement until it is resolved because Quantum is a public company. The claim, which Quantum must resolve, has a continuing negative effect on Quantum's share value in excess of the number itself.

This suit constitutes final, official, unambiguous notice that K&L Gates is Terminated from Quantum for cause.

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<sup>7</sup> In English, this title appears to mean collection agent.

**V.**  
**CAUSE OF ACTION**

**A. Breach of Fiduciary Duty**

The elements of a breach-of-fiduciary-duty claim are: (1) a fiduciary relationship existed between the plaintiff and defendant; (2) the defendant breached its fiduciary duty to the plaintiff; and (3) the defendant's breach resulted in injury to the plaintiff or benefit to the defendant. *Ashton v. Koons Fuller, P.C.*, No. 05-16-00130-CV, 2017 Tex. App. LEXIS 4293 (App.—Dallas May 10, 2017).

K&L Gates owed Quantum a fiduciary duty.

This duty arose through K&L Gates' status as attorneys for Quantum.

K&L Gates also had a fiduciary duty to Quantum because of its special relationship with Quantum, based upon Quantum's justifiable trust and confidence that its law firm would act in their best interest after having attended confidential board meetings and reviewed highly confidential corporate secrets that K&L Gates soon thereafter arrogated to Quantum's detriment.

**B. Deceptive Trade Practices**

Legal malpractice may rise to the level of unconscionable conduct under the DTPA. *Latham v. Castillo*, 972 S.W.2d 66, 68-69 (Tex. 1998) (attorney who fails to file a case as promised, but affirmatively represents that suit has been filed and is being actively prosecuted, is subject to a charge of unconscionable action under the DTPA). It is hard to imagine more unconscionable conduct than the case at bar.

Quantum is a consumer as defined by the Texas Deceptive Trade Practices Act.

K&L Gates' unconscionable course of action inheres to its representations, including those as described in this petition, that were false, misleading and deceptive. To wit, K&L Gates represented to Quantum that it would work in Quantum's best interest. It is not possible to

reconcile their actions with "Quantum's best interest". That position would be as frivolous as the positions Gates originally took, all of which have now been defeated or voluntarily dismissed by subsequent firms. It is not known when K&L Gates first began its representation of the predatory lenders or their owners or agents. It is conceivable they were secretly negotiating on both sides of the table. Without discovery, the full extent of malfeasance and proximate cause of additional damages cannot be fully determined.

Quantum relied upon its attorneys' representations to its own detriment.

One of the largest law firms in the world, K&L Gates, took advantage of Quantum's relative lack of legal expertise and/or capacity to a grossly unfair degree.

K&L Gates's conduct, as described above, was a producing cause of Quantum's economic damages. As a result of K&L Gates's conduct, Quantum has suffered economic damages within the jurisdictional limits of this Court.

Despite knowing full well of the adversarial situation, K&L Gates adopted, following their dismissal from the litigation, through their agent, "General" Tea, attempted to negotiate directly with the CEO of Quantum on multiple occasions intentionally disregarding corporate counsel, Mr. Morse, and the undersigned trial counsel.

### **C. Legal Malpractice**

To prevail on a legal malpractice claim, a plaintiff must show that (1) the attorney owed the plaintiff a duty, (2) the attorney breached that duty, and (3) the breach proximately caused the plaintiff's actual damages. *Alexander v. Turtur & Assocs., Inc.*, 146 S.W.3d 113, 117 (Tex. 2004).

The negligent actions and intentional fiduciary violations by K&L Gates described infra and supra inexorably led to the lawsuit against Quantum, which is still being litigated.

A Texas court has prevented the issuance of Stock that Gates had championed against Quantum's interest. The Texas Court of Appeals has affirmed the injunction and ordered costs of court against K&L Gates' former clients, the predatory lenders, SBI Investments, LLC, 2014-1 and L2 Capital LLC.

A Florida Court has awarded legal fees in favor of Quantum against one of the predatory lenders and dismissed its claims which were jurisdictionally flawed.

A portion of the case initiated by K&L Gates in Texas is still pending for trial in Kansas. (Although none of their original pleadings remain alive.)

In sum, the grossly negligent and intentional actions of K&L Gates led to Quantum being sued in Texas, Florida and Kansas, and Quantum has incurred significant legal fees and public concerns about this war begun against them by their own law firm. All of the costs due to the Intervention, the original Texas claim and appeal are directly and proximately caused by Gates' dual representation activities and pleadings.

## **VI. JURY DEMAND**

Quantum requests a jury trial and tenders the appropriate fee with this petition.

## **VII. REQUEST FOR DISCLOSURE**

Pursuant to Texas Rules of Civil Procedure 194, Defendant is requested to disclose the information or material described in Rule 194.2.

Defendant is requested to produce the responses to the Request for Disclosure at Plaintiff's Counsel's office.

**VIII.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Quantum respectfully requests it hereby recover the following relief against K&L Gates:

- a. A prohibition against K&L Gates from disseminating confidential attorney/client information regarding Quantum to satisfy shareholders they will not have to compete with insider trading;
- b. Monetary damages of at least One Hundred Thousand Dollars (\$100,000.00) for the defense against the claim. (The substantially greater and more complex damages, not so easily calculated, will need to be determined after discovery and expert review);
- c. The elimination of all K&L Gates' claims to be paid for their so called legal services rendered either for or against them as equitable relief;
- d. In the event that K&L Gates' conduct is determined to be unconscionable, punitive damages of at least Three Hundred Thousand Dollars (\$300,000.00);
- e. In the event that K&L Gates' conduct is determined to be criminal or a violation of insider trading laws, punitive damages of One Hundred Million Dollars (\$100,000,000.00) or whatever sum the jury finds is adequate punishment to prevent this type of conduct in the future when a billion-dollar elitist law firm considers trampling on a client without adequate resources to defend themselves. Predatory lenders prey on financial difficulties. A predatory law firm can prey on the concept of justice itself. Criminal actions do not have the same punitive limitations as civil actions;
- f. Costs of court; and

- g. Any other relief to which Quantum is justly entitled and such other and further relief this Court deems appropriate.

Respectfully submitted,

Minns & Arnett

*s/ Michael Louis Minns*

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