

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

VERLAN FIRE INSURANCE COMPANY as  
subrogee of Diversitech Holdings, Inc., Diversitech  
Intermediate, Inc., and Diversitech Corporation

Plaintiff,

v.

BIO-LAB, INC.;  
KIK INTERNATIONAL LLC; and  
KIK CUSTOM PRODUCTS INC.,

Defendants.

Case No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, Verlan Fire Insurance Company, as subrogee of Diversitech Holdings, Inc., Diversitech Intermediate, Inc., and Diversitech Corporation, by and through its attorneys, as and for its Complaint against Defendants, Bio-Lab, Inc., KIK International LLC, and KIK Custom Products Inc., and based on the personal knowledge of Plaintiff, investigation conducted by counsel, and review of public documents and information, alleges as follows:

**NATURE OF THE ACTION**

1. On September 29, 2024, a fire and explosion erupted at the Defendants' chemical plant in Conyers, Georgia. The fire led to the release of a large plume of toxic gases, vapors, and smoke that contaminated the air causing hazardous and unsafe conditions to nearby residents and businesses. The incident prompted immediate emergency responses from Rockdale County local authorities, who issued shelter-in-place orders and established evacuations zones affecting nearby residents and businesses.

2. The Defendants' negligence, carelessness, and recklessness caused the fire and the release of the toxic and hazardous gases, vapors, and smoke.

3. Plaintiff's subrogors owned and/or operated a manufacturing business within 1-mile of the Defendants' chemical plant and suffered significant property damage and other losses resulting from the fire and resulting toxic smoke, debris, particulate matter, and other harmful substances deposited in, on, and around their business property.

4. Plaintiff is an insurance company. At the time of the toxic chemical fire, Plaintiff insured their subrogors' manufacturing business. After the fire, one or more of Plaintiff's subrogors made an insurance claim for their damages and losses. Plaintiff honored the claim, issued indemnity payments, and became subrogated to their policyholders' right of recovery. Plaintiff's subrogors' insurance claim is ongoing, and Plaintiff may issue future indemnity payments for which Plaintiff may also become subrogated.

5. This subrogation action seeks to recover Plaintiff's indemnity payments, and any future indemnity payments, made due to the chemical fire and toxic gas and smoke release. The Defendants' negligence, recklessness, blatant disregard for safety protocols, and failure to prevent and/or contain the chemical fire caused the damages alleged herein.

### **PARTIES**

6. Plaintiff Verlan Fire Insurance Company (hereinafter "Verlan") is a New Hampshire corporation with its principal place of business located at 440 Lincoln Street, Worcester, Massachusetts.

7. At all relevant times, Verlan sold insurance products and was authorized to issue insurance policies in the State of Georgia.

8. Verlan's subrogor, Diversitech Holdings, Inc. is a corporation organized and existing under the laws of the State of Delaware with a principal office address located at 6650 Sugarloaf Parkway, Suite 100, Duluth, GA 30097.

9. At all relevant times, Diversitech Holdings, Inc., through its subsidiary, Diversitech Corporation, manufactured and sold, among other things, mounting equipment, equipment pads, accessories, part, components, and tools for the heating, ventilating, air conditioning and refrigeration industry.

10. Verlan's subrogor, Diversitech Intermediate, Inc., is a corporation organized and existing under the laws of the State of Delaware with a principal office address located at 6650 Sugarloaf Parkway, Suite 100, Duluth, GA 30097.

11. At all relevant times, Diversitech Intermediate, Inc., through its subsidiary, Diversitech Corporation, manufactured and sold, among other things, mounting equipment, equipment pads, accessories, part, components, and tools for the heating, ventilating, air conditioning and refrigeration industry.

12. Verlan's subrogor, Diversitech Corporation, is a corporation organized and existing under the laws of the State of Georgia with a principal office address located at 3039 Premier Parkway, Suite 600, Duluth, Georgia 30097.

13. At all relevant times, Diversitech Corporation manufactured and sold, among other things, mounting equipment, equipment pads, accessories, part, components, and tools for the heating, ventilating, air conditioning and refrigeration industry.

14. Verlan's subrogors, Diversitech Holdings, Inc., Diversitech Intermediate, Inc., and Diversitech Corporation, shall be hereinafter collectively referred to as "Diversitech."

15. Defendant Bio-Lab, Inc. (hereinafter “Bio-Lab” or “Defendant Bio-Lab”) was and is a Delaware corporation with its principal place of business located at 101 MacIntosh Blvd, Concord, ON, L4K4R5, CAN.

16. At all relevant times, Bio-Lab was registered to do business in the State of Georgia and conducted business in several counties in the State of Georgia, including Gwinnett and Rockdale Counties.

17. At all relevant times, Bio-Lab owned, operated, controlled, and/or managed a chemical plant located at 1700 Covington Highway, Conyers, Georgia 30012 (hereinafter the “Conyers Plant”) where Bio-Lab manufactured, packaged, stored, distributed, and/or sold chemicals for swimming pools and spas.

18. At all relevant times, Bio-Lab manufactured, packaged, distributed, and/or sold chemicals for swimming pools and spas under various product names, including, BioGuard, SpaGuard, Spas Essentials, Natural Chemistry, SeaKlear, Coral Seas, ProGuard, and AquaPill.

19. Bio-Lab may be served through its registered agent for service of process, Corporation Service Company, 251 Little Falls Drive, Wilmington DE 19808-1674 and CT Corporation System, 289 S. Culver Street, Lawrenceville, Georgia 30046-4805.

20. Defendant KIK Custom Products, Inc. (hereinafter “KIK Custom” or “Defendant KIK Custom”) was and is a Delaware corporation with its principal place of business located at 101 MacIntosh Boulevard, Concord, Ontario, L4K 4R5 Canada and 1725 North Brown Road, Lawrenceville, Georgia 30034.

21. KIK Custom uses the registered trade name KIK Consumer Products, Inc.

22. At all relevant times, KIK Custom was and remains one of Norther America’s largest independent manufacturers of consumer product.

23. KIK Custom may be served through its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 North Orange Street, Wilmington Delaware 19801-1120.

24. KIK Custom acquired Bio-Lab in 2013 to expand its pool and spas treatment business.

25. Bio-Lab has consistently held itself out as conducting business affairs as a conduit for KIK Custom in connection with the ownership and operation of the chemical enterprise, including describing itself as the “swimming pool and spa water care division of KIK Consumer Products, based in Lawrenceville, Georgia.”

26. At all relevant times, KIK Custom owned, operated, controlled, managed, funded, maintained and/or was otherwise responsible for, in whole or in part, the Conyers Plant.

27. At all relevant times, KIK Custom exercised complete control and/or a controlling role in Bio-Lab’s operations, to include the Conyers Plant.

28. Bio-Lab and KIK Custom constituted a joint venture in connection with their chemical enterprise insomuch as they agreed to take ownership and operation of the enterprise jointly, including “KIK Biolab – Conyers” for the purpose of sharing associated profits and losses, and each contributed their respective skills, property, or resources in exercising control or a right of control over the Conyers Plant.

29. Defendant KIK International LLC (hereinafter “KIK International” or “Defendant KIK International”) is a Delaware limited liability company with its principal place of business located at 101 MacIntosh Blvd, Concord, ON L4K 4P3, Canada.

30. At all relevant times, KIK International manufactured, packaged, marketed, distributed, and/or sold consumer goods such as household cleaning products and pool and spas products.

31. KIK International may be served through its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 North Orange Street, Wilmington, Delaware 19801-1120.

32. KIK Custom and Kik International are, upon information and belief, either a parent company or other corporate affiliate of Bio-Lab.

33. Alternatively, upon information and belief, Bio-Lab is a wholly owned by KIK Custom and/or KIK International.

34. At all relevant times, KIK Custom and/or KIK International maintained and exercised the right to control Bio-Lab's work, including, but not limited to, Bio-Lab's development and implementation of safety policies and procedures, Bio-Lab's handling, transport, and storage of chemicals, Bio-Lab's emergency response policies and procedures, and Bio-Lab's maintenance of its safety infrastructure.

35. At all relevant times, Bio-Lab, KIK Custom, and KIK International operated out of the same corporate headquarters.

36. At relevant times, Bio-Lab, KIK Custom, and KIK International had one or more common officers and directors. On information and belief, currently one individual simultaneously serves as the CEO of Bio-Lab, KIK Custom, and KIK International. On information, a different individual currently serves simultaneously as Executive Vice President, General Counsel, and Secretary for Bio-Lab, KIK Custom, and KIK International. On information

and belief, a different individual currently serves simultaneously as Chief Financial Officer and Treasurer of Bio-Lab, KIK Custom, and KIK International.

37. At all relevant times, Bio-Lab, KIK Custom, and KIK International acted individually, as well as by and through one another and their respective officers, directors, executives, employees, members, managers, contractors, subcontractors, representatives, and/or agents.

38. Bio-Lab, KIK Custom, and KIK International are jointly and severally liable for the conduct alleged herein because they acted in concert and under alter ego and piecing the corporate veil theories, including based on the domination and/or control by KIK Custom and KIK International over Bio-Lab, and the interlocking, and overlapping officers and directors among the three entities.

39. Defendants Bio-Lab, KIK Custom, and KIK International shall collectively be referred to hereinafter as “Defendants”.

#### **JURISDICTION AND VENUE**

40. This Court has subject matter jurisdiction over the claims asserted in the action under 28 U.S.C § 1332(a) because there is complete diversity between parties and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

41. Verlan is a citizen of the State of New Hampshire. Defendants are also citizens of foreign states. Bio-Lab is a citizen of Delaware and Ontario, Canada; KIK Custom is a citizen of Delaware and Ontario, Canada; and KIK International is a citizen of Delaware and Ontario, Canada.

42. This Court has jurisdiction over Defendants because they each operate, manage and/or control their chemical enterprise in this District.

43. This Court has personal jurisdiction over Defendants because they regularly engage in business within the State of Georgia, including manufacturing, distributing, selling, storing, and transporting hazardous materials in Georgia, and these causes of action arise, in part, from these activities, and the predicate facts giving rise to Verlan's Complaint occurred in Rockdale County, Georgia.

44. Through their regular business operations in this District, Defendants intentionally and regularly availed themselves of the markets and jurisdiction of this District, conferring this Court with personal jurisdiction over each Defendant.

45. Venue is proper in this District under 28 U.S.C §1391 because a substantial part of the events giving rise to Verlan's claims occurred in the Northern District of Georgia.

#### **STATEMENT OF FACTS**

46. Verlan incorporates by reference each and every allegation contained in the paragraphs above as if the same were fully set forth at length herein.

47. Diversitech, manufactures, among other things, mounting equipment, equipment pads, accessories, part, components, and tools for the heating, ventilating, air conditioning and refrigeration industry.

48. At all relevant times, Diversitech, possessed and/or otherwise held a leasehold interest in the commercial property located at 1665 Dogwood Drive Conyers, Georgia 30013 (hereinafter the "Diversitech Property").

49. At all relevant times, Diversitech conducted its manufacturing business at the Diversitech Property.

50. At all relevant times, Diversitech owned the improvements, betterments, inventory, goods, stock, merchandise, machinery, equipment, and/or business personal property contained within the Diversitech Property.



51. At all relevant times, Diversitech possessed and/or otherwise held an insurable interest in the Diversitech Property and the improvements, betterments, inventory, goods, stock, merchandise, machinery, equipment, and/or business personal property contained within.

52. At all relevant times, Verlan issued an insurance policy to Diversitech under Policy No. FQX-J651098-00 (hereinafter “the Verlan Policy”), providing insurance coverage for, among other things, Diversitech’s improvements, betterments, inventory, goods, stock, merchandise, machinery, equipment, and business personal property located at the Diversitech Property. The Verlan Policy also provided coverage for loss of business income.

**A. The Bio-Lab Conyers Plant**

53. The Bio-Lab Conyers Plant is located at 1700 Covington Highway, Conyers, Georgia. The plant opened in 1973 and consists of several production/manufacturing facilities and storage warehouses on-site. The Conyers Plant has changed ownership over the years.

54. At all relevant times, Defendants owned, operated, managed, funded, maintained, possessed and/or controlled the Conyers Plant.

55. At all relevant times, Defendants manufactured, blended, processed, received, stored, handled, packaged, distributed, and/or sold, among other things, swimming pool and spas chemicals for consumer product use at the Conyers Plant.

56. The chemicals stored in the Conyers Plant were primarily chlorinating and sanitizing agents such as Trichloroisocyanuric Acid (TCCA).

57. TCCA, and other chemical oxidizer products handled and stored at the Conyers Plant, are hazardous materials that are highly reactive when exposed to certain conditions, including water, and can release toxic and corrosive products such as chlorine gas and hydrogen chloride upon decomposition.

58. TCCA is used as a chlorinating agent to sanitize pool and spas water to kill bacteria, algae, and other microorganisms. When handled properly TCAA is added to appropriate quantities and bodies of water where, by chemical reaction, it dissolves into a sanitizing agent.

59. On information and belief, TCCA is a white solid substance which is received, handled, manufactured, blended, packaged, and stored at the Conyers Plant and is available as a powder, compacted tablets, and granules.

60. When TCAA comes into contact with water, it causes an exothermic reaction that gives off a significant amount of heat and decomposes the TCAA, on information and belief, into chlorine gas and nitrogen trichloride. In large bodies of water like a swimming pool, the heat is dissipated and the water dissolves both the chlorine and nitrogen trichloride. When, however, the TCCA encounters small amounts of water, a combustible runaway exothermic chemical reaction can occur instead. This runaway reaction can release toxic and combustible gases into the air. The heat can initiate a fire and cause explosions.

61. A water-reactive material is commonly defined as “[a] material that explodes, violently reacts, produces flammable, toxic, or other hazardous gases; or evolves enough heat to cause self-ignition or ignition of nearby combustibles upon exposure to water or moisture.” NFPA 400, Hazardous Materials Code, Section 3.3.67.11.

62. Defendants stored large quantities of TCCA and other reactive, combustible, and/or hazardous chemicals at the Conyers Plant, such as calcium hypochlorite and dichloroisocyanuric acid, and knew or should have known that TCCA and the other chemicals they stored were at risk of producing hazardous combustion products, including toxic chlorine gas, when improperly stored and/or handled.

63. Defendants also handled and stored myriad other chemicals at the Conyers Plant that posed serious risk and danger to human health and property.

**B. Plant 12 at the Conyers Plant**

64. “Plant 12” was a designated warehouse building at the Conyers Plant. It was a single-story, 24-foot-tall building that covered an area of 275,125 square feet, which is larger than five football fields combined.

65. Plant 12 was constructed in 2019. It was equipped with rack storage, floor storage, and a multi-zone sprinkler system. The warehouse also contained a firewall, which divided the warehouse into two storage area and was intended to prevent the spread of fire. The area behind the fire wall was referred to by Defendants’ personnel as the “bunker.” Dangerous reactive chemicals were to be stored in the “bunker” area of the warehouse.

66. Plant 12 contained TCCA and Sodium Dichloroisocyanurate (“DCCA”) stored in super sacks, which were large individual flexible bulk bags. Each full super sack contained about 2,750 pounds of material. Both TCCA and DCCA are oxidizers and can release toxic and corrosive products such as chlorine gas and hydrogen chloride upon decomposition. Plant 12 also contained other hazardous oxidizers such as Bromochloro-5,5-dimethylimidazolidine-2,4dione (“BCDMH”).

67. Defendants first began storing TCCA within the bunker area of the warehouse on November 5, 2019, though final construction activities inside the warehouse and on the exterior continued through late December 2019.

68. By September 2024, Defendants stored approximately 13.9 million pounds of reactive oxidizers in Plant 12 despite Defendants previously informing Rockdale County that they

anticipated an average inventory of 6.2 million pounds of raw materials, including oxidizers, would be stored in the warehouse.

**C. The September 29, 2024 Fire and Toxic Chemical Release at the Conyers Plant**

69. On September 29, 2024, Plant 12 contained approximately 5,000 super sacks, or about 13.9 million pounds, of dangerous reactive chemicals/oxidizers, with approximately 2.9 million pounds of these dangerous chemical products stored outside of the warehouse's bunker area.

70. On September 29, 2024, shortly after 5 a.m., an employee of the Conyers Plant reported hearing a popping sound in Plant 12 as she stepped out of the break area. Soon thereafter the employee concluded that chemical product was wet and reacting. No flames were observed at this time.

71. After unsuccessful attempts to isolate the reacting chemical product, a Bio-Lab employee called 9-1-1 at approximately 5:10 a.m. due to the large toxic vapor plumes and no visibility inside the building.

72. Rockdale County Fire Rescue ("RCFR") and Bio-Lab personnel arrived at the warehouse at approximately 5:30 a.m.

73. By 5:32 a.m. four of the seven sprinkler zones in the building were in active waterflow status.

74. At approximately 6:00 a.m., local emergency services began going door-to-door in Conyers, issuing shelter-in-place and evacuations orders directly to residents within the neighborhoods adjacent to the plant.

75. At approximately 6:30 a.m., flames were visible through the roof above where Bio-Lab employees had observed the chemical product reacting and off-gassing. Also, at this time

small flames were first observed inside the building near the area where two employees had first observed the chemical reaction and off-gassing.

76. At approximately 7:40 a.m., the first emergency shelter-in-place alert was broadcast to the surrounding community through the local Wireless Emergency Alert system via mobile device alert texts.

77. The fire was extinguished by RCFR at approximately 8:10 a.m.

78. After the fire was extinguished and the building somewhat ventilated, Bio-Lab personnel entered the building with forklifts to remove super sacks of hazardous chemical products.

79. Around noon, a second, larger fire erupted producing a large plume of thick black smoke, followed by multicolored plumes of smoke.

80. Due to the presence of the TCCA and DCCA in the building, RCFR personnel reported observing chemical reactions in the form of “small explosions” with product physically shooting out from the building, as well as hearing “popping” sounds similar to sounds heard at a gun range.

81. The fire was not contained again until approximately 4 p.m., but thick black smoke was still visible in the air around the Conyers Plant. Smoldering and off-gassing continued to produce a toxic chemical plume.

82. By about 8:00 p.m., the firefighting efforts transitioned to extinguish smaller fire hotspots with the building footprint. By this time, the fire destroyed the warehouse and its roof and most of the walls had collapsed.

83. Portions of the Plant 12 building collapsed during the fire and had to be removed during emergency operations. Ultimately, the building was destroyed.

84. The fire created a toxic chemical plume and exposed nearby residents and properties to massive amounts of chlorine gas and other toxic and corrosive chemicals including bromine vapor, hydrochloric acid, hydrogen cyanide, hydrogen bromide, and phosgene gas.

85. The fire caused authorities in Rockdale County to issue an evacuation order to nearby residents of the Conyers Plant affecting approximately 17,000 people and closed a nearby stretch of Interstate 20 in both directions. Later in the evening, authorities issued a shelter-in-place order for the entire county.

86. All businesses in Rockdale County were asked to close operations while the shelter-in-place order was in effect. The shelter-in-place order remained in effect for the better part of five days.

87. As a result of the incident local officials reported about 17,000 people were evacuated. Local media reported 90,000 people in the Atlanta metropolitan area were advised to shelter in place for a period of time due to the toxic smoke from the fires. Nightly shelter-in-place warning to the surrounding community within a 2-mile radius continued for nearly three weeks after the incident.

88. The Georgia Environmental Protection Division (“EPD”) and the Environmental Protection Agency (“EPA”) responded to perform air quality surveys, monitoring and/or assessment. The Federal Emergency Management Agency (“FEMA”) was called to respond to assist in emergency management as well.

89. The U.S. Chemical Safety and Hazard Investigation Board (“CSB”) undertook an investigation regarding the September 29, 2024 incident and Verlan believes the CSB’s investigation remains ongoing. The CSB did release an “Investigation Update” in November 2024 and another in May 2025.

90. On information and belief, the U.S. Occupational Safety and Health Administration (“OSHA”) also performed an investigation and on March 28, 2025 issued, on information and belief, six citations and monetary penalties to Bio-Lab for workplace safety violations, including the improper storage of hazardous chemicals.

91. The initial source of water that contacted the reactive chemicals and initiated off-gassing the morning of September 29, 2024 is unclear. Prior to the incident, there had been reported corrosion and failures of the Plant 12’s sprinkler system. There were also reported roof leaks. The CSB is still investigating the most likely water source that initiated the chemical reaction. However, after the fire developed the building’s sprinkler system activated which caused water to mix with water-reactive chemicals leading to the second, larger fire that produced the large plume of thick black smoke, followed by multicolored plumes of smoke.

**D. Previous Fires at the Bio-Med Conyers Plant and Lake Charles, LA Plant**

92. The Conyers Plant has a history of fires and toxic chemical releases.

93. In 2004, a warehouse at the Conyers Plant caught fire injuring numerous people.

94. The 2004 fire produced a toxic chlorine plume affecting residents within 50 miles of the Conyers Plant and authorities closed Interstate 20. Residents within a certain radius of the Conyers Plant were evacuated. The fire was caused by an explosion at the Conyers Plant fueled by a substantial quantity of dry chlorine pellets, which released massive amounts of chlorine and hydrochloric acid in the air.

95. In 2016, a fire ignited in a storage shed at the Conyers Plant. The fire was only noticed and reported because a nearby resident smelled smoke and chemicals and called the authorities. A Georgia Environmental Protection Agency division complaint reports the that the

chemical decomposition of TCCA fueled by reactions from chlorine pellets caused fumes to be released. Residents within a certain radius of the Conyers Plant were evacuated.

96. On September 14, 2020, a TCCA reaction and subsequent chemical fire and toxic chemical plume at the Conyers Plant. The fire ignited when water reacted with TCCA and a thermal decomposition event occurred. As a result of this fire, sections of the nearby interstate were shut down and surrounding businesses were evacuated.

97. Four days later, on September 18, 2020, a trailer containing TCAA caught fire at the Conyers plant, further releasing toxic materials and the surrounding communities.

98. Defendants' reckless and negligent practices are not limited to the Conyers Plant. On August 27, 2020, in Westlake, Louisiana, rainwater from Hurricane Laura contacted TCCA stored at the Lake Charles Bio-Lab facility and caused a decomposition reaction and chemical fire. The fire caused a plume of toxic chemicals to spread through surrounding areas.

99. The CSB also investigated the Lake Charles Bio-Lab facility fire and published an April 24, 2023 report identifying several safety issues that contributed to the incident, including but not limited to, Bio-Lab's significantly delayed response responding to the decomposition and fire, Bio-Lab's failure to adequately maintain its fire protection system, Bio-Lab's failure to conform to the NFPA 101 Life Safety Code for high hazard industrial occupancy, Bio-Lab's failure to conform to NFPA Hazardous Materials Code regarding its fire protection system, Bio-Lab's failure to prepare for an extreme weather event, and Bio-Lab having a deficient Process Hazard Analysis action item management system.

**E. Damage to the Diversitech Property and the Insurance Claim**

100. The Diversitech Property was located less than 1-mile away from the Conyers Plant.



101. During and after the September 29, 2024 incident at the Conyers Plant, the Diversitech Property was subject to evacuation orders.

102. The September 29, 2024 incident at the Conyers Plant caused toxic and harmful chemical substances, smoke, soot, ash, particulates, debris, dust, and other pollutants to be deposited in, on and around the Diversitech Property.

103. As a direct and proximate result of the September 29, 2024 incident at the Conyers Plant, Diversitech sustained substantial damage to their improvements, betterments, fixtures, inventory, goods, stock, merchandise, and/or business personal property, and incurred other incidental, consequential and economic damages and losses.

104. After the September 29, 2024 incident, Diversitech made an insurance claim to Verlan seeking benefits under the Verlan Policy for their resulting damages and losses.

105. Verlan honored the claim and thus far has issued in excess of Twenty Million Three Hundred Thousand Dollars (\$20,300,000.00) in indemnity payments to Diversitech for their damages and losses.

106. Diversitech's insurance claim remains open. Verlan is still reviewing and adjusting Diversitech's damages and may issue additional indemnity payments in the future.

107. As a result of the aforesaid indemnity payments, and any future indemnity payments issued, and pursuant to the terms of the Verlan Policy, common law principles of equitable subrogation, and/or operation of law, Verlan is legally, contractually, and/or equitably subrogated to the rights, claims, remedies, and causes of action possessed by its subrogors resulting and/or arising from the September 29, 2024 incident at the Conyers Plant.

108. Verlan, in its capacity as subrogee of Diversitech, now seeks to recover its indemnity payments, and all future indemnity payments caused to be issued, from Defendants.

109. Verlan's subrogors also incurred a \$100,000.00 policy deductible under the Verlan Policy. Verlan, on behalf of its subrogors, also seeks recovery of their subrogors' policy deductible.

110. Defendants are jointly and severally liable for the damages alleged herein.

**F. Defendants' Failures Causing the September 29, 2024 Conyers Plant Incident**

111. The 2024 incident at the Conyers Plant resulted from Defendants' negligence, recklessness, and disregard for safety.

112. Defendants did not have an adequate fire protection system at the Conyers Plant to extinguish fires quickly without causing dangerous chemical reactions with water-reactive chemicals.

113. Defendants did not have an adequate emergency response plan at the Conyers Plant to guide their response to the decomposition event.

114. Defendants' failure to possess and utilize an effective fire protection system or emergency response plan at the Conyers Plant exacerbated the harm caused by the decomposition event and fire, allowing for a runaway reaction, fire, explosion, and delayed emergency response.

115. Defendants failed to prevent the chemical fire and resulting toxic smoke and dust plume.

116. Defendants failed to discover the hazards that resulted in the chemical fire and resulting toxic smoke and dust plume, where such hazards could have been discovered by the exercise of ordinary care.

117. Defendants failed to have proper safeguards in place for the storage of vast quantities of reactive and hazardous chemicals.

118. Defendants failed to act with reasonable or ordinary care to take sufficient precautions at the Conyers Plant which would have prevented or mitigated the chemical fire and toxic dust plume.

119. Defendants failed to act with reasonable or ordinary care to contain the discharge of toxic chemicals, smoke, and hazardous byproducts after the fire occurred.

120. Defendants failed to act with reasonable or ordinary care in operating the Conyers Plant by storing more than double the amount of reactive chemicals in Plant 12 reported to Rockland County for permit application purposes.

121. Defendants failed to act with reasonable or ordinary care in storing more 2.9 million pounds of dangerous reactive chemicals/oxidizers outside of the fire wall intended to prevent the spread of fire.

122. Defendants failed to act with reasonable or ordinary care to properly manage the storage of hazardous chemicals.

123. Defendants failed to act with reasonable or ordinary care by failing to accurately report the quantity of reactive chemicals stored in Plant 12.

124. Defendants failed to act with reasonable or ordinary care by failing to have adequate risk management plans in place to prevent and mitigate chemical accidents.

125. Defendants failed to act with reasonable or ordinary care failing to adhere to fire safety standards for the storage of hazardous chemicals.

126. Defendants' operation of the Conyers Plant failed to adequately conform to NFPA 400, Hazardous Material Code for the safe handling and storage of hazardous materials or NFPA 101, Life Safety Code for high hazard industrial occupancies and fire safety.

127. At all relevant times it was foreseeable to Defendants that their failures would injure, damage and/or harm local businesses, such as Diversitech.

128. At all relevant times, Defendants knew of the amount of dangerous and toxic chemicals at the Conyers Plant and failed to take adequate precautions to ensure these chemicals were handled and stored safely and to prevent dangerous chemical reactions.

129. At all relevant times, the risk of a chemical fire caused by and/or involving its chemicals and the release of a toxic chemical plume was reasonably foreseeable to Defendants.

130. At all relevant times, it was reasonably foreseeable to Defendants that the risk of a chemical fire and the release of a toxic chemical plume could impact nearby properties and present a hazard to the residents and business owners located near the Conyers Plant.

131. At all relevant times, Defendants failed to act with reasonable care and acted with utter indifference and recklessness.

**COUNT I – NEGLIGENCE**  
**(Against All Defendants)**

132. Verlan incorporates by reference each and every allegation contained in the paragraphs above as if the same were fully set forth at length herein.

133. At all times relevant hereto, Defendants acted by and through their respective owners, managers, members, principals, officers, directors, representatives, employees, duly authorized agents and/or affiliates, who, at all times relevant hereto, acted within the scope of their respective employment, agency and/or authority.

134. As manufacturers, suppliers, and/or distributors of swimming pool and spa water chemicals, the Defendants have superior knowledge of these chemicals and their dangers.

135. Defendants knew or should have known of the risk of fire and chemical reaction created by the improper handling and storage of TCCA and other hazardous, reactive, and combustible chemicals stored at the Conyers Plant.

136. Defendants knew or should have known that a fire at the Conyers Plant would result in the release of toxic smoke, gases, particulate matter, soot, and debris into the surrounding neighborhood and communities.

137. Defendants owed Diversitech a duty of reasonable care to manage and operate the Conyers Plant in a manner that would not cause Diversitech injury or harm.

138. Defendants owed Diversitech a duty of reasonable care to safely handle and store volatile chemicals at the Conyers Plant in a manner that would not cause Diversitech harm or damage.

139. Defendants owed Diversitech a duty of reasonable care to prevent the release of toxic chemicals, smoke, debris, particulate matter and/or other harmful substances from the Conyers Plant.

140. Defendants failed to exercise reasonable care and breached the duties owed to Diversitech which caused property damage, business interruption, lost profits, and other damages and losses.

141. Specifically, Defendants breached their duties by:

- a. Failing to store water-reactive chemicals in a manner that prevented contact with water;
- b. Carelessly allowing water to come into contact with water-reactive chemicals;
- c. Inadequately staffing and implementing a fire watch team capable of identifying product decomposition and fire hazards;

- d. Failing to establish and enforce policies and procedures to prevent fires, explosions, and uncontrolled chemical reactions;
- e. Lacking proper supervisory protocols for the handling and storage of hazardous materials;
- f. Carelessly storing hazardous chemicals in areas unprotected by firewalls;
- g. Operating without a fire protection system sufficient for the facility's operations and materials;
- h. Violating industry safety standards for handling chlorinated pool chemicals, including the American Chemistry Council's 2001 guidelines;
- i. Failing to comply with NFPA 400 regarding the safe storage and handling of hazardous materials;
- j. Failing to comply with NFPA 101 Life Safety Code requirements for sprinkler systems in high-hazard industrial occupancies;
- k. Violating Georgia Fire Code provisions, including O.C.G.A. §§ 25-2-12 and 25-2-16;
- l. Failing to take sufficient precautions to control the emissions of toxic and harmful chemicals, smoke, soot, debris, particulate matter, and other pollutants from the Diversitech Property;
- m. Failing to take sufficient precautions to prevent a fire, including but not limited to, failing to ensure proper maintenance, upkeep, adequacy and operation of the sprinkler system;
- n. Lacking proper procedures and training for responding to fires and hazardous releases;
- o. Failing to properly train personnel and implement procedures for a chemical reaction response;
- p. Failing to take adequate precautions to prevent, contain, and extinguish fires;
- q. Neglecting to create and/or implement corporate policies to prevent ignition, explosion, and runaway reactions if they occurred;
- r. Failing to prevent dangerous chemical reactions between water and water-reactive chemicals.

142. In addition, Defendants' negligence may be inferred from the nature of the September 29, 2024 Conyers Plant fire and toxic chemical plume. This type of fire, explosion, and toxic chemical plume does not occur without Defendants' negligence. Defendants and their agents maintained exclusive control over the Conyers Plant and all materials therein that caused the fire and toxic chemical plume. Diversitech did not contribute in any way to the cause of the fire and toxic chemical plume. Defendants are therefore liable under the doctrine of *res ipsa loquitor*.

143. The negligent acts and/or omissions of Defendants, as set forth above, were the actual, direct, and proximate cause of the fire and toxic chemical and smoke plume.

144. The negligent acts and/or omissions of Defendants, as set forth above, was the actual, direct, and proximate cause of the property damages, business interruption, lost profits and/or other incidental and consequential damages and losses sustained by Verlan's subrogor.

145. As a direct and proximate result of Defendants' negligence, Verlan's subrogors suffered extensive property damage, along with significant incidental, consequential, and economic losses in excess of \$20,300,000.00, for which Verlan, pursuant to the Verlan Policy, made indemnity payments to, or on behalf of, its subrogors and seeks recovery of its indemnity payments, and any future indemnity payments that may be issued, from Defendants.

146. Verlan also seeks recovery of its subrogors' \$100,000.00 policy deductible.

WHEREFORE, Plaintiff Verlan Fire Insurance Company, as subrogee of Diversitech Holdings, Inc., Diversitech Intermediate, Inc., and Diversitech, Inc., hereby demands that judgment be entered in its favor against Defendant Bio-Lab, Inc., Defendant KIK International LLC, and Defendant KIK Custom Products Inc. in an amount in excess of \$20,300,000.00, plus interest, costs, attorneys' fees, and such other and further relief as this Court deems appropriate.

**COUNT II– ULTRA HAZARDOUS ACTIVITY/ STRICT LIABILITY**  
**(Against All Defendants)**

147. Verlan incorporates by reference each and every allegation contained in the paragraphs above as if the same were fully set forth at length herein.

148. Defendants are engaged in an ultrahazardous activity in the manufacture, processing, and storage of chlorine and other water reactive, flammable and/or hazardous chemicals.

149. The manufacture, processing, and storage of chlorine and other water reactive, flammable and/or hazardous chemicals is an abnormally dangerous and/or ultrahazardous activity as set forth in Restatement (Second) of Torts §§ 519 and 520.

150. The manufacture, processing, handling, storage, and distribution of hazardous water reactive chemicals is an abnormally dangerous activity and cannot be made safe by the exercise of the utmost care.

151. Defendants had exclusive custody of and complete control over the manufacturing, processing, handling, and storage of the ultrahazardous chemicals.

152. Defendants' manufacture, processing, and storage of these highly toxic, reactive, and combustible chemicals was the direct and proximate cause of the chemical fire and toxic plume.

153. Defendants are strictly liable for all damages which may occur or arise out of the manufacture, processing, handling, and storage regardless of their standard of care.

154. The ultrahazardous nature of Defendants' conduct is evidenced in the history of repeated chemical fires at the Conyers Plant, and other Bio-Lab facilities around the country, caused when water-reactive chemical came into contact with water.



155. The harm sustained by Diversitech was the kind of harm that would be reasonably anticipated based on the normal risks created by manufacturing, processing, and storing hazardous chemicals close to nearby communities and businesses, such as Diversitech.

156. Defendants manufacture, processing, handling, and storage of ultrahazardous materials was the actual, direct, and proximate cause of the property damages and other incidental and consequential damages, losses, and expenses sustained by Verlan's subrogors.

157. Defendants are strictly liable for the damages suffered due to the manufacturing, processing, handling, and storage of the hazardous chemicals pursuant to the provisions of the Restatement (Second) of Torts §§ 519 and 520.

158. Defendants' conduct, for which they are strictly liable, was the actual, direct, and proximate cause of the property damages, business interruption, lost profits and/or other incidental and consequential damages and losses sustained by Verlan's subrogors.

159. As a direct and proximate result of Defendants' ultrahazardous activities resulting in the September 29, 2024 fire and toxic chemical plume, Verlan's subrogors suffered extensive property damage, along with significant incidental, consequential, and economic losses in excess of \$20,300,000.00, for which Verlan, pursuant to the Verlan Policy, made indemnity payments to, or on behalf of, its subrogors and seeks recovery of its indemnity payments, and any future indemnity payments that may be issued, from Defendants.

160. Verlan also seeks recovery of its subrogor's \$100,000.00 insurance deductible.

WHEREFORE, Plaintiff Verlan Fire Insurance Company, as subrogee of Diversitech Holdings, Inc., Diversitech Intermediate, Inc., and Diversitech, Inc., hereby demands that judgment be entered in its favor against Defendant Bio-Lab, Inc., Defendant KIK International

LLC, and Defendant KIK Custom Products Inc. in an amount in excess of \$20,300,000.00, plus interest, costs, attorneys' fees, and such other and further relief as this Court deems appropriate.

**COUNT III – PUBLIC NUISANCE**  
**(Against All Defendants)**

161. Verlan incorporates by reference each and every allegation contained in the paragraphs above as if the same were fully set forth at length herein.

162. Defendants knew or should have known of the risk that a fire at the Conyers Plant.

163. Defendants knew or should have known of the risk that a fire at the Conyers Plant would result in the release of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and other substances into the surrounding neighborhood and communities.

164. Defendants knew or should have known of the risk of fire and chemical reaction created by the improper handling and storage of hazardous chemicals at the Conyers Plant.

165. Defendants owed the residents and businesses of surrounding neighborhoods and communities in Rockland County a duty to operate the Conyers Plant in a manner that would not cause damage, harm, and/or inconvenience.

166. Defendants created a public nuisance by causing the fire and the release of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and other substances into the surrounding neighborhoods and communities. The incident required thousands of people to evacuate their homes and businesses and tens of thousands to shelter-in-place.

167. In allowing toxic and harmful chemicals, smoke, debris, soot, particulate matter, and/or other substances to escape, release, and discharge into surrounding neighborhoods and communities, Defendants significantly and unreasonably interfered with public health, safety, comfort and convenience.

168. Residents, property owners, and businesses in surrounding neighborhoods and communities who came into contact with the toxic cloud of chemicals, debris, soot, contaminants, and particulate matter suffered personal harm and injury and property damage.

169. The discharge and release of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and other substances onto and in the Diversitech Property substantially and recklessly interfered with the lawful rights of Diversitech to use and enjoy their property.

170. The harm and damage caused by Defendants' conduct and actions are not merely trivial, speculative or limited to those with particular sensitivities; rather, Defendants' actions significantly impacted ordinary individuals and businesses, such as Diversitech.

171. Defendants' reckless and careless acts and/or omissions, and the discharge of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and other substances from the Conyers Plant, constitute a public nuisance pursuant to O.C.G.A. § 41-1-1, § 41-1-2, and § 41-1-3.

172. The nuisance caused substantial and unreasonable interference with Diversitech's rights and ability to enjoy and use the Diversitech Property, and interrupted its business.

173. The specific damages suffered by Diversitech include, but are not limited to, property damage, business interruption, and economic losses and are special damages that create a private right of action.

174. Defendants failed to remove the toxic chemicals and debris from the Diversitech Property.

175. Defendants' reckless and careless conduct, as set forth above, constitutes a public nuisance and was the actual, direct, and proximate cause of the property damages, business

interruption, lost profits and/or other incidental and consequential damages and losses sustained by Verlan's subrogors.

176. As a direct and proximate result of the public nuisance caused by Defendants, Verlan's subrogors suffered extensive property damage, along with significant incidental, consequential, and economic losses in excess of \$20,300,000.00, for which Verlan, pursuant to the Verlan Policy, made indemnity payments to, or on behalf of, its subrogors and seeks recovery of its indemnity payments, and any future indemnity payments that may be issued, from Defendants.

177. Verlan also seeks recovery of its subrogor's \$100,000.00 policy deductible.

WHEREFORE, Plaintiff Verlan Fire Insurance Company, as subrogee of Diversitech Holdings Inc. and Diversitech Inc., hereby demands that judgment be entered in its favor against Defendant Bio-Lab., Defendant KIK International LLC and Defendant KIK Custom Products Inc. in an amount in excess of \$12,500,000.00, plus interest, costs, attorneys' fees, and such other and further relief as this Court deems appropriate.

**COUNT IV – PRIVATE NUISANCE**  
**(Against All Defendants)**

178. Verlan incorporates by reference each and every allegation contained in the paragraphs above as if the same were fully set forth at length herein.

179. Defendants knew or should have known of the risk that at fire at the Conyers Plant.

180. Defendants knew or should have known of the risk that fire at the Conyers Plant would result in the release of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and other substances into the surrounding neighborhood and communities.

181. Defendants knew or should have known of the risk of fire and chemical reaction created by the improper handling and storage of hazardous chemicals at the Conyers Plant.

182. Defendants owed the residents and businesses of surrounding neighborhoods and communities in Rockland County a duty to operate the Conyers Plant in a manner that would not cause damage, harm, and/or inconvenience.

183. Defendant created a private nuisance by causing the fire and the release of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and other substances into the surrounding neighborhoods and communities.

184. This release of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and/or other substances into the air severely impacted Diversitech causing significant harm and interference with their property interests and economic pursuits.

185. The release of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and/or other substances into the air deprived Diversitech of its ability to use the Diversitech Property and operate their business.

186. The release of toxic and harmful chemicals, smoke, debris, soot, particulate matter, and/or other substances into the air constitutes a private nuisance constitute a private nuisance pursuant to O.C.G.A. § 41-1-1, § 41-1-2, and § 41-1-4.

187. Defendants reckless and careless conduct, as set forth above, constitutes a private nuisance and was the actual, direct, and proximate cause of the property damages, business interruption, lost profits and/or other incidental and consequential damages and losses sustained by Verlan's subrogors.

188. As a direct and proximate result of the private nuisance caused by Defendants, Verlan's subrogors suffered extensive property damage, along with significant incidental, consequential, and economic losses in excess of \$20,300,000.00, for which Verlan, pursuant to the

Verlan Policy, made indemnity payments to, or on behalf of, its subrogors and seeks recovery of its indemnity payments, and any future indemnity payments that may be issued, from Defendants.

189. Verlan also seeks recovery of its subrogor's \$100,000.00 policy deductible.

WHEREFORE, Plaintiff Verlan Fire Insurance Company, as subrogee of Diversitech Holdings, Inc., Diversitech Intermediate, Inc., and Diversitech, Inc., hereby demands that judgment be entered in its favor against Defendant Bio-Lab, Inc., Defendant KIK International LLC and Defendant KIK Custom Products, Inc. in an amount in excess of \$20,300,000.00, plus interest, costs, attorneys' fees, and such other and further relief as this Court deems appropriate.

**COUNT V – TRESPASS**  
**(Against All Defendants)**

190. Verlan incorporates by reference each and every allegation contained in the paragraphs above as if the same were fully set forth at length herein.

191. Defendants' negligent and reckless conduct caused the uncontrolled discharge and release of toxic chemicals and debris into the surrounding air and community.

192. Diversitech owned and operated a manufacturing business neighboring the Conyers Plant.

193. Diversitech had legitimate possessory rights in property affected by the Conyers Plant fire and toxic chemical plume.

194. Defendants' discharge and release of toxic chemicals, debris, soot, particulates, and smoke invaded the Diversitech Property.

195. Diversitech did not consent to the entry or invasion of such toxic chemicals, debris, soot, particulates, and smoke onto and inside the Diversitech Property.

196. The invasion and presence of toxic chemicals, debris, soot, particulates, and smoke onto and in the Diversitech Property was without permission or authority from Diversitech or anyone who could grant such permission or authority.

197. For several days after the Conyers Plant incident, Diversitech was unable to access the Diversitech Property.

198. Once Diversitech regained access to the Diversitech Property they discovered that their equipment, machinery, and raw materials and stock, among other things, was damaged from chlorine.

199. This intrusion and interference with Diversitech's possessory interest and business operations is and was an unlawful trespass, which interfered with their possessory rights to property and business operations.

200. The contamination resulting from Defendants' Conyers Plant significantly and adversely impacted the interests of Diversitech.

201. Defendants' trespass substantially impaired Diversitech's right to use and operate the Diversitech Property and caused economic and property damage as alleged herein.

202. Defendants knew or should have known that their manufacturing, processing, handling, and storage of these hazardous chemicals could result in a fire as well as infringe upon the possessory interests of nearby residents and business, such as Diversitech.

203. Defendants' trespass, as set forth above, was the actual, direct, and proximate cause of the property damages, business interruption, lost profits and/or other incidental and consequential damages and losses sustained by Verlan's subrogors.

204. As a direct and proximate result of Defendants' unlawful trespass, Verlan's subrogors suffered extensive property damage, along with significant incidental, consequential,

and economic losses in excess of \$20,300,000.00, for which Verlan, pursuant to the Verlan Policy, made indemnity payments to, or on behalf of, its subrogors and seeks recovery of its indemnity payments, and any future indemnity payments that may be issued, from Defendants.

205. Verlan also seeks recovery of its subrogor's \$100,000.00 policy deductible.

WHEREFORE, Plaintiff Verlan Fire Insurance Company, as subrogee of Diversitech Holdings Inc., Diversitech Intermediate, Inc., and Diversitech Inc., hereby demands that judgment be entered in its favor against Defendant Bio-Lab, Inc., Defendant KIK International LLC, and Defendant KIK Custom Products Inc. in an amount in excess of \$20,300,000.00, plus interest, costs, attorneys' fees, and such other and further relief as this Court deems appropriate.

#### **PRAYER FOR RELIEF**

WHEREFORE, the following relief is respectfully requested:

1. Award Plaintiff compensatory, incidental, and consequential damages to the extent permitted by law in an amount to be proven at trial;
2. Award Plaintiff pre-judgement and post-judgement interest as permitted by law;
3. Award reasonable attorneys' fees and cost of suit; and
4. Such other and further relief that the Court deems just, equitable, and proper.

#### **JURY DEMAND**

Plaintiff demands a trial by jury on all issues herein so triable.

Respectfully submitted this 10th day of November, 2025.

/s/ Graham McKinnon, IV  
Graham McKinnon, IV  
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