

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

MUNSCH HARDT KOPF & HARR, P.C.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
V.	§	OF HARRIS COUNTY, TEXAS
	§	
	§	
NOXXE OIL AND GAS, LLC,	§	
Defendant.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

1. Plaintiff Munsch Hardt Kopf & Harr, P.C. ("Munsch Hardt" or "Plaintiff") files its Original Petition against Defendant Noxxe Oil and Gas, LLC, and would respectfully show the Court as follows:

**DISCOVERY PLAN**

2. Plaintiff intends discovery to be conducted under Level 2 of the Texas Rules of Civil Procedure.

**PARTIES**

3. Plaintiff Munsch Hardt is a Texas professional corporation with its principal place of business in Dallas, Texas.

4. Defendant Noxxe Oil and Gas, LLC ("Noxxe") is a domestic limited liability company and may be served with citation by delivery of same upon its registered agent, Patricia B. Tomasco, 100 Congress Ave., Suite 1100, Austin, TX 78701.

**VENUE AND JURISDICTION**

5. Venue is proper in Harris County pursuant to Texas Civil Practice and Remedies Code Section 15.002 because Harris County is the county of Defendant's principal office, which is located at 5847 San Felipe St., suite 2200, Houston, TX 77057. In addition, all or a

substantial part of the events or omissions giving rise to Munsch Hardt's claims occurred in Harris County.

6. The Court has jurisdiction over the lawsuit because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

### **FACTS**

7. On or about December 10, 2009, Noxxe solicited and entered into an agreement for legal services to be provided by Munsch Hardt and executed an engagement letter with Munsch Hardt (the "Engagement Letter"). A true and correct copy of the Engagement Letter is attached as Exhibit "A" and incorporated herein by reference for all purposes. Thereafter, from approximately December of 2009 through November of 2010, Munsch Hardt provided legal services to Noxxe. Munsch Hardt kept systematic records of the legal services and sent Noxxe invoices requesting payment. A true and correct copy of Noxxe's account is attached as Exhibit "B-1" to the Affidavit of Debra O'Malley and is incorporated herein by reference for all purposes. Despite being invoiced, Noxxe failed to compensate Munsch Hardt for the services it provided.

8. On May 23, 2011, Munsch Hardt sent Noxxe a demand letter via certified mail return receipt requested and first class mail setting forth the balance on Noxxe's account and requesting payment (the "Demand Letter"). A true and correct copy of the Demand Letter, without enclosures, is attached as Exhibit "C" and is incorporated herein by reference for all purposes. Despite this demand, Noxxe has failed to compensate Munsch Hardt for the legal services it provided.

9. After allowing for all just and lawful offsets, payments, and credits, Noxxe is indebted to Munsch Hardt in the amount of \$72,082.69, not including interest.

### **CAUSES OF ACTION**

10. **Suit on Sworn Account.** Munsch Hardt incorporates by reference the allegations set forth in the paragraphs above as though they were set forth herein. By requesting and accepting the services of Munsch Hardt, Noxxe became bound to pay Munsch

Hardt the designated charges in Noxxe's account, which were reasonable and customary for such services. As evidence of Noxxe's account, Munsch Hardt offers the Affidavit of Debra O'Malley, attached hereto as Exhibit "B", and the invoices attached thereto as Exhibit "B-1" and incorporates them herein by reference for all purposes. The account is a liquidated money demand upon which systematic records have been kept. Moreover, the account arises out of business dealings between the parties and is verified under Rule 185 of the Texas Rules of Civil Procedure. In addition, the account represents a record of the series of transactions Munsch Hardt systematically keeps in the ordinary course of business. After allowing for all just and lawful offsets, payments, and credits, Noxxe is indebted to Munsch Hardt on the account in the amount of \$72,082.69, not including interest.

11. **Breach of Contract.** Munsch Hardt incorporates by reference the allegations set forth in the paragraphs above as though they were set forth herein. The Engagement Letter is a valid, enforceable contract. Munsch Hardt is the proper party to sue for breach of the Engagement Letter. Munsch Hardt fully performed, tendered performance of, or was excused from performing its contractual obligations under the Engagement Letter, and invoiced Noxxe accordingly. However, Noxxe materially breached the contract by not paying Munsch Hardt for the legal services Munsch Hardt provided. As a direct and proximate result of Noxxe's material breach, Munsch Hardt incurred actual damages in excess of the minimum jurisdictional limits of this Court. All conditions precedent to recovery by Munsch Hardt have occurred.

12. **Quantum Meruit.** Munsch Hardt incorporates by reference the allegations set forth in the paragraphs above as though they were set forth herein. In the alternative, Munsch Hardt pleads for recovery under the doctrine of quantum meruit. Munsch Hardt provided Noxxe with valuable services in the amount of \$72,082.69. Noxxe accepted and received a benefit from these services. Moreover, Munsch Hardt provided the services under circumstances that reasonably notified Noxxe that Munsch Hardt expected to be compensated. The reasonable value of the services rendered were in excess of the jurisdictional limits of this Court. In

