

CAUSE NO. _____

Xtreme Power Solutions LLC
Plaintiff,

v.

**Dynapower Corporation and Electronic
Concepts, Inc.,**
Defendants.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

_____**JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Xtreme Power Solutions LLC files its Original Petition, as follows:

I.

Discovery Level

Discovery is to be conducted pursuant to Level III, Texas Rule of Civil Procedure 190.3.

II.

Parties

1. Xtreme Power Solutions LLC ("Xtreme") is a Delaware limited liability corporation with its principal place of business at 111 Congress Avenue, Suite 700, Austin, Texas 78701.

2. Dynapower Corporation ("Dynapower") is a Michigan corporation with its principal place of business at 85 Meadowland Drive, South Burlington, Vermont, 05403. Because Dynapower does not have a registered agent for service of process in Texas, service of citation may be made on the Texas Secretary of State, who is requested to serve Dynapower at its principal place of business.

3. Electronic Concepts, Inc. ("ECI") is a Delaware corporation with its principal place of business at 526 Industrial Way West, Eatontown, New Jersey, 07724. Because ECI

does not have a registered agent for service of process in Texas, service of citation may be made on the Texas Secretary of State, who is requested to serve ECI at its principal place of business.

III.
Jurisdiction and Venue

4. The Court has jurisdiction over this matter because the amount in controversy exceeds the Court's minimum jurisdictional limit and the subject matter is within the jurisdiction of this Court. TEX. GOV'T CODE §24.007-008. The Court has personal jurisdiction over Dynapower and ECI pursuant to TEX. CIV. PRAC. & REM. CODE §17.042.

IV.
Factual Background

5. Xtreme is a leading designer and manufacturer of energy storage and power management systems for power producers, utilities, and commercial end users, among others. In 2011, First Wind O&M, LLC ("First Wind") contracted with Xtreme for the manufacture of ten Dynamic Power Modules ("DPMs") for use in First Wind's wind farm in Kahuku, Hawaii. The DPMs are critical components of First Wind's energy storage system, absorbing excess power or providing supplemental power, depending on the strength of wind gusts supplying the farm.

6. To complete the DPMs for First Wind, Xtreme purchased ten specially-designed inverters from Dynapower that contained capacitors manufactured by ECI. The ten inverters were installed in ten DPMs, which were housed in a building specially constructed by First Wind for the DPMs.

7. On March 1, 2011, the Kahuku wind farm went online. On April 22, 2011, one of the inverters caught fire, destroying one of the DPMs and damaging nearby equipment and fixtures. Additionally, as a result of the fire, soot containing metallic fragments spread throughout the building. Because the metallic fragments were reactive with the DPMs' component batteries, Xtreme was forced to retain a company to completely clean out the soot

from the building. Xtreme incurred millions of dollars in costs relating to repair or replacement of damaged and destroyed equipment and components, costs of materials necessary for repairs, and cleaning/repainting expenses, as well as associated costs of labor, consulting, shipping, and travel. After the fire, Xtreme consulted with Dynapower to determine possible changes to the inverters installed in the DPMs. Xtreme followed Dynapower's suggestions for the remaining inverters.

8. On May 23, 2011, a second inverter caught fire. Because of the safety precautions taken by Xtreme, the second fire was not as destructive as the first, but the fire still destroyed the DPM and caused damage to the building, which required significant additional financial outlays by Xtreme.

9. An investigation of the two fires identified the ECI capacitors contained in Dynapower's inverters to be the source of both incidents. The capacitors supplied by ECI contained manufacturing defects that made them susceptible to combustion under ordinary use at the wind farm.

V.

Dynapower: Breach of Implied Warranties

10. By selling defective inverters, Dynapower breached the implied warranties of merchantability and/or fitness. The inverters were not fit for the ordinary purposes and/or the particular purposes for which they were intended. When placed under usage at the Kahuku wind farm, the inverters failed. Xtreme seeks direct, incidental and consequential damages as a result of Dynapower's breach.

VI.

Dynapower: Negligence

11. Dynapower was negligent in the design and manufacture of the inverters installed in Xtreme's DPMs. Dynapower owed Xtreme a duty to use reasonable care in the design and

manufacture of its inverters, but failed to fulfill its duty. Xtreme seeks damages for Dynapower's negligence.

VII.

ECI: Breach of Implied Warranties

12. By selling defective capacitors, ECI breached the implied warranties of merchantability and/or fitness. The capacitors were not fit for the ordinary purposes and/or the particular purposes for which they were intended. When placed under usage at the Kahuku wind farm, the capacitors failed. Xtreme seeks direct, incidental and consequential damages as a result of ECI's breach.

VIII.

ECI: Negligence

13. ECI was negligent in the design and manufacture of the capacitors installed in the Dynapower inverters incorporated into Xtreme's DPMs. ECI owed Xtreme a duty to use reasonable care in the design and manufacture of its capacitors, but failed to fulfill its duty. Xtreme seeks damages for ECI's negligence.

IX.

ECI: Breach of Contract/Express Warranties

14. Dynapower assigned to Xtreme express warranties by ECI regarding the defective capacitors. Because ECI breached these express warranties by selling defective capacitors, Xtreme seeks damages for ECI's breach.

X.

ECI: Attorneys' Fees

15. In connection with its claim for breach of contract/express warranties, Xtreme has been required to employ the services of the undersigned counsel and is entitled to recover its reasonable attorneys' fees and costs from ECI pursuant to Chapter 38 of the Texas Civil Practice & Remedies Code.

XI.
Jury Demand

16. Xtreme hereby demands a trial by jury of this cause and tenders the appropriate jury fee to the District Clerk contemporaneously herewith.

XII.
Prayer

FOR THESE REASONS, Plaintiff Xtreme Power Solutions LLC prays the Court, on final hearing hereof, enters final judgment in favor of Xtreme for actual damages, attorneys' fees, costs of Court, pre- and post-judgment interest as allowed by law, and for such other and further relief, at law and in equity, as to which Xtreme may show itself justly entitled.

Respectfully submitted,

BRACEWELL & GILLIANI LLP

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