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CAUSE NO. 2020-08475

CHRIS LE, ET AL.	§	**IN THE DISTRICT COURT**
	§	
Plaintiffs	§	
	§	
VS.	§	**HARRIS COUNTY, TEXAS**
	§	
WATSON VALVE, SERVICES, INC., ET AL.	§	
	§	
	§	
Defendants	§	**11TH JUDICIAL DISTRICT**

PLAINTIFFS' FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, CHRIS LE, JOAN DOAN, SEBASTIJAN BERENJI, VICTORIA WELLS, DAVID DIOSDADO, YOLANDA WELLS, JUNG YUN, JERLESA TATES, JAMES BOSTICK, MARY BOSTICK, WENDY HONDA BOSTICK INCORRECTLY NAMED WENDY HONDA, JOSEPH KHANH PHAN INCORRECTLY NAMED JOSEPH PHAM, JORGE CHACON, ZACARIAS CHACON, DOMINGO DURON, MANUEL CORRAL, JOSE CORRAL, JAIME GONZALEZ, BIBIANO SANDOVAL, ANGELINA SANDOVAL, CELINA SANDOVAL, ABIGAIL HERNANDEZ, ROSALBA MARTINEZ, HILDA LIMAS, ANTHONY HOWARD, JR, JEANNE MERRITT, MERVIN ALBANIA, RIVIS HUSBAND, MIRIAN CRUZ, ROBERTO HERNANDEZ, ALVARO MENDIETA, ROSALBA MENDIETA, ALVARO MENDIETA, JR, PAUL MARTINEZ, JANET MARTINEZ, ARMIN DENIC, LINDA DANG, MYRA JEFFERSON, TUYET DO, STEVEN TARN, MARK TRAN, GILBERT ORELLANA, EDUARDO DOLPHER, MORGAN LEE, ELIZABETH RUEDA, SARA GLORIA, DORIS ARIAS, PABLO LOPEZ, DENIS HERNANDEZ, ABEL MARTINEZ, MARTIN ESQUEDA, BLANCA ELIZABETH QUIROZ MOJICA AKA BLANCA MOJICA, ANA CRISTINA SERPAS INCORRECTLY NAMED ANA CRISTINA SERPAZ, SULMA

BEJARANO INCORRECTLY NAMED SULMA BERJANO, ANDRES GOMEZ, LUIS REYES, PATRICIA MARTINEZ INCORRECTLY NAMED PATRICIA CERVANTES, HECTOR CERVANTES, CRISTHIAN MARTINEZ, SINDY YOJANA CASTILLO-SANCHEZ AKA SINDY SANCHEZ, ROSAURA ZAPATA CALIX AKA ROSAURA CALIX, DIANA LOPEZ, SUSAN LOPEZ, LUIS MEDELLIN, MARIA MEDELLIN, KEVIN VU, JULIA TALAMANTES, ONEIDA TALAMANTES, MELODY DOLPHER, LUCERO MEDELLIN AND HECTOR MEDELLIN, Plaintiffs in the above-styled and numbered cause, files their Plaintiffs' First Amended Petition against Defendants WATSON VALVE SERVICES, INC.; WATSON GRINDING AND MANUFACTURING CO.; WESTERN INTERNATIONAL GAS & CYLINDERS, INC.; MATHESON TRI-GAS, INC.; ARC SPECIALTIES, INC.; AUTOMATION PLUS, INC.; AUTOMATION PROCESS, INC.; TELEDYNE DETCON, INC. F/K/A DETCON, INC.; DETCON, INC. F/K/A OLDHAM; 3M COMPANY; TRCC, LLC; DATAONLINE, LLC; INDUSTRIAL SCIENTIFIC CORPORATION; TOTAL SAFETY U.S., INC.; AND NADER SALIM, and for the cause(s) of action would respectfully show this Honorable Court the following.

I.
PARTIES

1. Plaintiff CHRIS LE is a natural person residing in Harris County, Texas.

2. Plaintiff JOAN DOAN is a natural person residing in Harris County, Texas.

3. Plaintiff SEBASTIJAN BERENJI is a natural person residing in Harris County, Texas.

4. Plaintiff VICTORIA WELLS is a natural person residing in Harris County, Texas.

5. Plaintiff DAVID DIOSDADO is a natural person residing in Harris County, Texas.

6. Plaintiff YOLANDA WELLS is a natural person residing in Harris County, Texas.

7. Plaintiff JUNG YUN is a natural person residing in Harris County, Texas.

8. Plaintiff JERLESA TATES is a natural person residing in Harris County, Texas.

9. Plaintiff JAMES BOSTICK is a natural person residing in Harris County, Texas.

10. Plaintiff MARY BOSTICK is a natural person residing in Harris County, Texas.

11. Plaintiff WENDY HONDA BOSTICK INCORRECTLY NAMED WENDY HONDA is a natural person residing in Harris County, Texas.

12. Plaintiff JOSEPH KHANH PHAN INCORRECTLY NAMED JOSEPH PHAM is a natural person residing in Harris County, Texas.

13. Plaintiff JORGE CHACON is a natural person residing in Harris County, Texas.

14. Plaintiff ZACARIAS CHACON is a natural person residing in Harris County, Texas.

15. Plaintiff DOMINGO DURON is a natural person residing in Harris County, Texas.

16. Plaintiff MANUEL CORRAL is a natural person residing in Harris County, Texas.

17. Plaintiff JOSE CORRAL is a natural person residing in Harris County, Texas.

18. Plaintiff JAIME GONZALEZ is a natural person residing in Harris County, Texas.

19. Plaintiff BIBIANO SANDOVAL is a natural person residing in Harris County, Texas.

20. Plaintiff ANGELINA SANDOVAL is a natural person residing in Harris County, Texas.

21. Plaintiff CELINA SANDOVAL is a natural person residing in Harris County, Texas.

22. Plaintiff ABIGAIL HERNANDEZ is a natural person residing in Harris County,

Texas.

23. Plaintiff ROSALBA MARTINEZ is a natural person residing in Harris County, Texas.

24. Plaintiff HILDA LIMAS is a natural person residing in Harris County, Texas.

25. Plaintiff ANTHONY HOWARD, JR. is a natural person residing in Harris County, Texas.

26. Plaintiff JEANNE MERRITT is a natural person residing in Harris County, Texas.

27. Plaintiff MERVIN ALBANIA is a natural person residing in Harris County, Texas.

28. Plaintiff RIVIS HUSBAND is a natural person residing in Harris County, Texas.

29. Plaintiff MIRIAN CRUZ is a natural person residing in Harris County, Texas.

30. Plaintiff ROBERTO HERNANDEZ is a natural person residing in Harris County, Texas.

31. Plaintiff ALVARO MENDIETA is a natural person residing in Harris County, Texas.

32. Plaintiff ROSALBA MENDIETA is a natural person residing in Harris County, Texas.

33. Plaintiff ALVARO MENDIETA, JR. is a natural person residing in Harris County, Texas.

34. Plaintiff PAUL MARTINEZ is a natural person residing in Harris County, Texas.

35. Plaintiff JANET MARTINEZ is a natural person residing in Harris County, Texas.

36. Plaintiff ARMIN DENIC is a natural person residing in Harris County, Texas.

37. Plaintiff LINDA DANG is a natural person residing in Harris County, Texas.

38. Plaintiff MYRA JEFFERSON is a natural person residing in Harris County, Texas.

39. Plaintiff TUYET DO is a natural person residing in Harris County, Texas.

40. Plaintiff STEVEN TRAN is a natural person residing in Harris County, Texas.

41. Plaintiff MARK TRAN is a natural person residing in Harris County, Texas.

42. Plaintiff GILBERT ORELLANA is a natural person residing in Harris County, Texas.

43. Plaintiff EDUARDO DOLPHER is a natural person residing in Harris County, Texas.

44. Plaintiff MORGAN LEE is a natural person residing in Harris County, Texas.

45. Plaintiff ELIZABETH RUEDA is a natural person residing in Harris County, Texas.

46. Plaintiff SARA GLORIA is a natural person residing in Harris County, Texas.

47. Plaintiff DORIS ARIAS is a natural person residing in Harris County, Texas.

48. Plaintiff PABLO LOPEZ is a natural person residing in Harris County, Texas.

49. Plaintiff DENIS HERNANDEZ is a natural person residing in Harris County, Texas.

50. Plaintiff ABEL MARTINEZ is a natural person residing in Harris County, Texas.

51. Plaintiff MARTIN ESQUEDA is a natural person residing in Harris County, Texas.

52. Plaintiff BLANCA ELIZABETH QUIROZ MOJICA AKA BLANCA MOJICA is a natural person residing in Harris County, Texas.

53. Plaintiff ANA CRISTINA SERPAS INCORRECTLY NAMED ANA CRISTINA SERPAZ is a natural person residing in Harris County, Texas.

54. Plaintiff SULMA BEJARANO INCORRECTLY NAMED SULMA BERJANO is a natural person residing in Harris County, Texas.

55. Plaintiff ANDRES GOMEZ is a natural person residing in Harris County, Texas.

56. Plaintiff LUIS REYES is a natural person residing in Harris County, Texas.

57. Plaintiff PATRICIA MARTINEZ INCORRECTLY NAMED PATRICIA CERVANTES is a natural person residing in Harris County, Texas.

58. Plaintiff HECTOR CERVANTES is a natural person residing in Harris County, Texas.

59. Plaintiff CRISTHIAN MARTINEZ is a natural person residing in Harris County,

60. Plaintiff SINDY YOJANA CASTILLO-SANCHEZ AKA SINDY SANCHEZ is a natural person residing in Harris County, Texas.

61. Plaintiff ROSAURA ZAPATA CALIX AKA ROSAURA CALIX is a natural person residing in Harris County, Texas.

62. Plaintiff DIANA LOPEZ is a natural person residing in Harris County, Texas.

63. Plaintiff SUSAN LOPEZ is a natural person residing in Harris County, Texas.

64. Plaintiff LUIS MEDELLIN is a natural person residing in Harris County, Texas.

65. Plaintiff MARIA MEDELLIN is a natural person residing in Harris County, Texas.

66. Plaintiff KEVIN VU is a natural person residing in Harris County, Texas.

67. Plaintiff JULIA TALAMANTES is a natural person residing in Harris County, Texas.

68. Plaintiff ONEIDA TALAMANTES is a natural person residing in Harris County, Texas.

69. Plaintiff MELODY DOLPHER is a natural person residing in Harris County, Texas.

70. Plaintiff LUCERO MEDELLIN is a natural person residing in Harris County,

Texas.

71. Plaintiff HECTOR MEDELLIN is a natural person residing in Harris County, Texas.

72. Defendant, WATSON VALVE SERVICES, INC. ("WATSON VALVE") is a domestic for-profit corporation doing business in the State of Texas. Defendant's principal place of business is locatedin Harris County, Texas. Defendant has appeared and answered.

73. Defendant, WATSON GRINDING AND MANUFACTURING CO. ("WATSON GRINDING") is a domestic for-profit corporation doing business in the State of Texas. Defendant's principal place of business is located in Harris County, Texas. Defendant has appeared and answered.

74. Defendant, WESTERN INTERNATIONAL GAS & CYLINDERS, INC. ("WESTERN") is a domestic for- profit corporation doing business in the State of Texas. Defendant has appeared and answered.

75. Defendant, MATHESON TRI-GAS, INC. ("MATHESON") is a foreign for-profit corporation doingbusiness in the state of Texas. Defendant has appeared and answered.

76. Defendant, ARC SPECIALTIES, INC. ("ARC") is domestic for-profit corporation doingbusiness in the State of Texas. Defendant has appeared and answered.

77. Defendant, AUTOMATION PLUS, INC. ("AUTOMATION PLUS") is a domestic for-profit corporationdoing business in the State of Texas. Defendant has appeared and answered.

78. Defendant, AUTOMATION PROCESS, INC. ("AUTOMATION PROCESS") is a domestic for-profitcorporation doing business in the State of Texas. Defendant has appeared and answered.

79. Defendant, DETCON, INC. F/K/A OLDHAM ("DETCON") is a domestic for-

profit corporation doingbusiness in the State of Texas. Defendant has appeared and answered.

80. Defendant, TELEDYNE DETCON, INC. F/K/A DETCON, INC. ("TELEDYNE DETCON") is a domesticfor-profit corporation doing business in the State of Texas. Defendant has appeared and answered.

81. Defendant, TRCC, LLC ("TRCC") is a domestic limited liability corporation doingbusiness in the State of Texas. Defendant has appeared and answered.

82. Defendant, DATAONLINE, LLC ("DATAONLINE") is a foreign limited liability company doingbusiness in the State of Texas. Defendant has appeared and answered.

83. Defendant, 3M COMPANY ("3M") is a foreign for-profit corporation doing business in theState of Texas. Defendant has appeared and answered.

84. Defendant, INDUSTRIAL SCIENTIFIC CORPORATION ("INDUSTRIAL") is a foreign-for-profitcorporation doing business in the State of Texas. Defendant has appeared and answered.

85. Defendant, TOTAL SAFETY U.S., INC. ("TOTAL SAFETY") is a Foreign For-Profit Corporationincorporated in the state of Delaware and doing business in the State of Texas. Total Safety may be served with process through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever they are found.

86. Defendant NADER SALIM ("SALIM") is a resident of Fort Bend County, Texas. Defendant Salim may be served with process at 3303 Falling Brook Court, Sugar Land, Texas 77479, or wherever he may be found.

87. All Defendants are collectively referred to as "MDL Defendants."

88. Plaintiffs specifically invoke the right to institute this lawsuit against whatever entities were conducting business using the assumed and/or common names of the MDL

Defendants during the events described in this petition and/or at any time relevant to the events put forth in this petition. Plaintiffs expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the correct names of these parties substituted later upon the motion from any party or the Court.

II.
JURISDICTION

A. SUBJECT MATTER JURISDICTION

89. None of the MDL Defendants have contested subject matter jurisdiction.

90. Plaintiffs are citizens of the State of Texas at all times relevant to this case.

91. Watson Valve, Watson Grinding, Western, ARC, TRCC, Detcon, Teledyne Detcon, Automation Plus, Inc. and Automation Process, Inc. (collectively "Automation Defendants"), areincorporated in Texas and their principal places of business are in Texas.

92. Defendant Matheson and Defendant Total Safety are incorporated in Delaware and their principal place of business is in Texas.

93. DataOnline, 3M, and Industrial are foreign entities. Defendant DataOnline is incorporatedin New Jersey and its principal place of business is in New Jersey. Defendant 3M is a Delaware Corporation with its principal place of business in Minnesota. Defendant Industrial is aPennsylvania Corporation with its principal place of business in Pennsylvania.

94. The amount in controversy is in excess of $75,000 and there is a lack of diversity betweenthe parties. Therefore, removal on the basis of diversity jurisdiction would be improper.

B. PERSONAL JURISDICTION

95. None of the MDL Defendants have contested personal jurisdiction.

96. MDL Defendants purposefully availed themselves to business dealings in the State of Texas and could reasonably expect to respond to complaints therein. MDL Defendants'

purposefulavailment of the benefit and protection of the laws of Texas is sufficient to support the proper exercise of personal jurisdiction over MDL Defendants.

97. Watson Grinding and Watson Valve, Western, Matheson, ARC, TRCC, Detcon, Teledyne Detcon, Total Safety, Defendant Salim, and the Automation Defendants purposefully availed themselves to Texas because they are incorporated in and/or their principal places of business arelocated in Texas. Further, because these MDL Defendants' actions related to this explosion occurred in Texas, personal jurisdiction over them is appropriate and Constitutional.

98. Defendants DataOnline, 3M, and Industrial purposefully availed themselves to Texas. 3Mowned defendant Detcon at all relevant times to this lawsuit. Detcon employees in Texas used 3Memail addresses while interacting with Watson Grinding and Watson Valve regarding the service,maintenance and repair of the sensors for the propylene system at Watson Grinding's and Watson Valve's facility located in Houston, Texas. As part of this work, 3M designed and manufactured products that were shipped to Texas and sold to Watson, through Detcon, for installation at WatsonGrinding and Watson Valve's facility. As a result, 3M purposefully availed itself to Texas becauseit derived profits from servicing and maintaining the sensors to the propylene system at Watson and it shipped and sold products to Texas for the service, maintenance and repair of the propylenesystem at Watson Grinding's and Watson Valve's facility, and as a result, a nexus exists between3M's actions and the explosion.

99. DataOnline purposefully availed itself to Texas because it sells its telemetry equipment inthe State of Texas and provides monitoring services of tank levels in Texas. Further it was paid toperform these very services for the propylene tank and system at the premises where the subject explosion occurred. A nexus exists between DataOnline's contacts with Texas and the explosionbecause evidence exists that the propylene levels in the tank decreased significantly

between January 23, 2020, and January 24, 2020, such that warnings and alarms should have issued and sounded, but none did and DataOnline was responsible for monitoring the propylene levels in thetank.

100. Industrial purposefully availed itself to Texas because it targets the Texas market for the sale and use of its gas monitors. To do so, Industrial advertises, markets, sells, ships and installs its gas monitors to and in Texas. This includes the gas monitors that were present at the premiseswhere the subject explosion occurred. A nexus exists between Industrial's contacts with Texas and the explosion because gas monitors it shipped to and sold to Texas caused and/or contributedto causing the subject explosion, as described below, because they failed to identify the propyleneleak and to send an alarm that a potentially catastrophic condition existed and needed to be immediately addressed.

101. Consequently, subject matter jurisdiction exists over 3M, DataOnline and Industrial.

III.
VENUE

102. None of the MDL Defendants have contested venue.

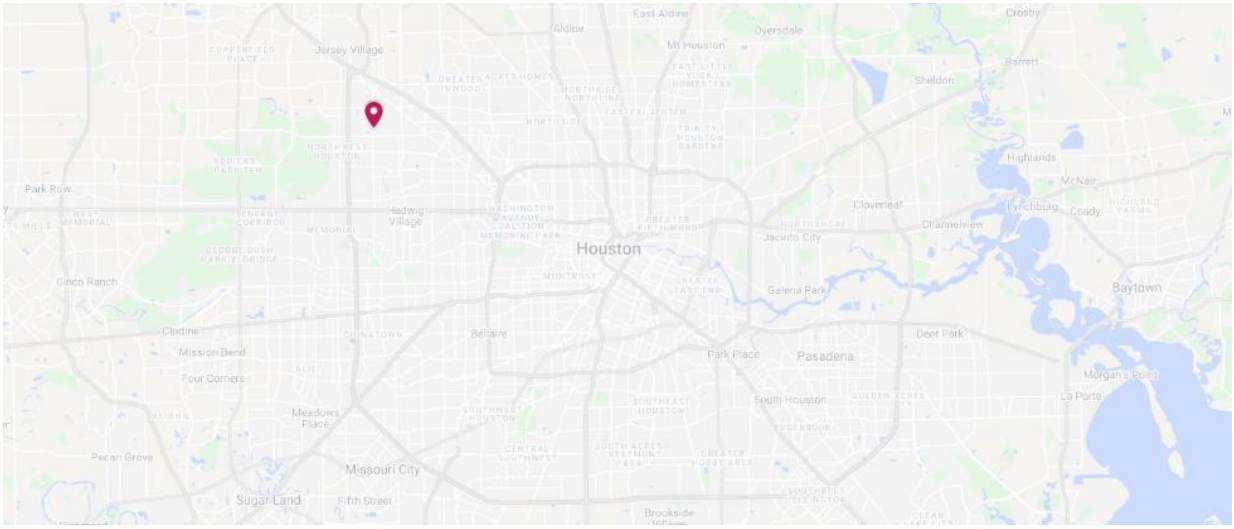
103. Venue is proper in Harris County pursuant to Texas Civil Practice and Remedies Code sections 15.002(a)(1) and (a)(3), because it is the county where a substantial part of the events giving rise to this case occurred and because the principal place of business for Watson Grinding,Watson Valve, Total Safety, and ARC are all located in Harris County. Additionally, under TexasCivil Practice and Remedies Code section 15.005, venue is proper as to one MDL Defendant it isproper for all MDL Defendants.

IV.
FACTUAL BACKGROUND

104. The facility at issue was comprised of a number of structures and was constructed betweenGessner Road and Steffani Lane (collectively referred to as "Subject Premises"). The Subject Premises are centrally located in Houston at:

a. 4525 Gessner Road, Houston, Texas 77041 (Leased by Watson Grinding, used by Watson Grinding and Watson Valve);

b. 4512 Steffani Drive, Houston, Texas 77041 (valve shop building owned by 4512 Steffani Property, leased by Watson Valve);



c. 4522 Steffani Lane, Houston, Texas 77041 (coatings building owned by WatsonGrinding, used by Watson Grinding and Watson Valve);

d. 4606 #2 Steffani Lane, Houston, Texas 77041 (ball lapping building owned byBetty S. Watson, leased by Watson Grinding); and

e. 4606 Steffani Lane, Houston, Texas 77041 (CNC building leased by WatsonGrinding).

Pre and Post explosion aerial photos of Coating building (left) and ball lapping building/machine shop (right) with Propylene pipe remains highlighted in yellow. (Propylene piping denoted in the Pre-incident photo in red)

105. Pertinent to the issues in this case, located on the property was a storage tank that stored propylene. The propylene tank supplied propylene to the "Coating Building" through a piping system. (See Propylene piping system annotated in the above photographs for reference).

106. Watson Valve used the Coating Building located at 4522 Steffani Lane, Houston, Texas 77041. According to the Watson Valve "Process Flow Chart," the coating department in the Coating Building was an integral part of Watson Valve's operation, and the use of propylene was an essential part of its operation of coating and finishing ball valves and other parts that are most

commonly used in the oil field.

107. Organizational charts for both Watson Valve and Watson Grinding show key common employees of both entities. Additionally, both Watson Grinding and Watson Valve had "Watson Internal Specifications" that relied on the use of propylene.

108. In the early morning hours of Friday, January 24, 2020, a massive explosion rocked the city of Houston awake.

109. The explosion resulted in widespread destruction and caused fatalities and countless injuries, destroyed numerous homes and caused significant damage to hundreds of homes. The explosion was so violent that the Houston Chief of Police, Art Acevedo, labeled the site and surrounding areas a "disaster area."

110. Propylene was identified as the chemical involved in the explosion, because telemetry readings from the propylene tank indicated a significant loss of propylene from January 23, 2020,to January 24, 2020. Propylene is an extremely flammable gas that can explode when mixed withair. Despite the dangerous condition created by the leaking propylene, no evidence exists that anyalarms sounded before the explosion to warn anyone of the leaking propylene.

111. The 2,000-gallon tank of the volatile propylene gas at the Subject Premises was connectedto a piping system that supplied propylene to spray rooms where it was used in the Watson Grinding and Watson Valve manufacturing processes.

112. This 2,000-gallon tank of propylene gas was located in very close proximity to hundreds of homes and businesses.

113. In early 2010, Matheson acquired Western. Matheson is the largest subsidiary of Taiyo Nippon Sanso Corporation. Taiyo Nippon Sanso Corporation is one of the top five globalproducers of industrial and specialty gases and is headquartered in Japan.

114. Matheson had a Product Supply Agreement with Watson Grinding ("Watson-Matheson Agreement") effective June 2017 to provide propylene to the Subject Premises. Matheson had a previous Propylene Supply Agreement with Western ("2012 Supply Agreement") effective from July 2012 to June 2017 for Western to provide propylene on behalf of Matheson. The 2012 SupplyAgreement automatically renewed each year after the first three-year term unless terminated according to its provisions. Upon information and belief, neither party had terminated the 2012 Supply Agreement, and it was in effect in 2020 when the explosion occurred.

115. Under the terms of the Watson-Matheson Agreement, Matheson was required to install a bulk storage system, including any safety and control apparatus, telemetry systems, and low temperature device, vaporization equipment ("System"). Watson-Matheson Agmt. ¶4(a). Matheson retained title to the System at all times, as well as the authority to "remove the System(s) at [Watson Grinding's] expense without notice or consent," and to make "additions and/or modifications to the System" if, "in [Matheson's] opinion," such modifications were "required or the system should be relocated …" after Watson Grinding was provided an "opportunity to comment" or to make the additions, modifications, or relocation at Watson Grinding's expense.

Id. ¶4(c) & (d). Matheson was contractually obligated to conduct an annual safety inspection of The System. *Id.* ¶4(a)(3). The purpose of The System was to monitor for any leaked propylene gas. The Watson-Matheson Agreement gives Matheson the right to refuse delivery if the Subject Premises are considered unsatisfactory, unsafe or in violation of the law. *Id.* ¶3(b).

116. Matheson subcontracted with its subsidiary, Western, to install The System at the SubjectPremises. Western made deliveries of propylene from the time of the contract between Watson Grinding and Matheson until the week of the explosion. Matheson and Western expressly acknowledged: (a) the necessity of "us[ing] best efforts to comply with all applicable recommendations of the Compressed Gas Association and all government rules, regulations, statutes and ordinances;"[1] (b) "full knowledge of the hazards associated with the storage, use, handling, transport and filling of cylinders with [propylene];" and (c) the duty to warn Matheson's "employees and independent contractors of all such hazards." 2012 Supply Agmt. ¶¶3, 9(c) & 13. The 2012 Supply Agreement also memorialized numerous contractual duties that Matheson had undertaken in the Matheson-Watson Agreement and Western agreed to provide on Matheson's behalf with respect to each "Consuming Location," including the Watson site. *Id.* ¶5 & Addendum as to propylene, Western retained ownership and title to all "equipment needed for the storage, control and vaporization of the [propylene]." *Id.* ¶¶4-5.Western was also specifically obligated: to comply with rules and regulations regarding propylene storage, use, handling and transport; to furnish a site with the equipment needed for the safe distribution of propylene; to provide and install the necessary equipment in good repair and operating condition; to inspect the Subject Tank owned by Matheson; and to take all safety precautions and comply with all applicable regulations and requirements for propylene distribution. *Id.* at ¶¶4-6. Western and Matheson retained control over the Subject Tank and equipment necessary to the delivery and acceptance of propylene to the

Subject Tank on the Watson site. Western and Matheson were contractually bound by the Watson-Matheson and 2012 Supply Agreements to ensure a safety program for the ultimate customer, Watson Grinding.

117. On August 29, 2018, Western and Matheson were put on notice via email communication about a substantial leak in the piping system at the Subject Premises. Watson Grinding had reachedout to Defendant Matheson's sales representative, Carrie Walker, seeking advice regarding the adequacy of their propylene system. Specifically, Watson Grinding was inquiring to see if a certainpipe material was adequate for fixing the leak.

118. After hearing of a substantial leak in the piping system, neither Western nor Matheson exercised their contractual right/obligation to refuse delivery. Instead, they continued making deliveries to the Subject Premises. Neither Defendant Matheson nor Defendant Western took anysteps to address the leak reported to them at the Subject Premises, despite their individual duties of care, both under contract and common law.

119. The propylene that was the combustible gas involved in this explosion was stored in a 2,000-gallon tank that was contractually owned by Western and was serviced, maintained, and filled by Western. The geographical location of the 2,000-gallon propylene tank ("Subject Tank")was 4606 Steffani Lane, Houston, Texas 77041.

120. Western and Matheson both had knowledge or reason to believe that the system to which their Propylene tank was attached, was unsafe in violation of the Texas Railroad Commission Chapter 9, LP Gas Safety Rules §9.135 *Unsafe or Unapproved Containers, Cylinders, or Piping* which states:

> "a licensee or the licensee's employees shall not introduce LP-gas into any container or cylinder if the licensee or employee has knowledge or reason to believethat such container, cylinder, piping, or the system or the appliance to which it is attached is unsafe or is not installed in accordance with the statutes

or the LP-Gas Safety Rules."[2]

121. Western and Matheson both exercised control over The System and the Subject Tank.

122. Matheson performed a "Safety/Site Inspection" of the Subject Premises on March 26, 2019.

123. Western, through its contract with Matheson, delivered 1,067 gallons of propylene to the Subject Tank on January 20, 2020 and filled the tank to 85% capacity from 28% capacity.

124. As part of The System, Western and Matheson had monitoring equipment on the Subject Tank. However, the monitoring equipment was being severely underutilized for its capabilities.

125. Prior to replenishing the tank with propylene on January 20, 2020, the tank level had dropped to 30% and a warning signal was sent to both Western and Matheson. Western and Matheson were aware of the average daily usage of the customer and were aware of the average tank levels in their tank due to normal consumption.

126. During the 24-hour cycle beginning on January 23, 2020, at 00:53:54 a.m., the tank experienced a precipitous drop in levels from 67% to 38% at the time of the next reading on 00:53:54 a.m. on January 24, 2020. The next warning code was at a tank level reading of 20% at 4:26:39 a.m. on January 24, 2020.

127. Safeguards should have been working, but were not, that would have prevented and/or warned about the uncontrolled and unregulated leak of propylene. Each of the above-named Defendants were involved in the failure of these safeguards, which caused and/or contributed to causing the explosion and its widespread destruction. These include, but are not limited to, the design and installation of the propylene system, the inspection, maintenance, service and repair ofthe System and its sensors, and the failure of the monitors and alarms to warn of the

leak once it existed.

128. The Automation Defendants designed and installed The System and its sensors. They alsoserviced and maintained The System over the years after it was initially installed.

129. The Coating Building, the seat of this explosion, was to be equipped with a number of iTrans sensors to monitor and detect flammable gas leaks. The sensors were placed at least four feet above the floor of the spray room at a height that is usually designed to detect a flammable gas that is lighter than air, such as hydrogen. Propylene is heavier than air. Upon detection of a leak in the spray room, a properly designed and maintained system is supposed to do, at a minimum, two things: (1) sound an audible alarm that would alert not only human beings present at 4525 Gessner Road, but also in the surrounding community; and (2) automatically cut off the supply of propylene to the piping system by way of the automatic shut off valve at a location upstream of the spray room.

130. The automatic shut off valve for the propylene supply system was located in close proximity to the Watson Grinding and Watson Valve buildings, however, the valve had not been modified/engineered to shut down the supply of the propylene downstream in the event of unusual volume loss in The System.

131. Defendants Detcon and Teledyne Detcon, and Defendant Total Safety performed inspection, maintenance, testing and repair work on the propylene system and sensors in the spray room that are supposed to sound an alarm in the event oxygen levels are too low or combustible levels of gas are too high.

132. Defendant 3M exercised control over Defendants Detcon and Teledyne Detcon during some of the service and inspection work. These Defendants worked on the system within six (6) months of the explosion and should have known that the sensors in the Coating's Building

were not optimally functioning to detect propylene.

133. The gas monitors in question that failed to identify the propylene leak and failed to issue an alarm were designed and manufactured by Defendant Industrial.

134. Defendant ARC serviced and maintained the control panels in the spray rooms, which arepart of the warning system that failed to function properly on the date of the incident. Defendant TRCC and its principal, Defendant Salim, were Watson Grinding's safety, environmental and quality consultant at pertinent times.

135. Defendant Salim was not being paid by Watson Valve or anyone for work performed in his capacity as a safety, environmental and quality consultant for Watson Valve, and therefore heis classified as a volunteer/consultant for Watson Valve.

136. Additionally, Robert Kellogg was not paid by Watson Valve or anyone for work done in his capacity as Vice President of Manufacturing for Watson Valve and therefore Robert Kellogg is classified as a volunteer worker for Watson Valve. Included as volunteer workers of Watson Valve are Alex Mendez, Gerardo Barrera, Julio Garza, Martin Moya, John Lichenstein, Rifka Abudaram, Hao D. Vo, Benito Sanchez, Jr., Rick Bell, Jason White, Mike Buckingham, Robert Wilkinson, Bill Morgan, David Dunn, and Matt Snow, each of whom was not paid by Watson Valve or anyone for work done in their respective capacities for Watson Valve.

137. Defendant, DataOnline, manufactured and sold the telemetry equipment for the propylenetank and was hired to monitor the propylene levels in the tank.

V.
CAUSES OF ACTION AGAINST WATSON GRINDING

A. NEGLIGENCE

138. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Watson Grinding committed acts and omissions, which collectively and separately

constituted negligence. Watson Grinding had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Watson Grinding breached that duty in one or more of the following ways:

a. Failing to manage the uncontrolled and unregulated release of propylene originating from the Western and Matheson tanks;

b. Failing to modify/engineer the automatic shut-off valve; and

c. Other acts or omissions deemed negligent.

139. These breaches, among others, constituted negligence. Such negligence was a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiffs herein.

B. GROSS NEGLIGENCE

140. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of Watson Grinding, taken singularly or in combination, constituted gross negligence and were the proximate cause of Plaintiffs' injuries and damages.[3] Watson Grinding's acts and/or omissions, when viewed objectively from Watson Grinding's standpoint atthe time such acts and/or omissions occurred, involved an extreme degree of risk, considering theprobability and magnitude of the potential harm to others. Watson Grinding had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of theoccurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/orexemplary damages.

VI.
CAUSES OF ACTION AGAINST WATSON VALVE

A. NEGLIGENCE

141. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Watson Valve committed acts and omissions, which collectively and separately constituted negligence. For the safety of the public and its employees, Watson Valve had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Watson Valve breached that duty in one or more of the following ways:

a. Failing to manage the uncontrolled and unregulated release of propylene originating from the Western and Matheson tanks;

b. Failing to properly manage the propylene supply in a safe manner;

c. Failing to ensure the propylene delivery system was in compliance with industry standard;

d. Failing to modify/engineer the automatic shut off valve;

e. Failure to ensure that all buildings with the potential for propylene exposure had properly working and/or properly calibrated LEL monitors; and

f. Other acts or omissions deemed negligent.

142. These breaches, among others, constituted negligence. Such negligence was a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiffs herein.

B. NONDELEGABLE DUTY

143. Watson Valve is vicariously liable for the negligent acts/omissions of its volunteer, NaderSalim. The duty imposed on Watson Valve was based on a concern for public safety, and thereforeit is a duty that Watson Valve cannot escape or delegate to a volunteer. Such negligence

on the part of Salim in his capacity as a volunteer safety, environmental and quality consultant for WatsonValve was a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiffs herein. Plaintiffs' injuries were the proximate result of Nader Salim's negligence, and Nader Salim committed the actions and/or inactions while performing a nondelegable duty of Defendant Watson Valve.

C. GROSS NEGLIGENCE

144. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of the Watson Valve, taken singularly or in combination, constitutedgross negligence and were the proximate cause of Plaintiffs' injuries and damages.[4] Watson Valve's acts and/or omissions, when viewed objectively from the Watson Valve's standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering theprobability and magnitude of the potential harm to others. Watson Valve had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of theoccurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/orexemplary damages.

VII.
CAUSES OF ACTION AGAINST DEFENDANT MATHESON

A. NEGLIGENCE

145. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant Matheson committed acts and omissions, which collectively and separately constituted negligence. Defendant Matheson had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendant Matheson breached that duty in one or more of the

following ways:

a. Failing to have properly functioning monitors and alarms on the tank to identify and shut down the flow of propylene in the event of a leak in the system;

b. Failing to properly maintain, inspect and service the propylene tanks and piping on site to identify and prevent leaks;

c. Delivering propylene to a facility without the capacity to safely store the delivered product;

d. Failing to provide adequate training to its agents and employees relating to:proper functioning of monitors and alarms on the Subject Tank; proper maintenance, inspection, and service on the Subject Tank; compliance withgovernmental regulations and industry standards; warning of known hazardsand dangerous conditions; and ensuring that The System and piping systemwere in safe and in compliance with all applicable laws, regulations, and industry standards;

e. Failing to warn of a known hazard and dangerous condition;

f. Violating governmental regulations and standards;

g. Failing to recognize and remediate hazards with an extreme degree of risk;

h. Failing to modify/engineer the automatic shut off valve;

i. Failing to ensure that propylene was properly odorized;

j. Failure to identify risks and adverse factors caused by an uncontrolled propylene release at the Subject Premises;

k. Failure to conduct a risk assessment or site inspection of the Subject Premises and The System;

l. Failing to cooperate with its customers to promote safe and secure use of itsproducts;

m. Failure to provide information on the dangers and risks applicable to the useof propylene;

n. Failing to warn properly warn of foreseeable risks after it became clear thatpersons and properties were being exposed outside of a controlled industrialenvironment;

o. Failure to investigate an incident of a substantial leak after being made awarethat such a leak occurred;

p. Failure to notify relevant departments and take appropriate action after beingnotified of a leak in the piping system at Watson Grinding in August of 2018;

q. Failure to propose and implement counter measures to prevent accidents andoccupational injuries;

r. Failing to ensure that The System and subsequent piping system at the Subject Premises were safe and in compliance with all applicable laws and/orregulations; and

s. Failing to comply with Chapter 9 of the Railroad Commission LP Gas Safety Rules, the Texas Natural Resource Code, the Texas Administrative Code, Title 58 of the National Fire Protection Association ("NFPA"), 49 C.F.R. 173.315, and the Occupational Safety and Health Administration.

146. Additionally, Defendant Matheson is negligent because it failed to act as a reasonably prudent supplier of propylene, related storage and safety equipment, and safety and inspection services would have acted in the same or similar circumstances based on industry standards. The same or similar circumstances take into account the contractual duties Matheson voluntarily undertook for Watson Grinding in designing, manufacturing, installing, maintaining, and inspecting the premises where it delivered propylene. Product stewardship reflects the standard ofcare implemented by the industry to ensure, among other things, the safe design, sale, delivery, testing, and use of products. Defendant Matheson's parent company, Taiyo Nippon Sanso Corporation adopted Guidelines and Policies on responsible care of volatile products throughout the products' lifetimes5 for their subsidiaries, including Matheson and therefore Western, as a subsidiary of Matheson:

(2) In order to minimize the impact on human health and safety and global environment, identify risks and adverse factors caused by the products by conducting risk assessment through the life cycle of products and endeavor to reduce the risks by managing them based on the results.

(3) In the case of any quality issue of product or service, immediately investigate a cause and take appropriate recurrence prevention measures and other similar actions.

Nipon Sanso Holdings Group Procurement Guidelines: Matters to be shared with our suppliers, Subparts 6(2)-(3).[6]

(1) We are always mindful of safety in manufacture, development, import, storage, sales, transportation, export, maintenance, and repair of products, fully understand and comply with laws and safety standards concerning product safety, and aim to achieve a higher level of safety.

(2) If we obtain information on product safety, we immediately investigate the factual relevance of such information. If any issue is identified, we notify relevant departments and sections and take appropriate actions.

(3) We understand and comply with laws, regulations, etc. concerning occupational safety and health. In case of any occupational accident, we give priority to ensuring workplace safety and minimize the effect of accident, and ensure that we take prescribed procedures such as an immediate reporting to prevent a recurrence of such accident.

(4) We grasp the materialized and potential risks concerning business activities, and ensure safety of employees and the society by proposing and implementing countermeasures to prevent accidents and occupation injuries.

Nipon Sanso Holdings Group Code of Conduct, Subparts 7 (1) – (4).[7]

(2) We endeavor to fully provide information on usage conditions and usage environment and other information necessary for our customers to use and handle the products safely.

(3) In the case of any quality issue of product, we immediately investigate a cause and take appropriate recurrence prevention measures, remedial measures, and other similar actions.

Nipon Sanso Holdings Group Code of Conduct, Subparts 9(2)-(3).[8]

> 6. Cooperate with customers, transportation companies, suppliers, agents, and contractors to promote safe and secure use, transport and disposal of products, and provide information on the dangers and risks applicable to such businesses and products.

Nipon Sanso Holdings Group Occupational Safety and Health/Industrial Safety Disaster Prevention Policy, sub. 6.[9]

147. These standards outlined by Matheson's parent company Taiyo Nippon Sanso implementwell-known industry standards that are commonly accepted by companies that produce, sell, and deliver propylene, similar to Western and Matheson. These standards of care demonstrate that Matheson did not act as a reasonably prudent company under the same or similar circumstances.

148. Chevron Phillips Chemical, an industry competitor company of Western and Matheson inthe sale and supply of propylene, references their product stewardship and responsible care initiatives online, stating among other things that "Chevron Phillips Chemical is committed to Product Stewardship and doing business responsibly. We endeavor to provide sufficient information for the safe use and handling of all our products. To that end, Material Safety Data Sheet and certificate of analysis are provided to the customers. In addition, we have completed a Hazard and Exposure Risk Characterization (HERC) to evaluate the potential risks associated with the distribution and use of propylene."[10]

149. Shell Global, another industry competitor company of Western and Matheson in the sale and supply of propylene, references their product stewardship and responsible care initiatives online, stating among other things that "Storage tanks must be clean, dry and rust free and protectedfrom direct sunlight, ignition sources or other sources of heat. Vapours from the storage tank should not be released to the environment but controlled through a suitable vapour treatment system…. customers are limited to those who only use the product in closed systems as an

intermediate for the manufacture of other chemicals. Proper equipment design and handling procedures maintain low risk from exposure to the product where the product is used as a chemical intermediate."

150. This standard of care is not limited to Taiyo Nippon Sanso, Matheson, and Western, but rather it is a well-known and commonly accepted industry norm that defines the a standard of careby which Defendants Western and Matheson's conduct in selling and delivering hazardouschemicals and gases must be measured. This standard is reflected in the agreements described above relating to Western and Matheson's obligations to one another, their ultimate customer, Watson Grinding, and third parties necessarily impacted by their failure to comply with those obligations. It is also reflected in NFPA 54 and 58, ASME B31, among other industry standards and "best practices."

151. Matheson discusses their culture of safety and responsible care regularly, including in employee training presentations and continuing education seminars, reiterating among other things:

> "MATHESON's Culture of Safety
> Our Safety program: Safety, Health, & Environment
> Encompasses people, the community and the world in which we live.
> It's about MATHESON, our customers, our suppliers, and our neighbors.It requires training, training and *more* training.
> It means that every MATHESON employee is empowered to call out a safety issue – even at a customer site.
> It involves the products we deliver, and how we help our customers use them.It involves the "It's a Culture of Safety First. *Always*."[12]

152. Here, Defendant Matheson was negligent in violating the standard of care as outlined by the industry standards, including those standards relating to stewardship and care of its products, and compliance with the policies of its parent corporation—which are consistent with well-knownand commonly accepted industry standards—in relation to the propylene at the Subject

Premises,because it failed to promote safe and secure use of the propylene, provide adequate customer support, conduct adequate risk assessments, investigate previous issues, take appropriate prevention measures, provide appropriate maintenance services, inspection and site visits, and provide information and warnings about the propylene, the Subject Tank and/or piping. The failure to do so contributed to causing the release of propylene, the subsequent explosion, and Plaintiffs' injuries and damages contained herein.

153. These breaches, among others, constituted negligence. Such negligence was a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiffs herein.

B. NEGLIGENCE PER SE

154. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendant Matheson, taken singularly or in combination, constituted negligence per se and were the proximate cause of Plaintiffs' injuries and damages. Defendant Matheson's acts and/or omissions, violated Chapter 9 of the Railroad Commission LP Gas Safety Rules, the Texas Natural Resource Code, the Texas Administrative Code, Title 58 of the NFPA, 49 C.F.R. 173.315, and the Occupational Safety and Health Administration.

155. Plaintiffs individually and/or collectively were members of the class of persons that Chapter 9 of the Railroad Commission LP Gas Safety Rules, the Texas Natural Resource Code, the Texas Administrative Code, Title 58 of the NFPA, 49 C.F.R. 173.315, and the Occupational Safety and Health Administration were designed to protect, and the injuries and damages brought by Plaintiffs are injuries and damages that the regulations are meant to prevent.

C. PRODUCTS LIABILITY- MANUFACTURING DEFECT

156. Pursuant to Texas Civil Practice and Remedies Code Chapter 82.001(4), at all

pertinent times Defendant Matheson was engaged in the business of designing, manufacturing, marketing, assembling, selling and/or otherwise placing The System into the stream of commerce.

157. Defects in the manufacture of The System rendered it defective and unreasonably dangerous in that it was prone to fail in the foreseeable course of use. In particular, the telemetry system was defectively manufactured and/or assembled by Defendant Matheson.

158. The System was used for its intended and foreseeable purpose.

159. The defective manufacturing and assembly of The System directly and proximately causedPlaintiffs' injuries and damages.

D. PRODUCTS LIABILITY- MARKETING DEFECT

160. Pursuant to Texas Civil Practice and Remedies Code Chapter 82.001(4), at all pertinent times Defendant Matheson was engaged in the business of designing, manufacturing, marketing, assembling, selling and/or otherwise placing The System into the stream of commerce.

161. Defendant Matheson knew that defects in the marketing of The System rendered itunreasonably dangerous in that it was prone to fail in the foreseeable course of use. In particular, the telemetry system was defectively marketed by Defendant Matheson.

162. Defendant Matheson failed to give adequate and proper warnings and instructions regarding the dangers of The System, which rendered The System defective and unreasonably dangerous and was a producing cause of the injuries to Plaintiffs.

163. Defendant Matheson failed to provide adequate warnings regarding the latent defects in The System, including but not limited to defects in the telemetry system and the lack of coordination with the shut off devices, which rendered The System defective and unreasonably dangerous and was a producing cause of injuries to Plaintiff.

164. The System was used for its intended and foreseeable purpose.

165. The defective marketing of The System directly and proximately caused Plaintiffs' injuriesand damages.

E. PRODUCTS LIABILITY- DESIGN DEFECT

166. Incorporating by reference the above paragraphs, The System was originally designed, manufactured, sold, assembled, installed and maintained by Defendant Matheson. At the time TheSystem was sold, Defendant Matheson was in the business of designing, manufacturing, selling, assembling, and/or otherwise placing systems, such as The System in question, into the stream ofcommerce.

167. At the time The System was designed, manufactured, assembled, and constructed by Defendants, it was defective in design and unreasonably dangerous. The defective and unreasonably dangerous condition of The System was a direct and proximate cause of the damages to Plaintiffs.

168. The defects regarding The System include but are not limited to the telemetry system andlack of coordination with the shut off devices.

169. Such alternative designs for the defects of The System were available in the market and were technologically and economically feasible at the time The System was designed, manufactured, and assembled. Such alternative designs would not have impaired the utility of The System.

170. At the time of the incident made the basis of this lawsuit, The System was in the same or substantially similar condition as it was at the time Defendant Matheson and Western manufactured it.

171. As a direct and proximate result of the failure of Defendant Matheson to properly

design, sell, assemble, and deliver The System, Plaintiffs suffered severe personal injuries, property damage, and compensable injuries.

F. GROSS NEGLIGENCE

172. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendant Matheson, taken singularly or in combination, constituted gross negligence and were the proximate cause of Plaintiffs' injuries and damages.

173. Among other issues, Matheson had a Product Supply Agreement with Watson Grinding ("Watson-Matheson Agreement") effective June 2017 to provide propylene to the Subject Premises. Matheson had a previous Propylene Supply Agreement with Western ("2012 Supply Agreement") effective since July 2012 for Western to provide propylene on behalf of Matheson. The 2012 Supply Agreement automatically renewed each year after the first three-year term unlessterminated according to its provisions. Upon information and belief, neither party had terminatedthe 2012 Supply Agreement, and it was in effect in 2020 when the explosion occurred under the terms of the Watson-Matheson Agreement, Matheson was required to install a bulk storage system, including any safety and control apparatus, telemetry systems, and low temperature device, vaporization equipment ("System"). Watson-Matheson Agmt. ¶4(a). Matheson retained title to the System at all times, as well as the authority to "remove the System(s) at [Watson Grinding's] expense without notice or consent," and to make "additions and/or modifications to the System" if, "in [Matheson's] opinion," such modifications were "required or the system should be relocated …" after Watson Grinding was provided an "opportunity to comment" or to make the additions, modifications, or relocation at Watson Grinding's expense. *Id.* ¶4(c) & (d). Matheson was contractually obligated to conduct an annual safety inspection of The System. *Id.* ¶4(a)(3). The purpose of The System was to monitor for any leaked propylene

gas. The Watson-Matheson Agreement gives Matheson the right to refuse delivery if the Subject Premises are considered unsatisfactory, unsafe or in violation of the law. *Id.* ¶3(b).

158. Matheson subcontracted with its subsidiary, Western, to install The System at the SubjectPremises. Western made deliveries of propylene from the time of the contract between Watson Grinding and Matheson until the week of the explosion. Matheson and Western expressly acknowledged: (a) the necessity of "use[ing] best efforts to comply with all applicable recommendations of the Compressed Gas Association and all government rules, regulations, statutes and ordinances;"[14] (b) "full knowledge of the hazards associated with the storage, use, handling, transport and filling of cylinders with [propylene];" and (c) the duty to warn Matheson's "employees and independent contractors of all such hazards." 2012 Supply Agmt. ¶¶3, 9(c) & 13. The 2012 Supply Agreement also memorialized numerous contractual duties that Matheson had undertaken in the Matheson-Watson Agreement and Western agreed to provide on Matheson's behalf with respect to each "Consuming Location," including the Watson site. *Id.* ¶5 & Addendum as to propylene, Western retained ownership and title to all "equipment needed for the storage, control and vaporization of the [propylene]." *Id.* ¶¶4-5.Western was also specifically obligated: to comply with rules and regulations regarding propylene storage, use, handling and transport; to furnish a site with the equipment needed for the safe distribution of propylene; to provide and install the necessary equipment in good repair and operating condition; to inspect the Subject Tank owned by Matheson; and to take all safety precautions and comply with all applicable regulations and requirements for propylene distribution. *Id.* at ¶¶4-6. Western and Matheson retained control over the Subject Tank and equipment necessary to the delivery and acceptance of propylene to the Subject Tank on the Watson site. Western and Matheson were contractually bound by the Watson-

Matheson and 2012 Supply Agreements to ensure a safety program for the ultimate customer, Watson Grinding.

159. On August 29, 2018, Western and Matheson were put on notice via email communication about a substantial leak in the piping system at the Subject Premises. Watson Grinding had reachedout to Defendant Matheson's sales representative, Carrie Walker, seeking advice regarding the adequacy of their propylene system. Specifically, Watson Grinding was inquiring to see if a certainpipe material was adequate for fixing the leak.

160. After hearing of a substantial leak in the piping system, neither Western nor Matheson exercised their contractual right/obligation to refuse delivery. Instead, they continued making deliveries to the Subject Premises. Neither Defendant Matheson nor Defendant Western took any steps to address the leak reported to them at the Subject Premises, despite their individual duties of care, both under contract and common law.

161. Defendant Matheson's acts and/or omissions, when viewed objectively from Defendant Matheson's standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant Matheson had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

VIII.
CAUSES OF ACTION AGAINST DEFENDANT WESTERN

A. NEGLIGENCE

162. Incorporating by reference the above paragraphs, at the time and on the occasion in

question, Defendant Western committed acts and omissions, which collectively and separately constituted negligence. Defendant Western had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendant Western breached that duty in one or more of the following ways:

a. Failing to have properly functioning monitors and alarms on the tank to identify and shut down the flow of propylene in the event of a leak in the system;

b. Failing to properly maintain, inspect and service the propylene tanks and piping on site to identify and prevent leaks;

c. Delivering propylene to a facility without the capacity to safely store the delivered product;

d. Failing to warn of a known hazard and dangerous condition;

e. Failing to warn properly warn of foreseeable risks after it became clear thatpersons and properties were being exposed outside of a controlled industrialenvironment;

f. Violating governmental regulations and standards;

g. Failing to recognize and remediate hazards with an extreme degree of risk;
h. Failing to provide adequate training to its agents and employees relating to:proper functioning of monitors and alarms on the Subject Tank; proper maintenance, inspection, and service on the Subject Tank; compliance withgovernmental regulations and industry standards; warning of known hazards and dangerous conditions; and ensuring that The System and piping systemwere in safe and in compliance with all applicable laws, regulations, and industry standards;

i. Failing to modify/engineer the automatic shut off valve;

j. Failing to ensure that propylene was properly odorized;

k. Failing to ensure that The System and subsequent piping system at the Subject Premises were safe and in compliance with all applicable laws and/orregulations; and

l. Failing to comply with NFPA and other industry standards.

163. Additionally, Defendant Western is negligent because it failed to act as a reasonably

prudent supplier of propylene, related storage and safety equipment, and safety and inspection services in the same or similar circumstances. The same or similar circumstances take into account the contractual duties Western voluntarily undertook as part of its agreement with Matheson and on behalf of Watson Grinding in designing, manufacturing, installing, maintaining, and inspecting the premises where it delivered propylene. Western failed to comply with industry standards of care, which include but are not limited to well-known and commonly accepted industry product stewardship standards that ensure, among other things, the safe design, sale, delivery, testing, and use of products. Defendant Matheson's parent company, Nipon Sanso Holdings, adopted Guidelines and Policies on responsible care of volatile products throughout the products' lifetimes15 for their subsidiaries, including Matheson and therefore Western, as a wholly owned subsidiary of Matheson. These guidelines and policies replicate well-known and commonly accepted practices of others in the industry, including NFPA 54 and 58, ASME B31, and the stewardship policies of Chevron Phillips Chemical and Shell Global, among other industry standards and "best practices." These standards are also reflected in the agreements described above relating to Western and Matheson's obligations to one another, their ultimate customer, Watson Grinding, and third parties necessarily impacted by their failure to comply with those obligations. These reflect the industry-wide standard of care and demonstrate that Western did not act as a reasonably prudent company under the same or similar circumstances.

164. Here, Defendant Western was negligent in failing to adhere to well-known and commonly accepted industry standards of care, and in failing to comply with the policies of its parent corporation—which are consistent with industry standards—in relation to the propylene at the Subject Premises because it failed to: promote safe and secure use of the propylene, provide adequate customer support, conduct adequate risk assessments, investigate previous issues, take

appropriate prevention measures, provide appropriate maintenance services, inspection and site visits, and provide information and warnings about the propylene, its tank and/or piping.[16]

165. The failure to do so contributed to causing the release of propylene, the subsequentexplosion, and Plaintiffs' injuries and damages contained herein.

166. These breaches, among others, constituted negligence. Such negligence was a proximatecause of the occurrence in question and the injuries and damages sustained by Plaintiffs herein.

B. NEGLIGENCE PER SE

167. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendant Western taken singularly or in combination, constitutednegligence per se and were the proximate cause of Plaintiffs' injuries and damages. Defendant Western's acts and/or omissions, violated the Texas Natural Resource Code, the Texas Administrative Code, Title 58 of the NFPA, 49 C.F.R. 173.315, and the Occupational Safety and Health Administration.

168. Plaintiffs individually and/or collectively were members of the class of persons that the Texas Natural Resource Code, the Texas Administrative Code, Title 58 of the National Fire Protection Association, 49 C.F.R. 173.315, and the Occupational Safety and Health Administration were designed to protect, and the injuries and damages brought by Plaintiffs are injuries and damages that the regulations are meant to prevent.

C. PRODUCTS LIABILITY- MANUFACTURING DEFECT

169. Pursuant to Texas Civil Practice and Remedies Code Chapter 82.001(4), at all pertinent times Defendant Western was engaged in the business of designing, manufacturing, marketing, assembling, selling and/or otherwise placing The System into the stream of commerce.

170. Defects in the manufacture of The System rendered it defective and unreasonably dangerous in that it was prone to fail in the foreseeable course of use. In particular, the telemetry system was defectively manufactured and/or assembled by Defendant Western.

171. The System was used for its intended and foreseeable purpose.

172. The defective manufacturing and assembly of The System directly and proximately causedPlaintiffs' severe personal injuries, property damage, and other compensable injuries.

D. PRODUCTS LIABILITY- MARKETING DEFECT

173. Pursuant to Texas Civil Practice and Remedies Code Chapter 82.001(4), at all pertinent times Defendant Western was engaged in the business of designing, manufacturing, marketing, assembling, selling and/or otherwise placing The System into the stream of commerce.

174. Defendant Western's defects in the marketing of The System rendered it unreasonably dangerous in that it was prone to fail in the foreseeable course of use. In particular, the telemetry system was defectively marketed by Defendant Western.

175. Defendant Western failed to give adequate and proper warnings and instructions regarding the dangers of The System, failure which rendered The System defective and unreasonably dangerous, and was a producing cause of the injuries to Plaintiffs.

176. Defendant Western failed to provide adequate warnings regarding the latent defects in The System, including but not limited to defects in the telemetry system and the lack of coordination with the shut off devices, which rendered The System defective and unreasonably dangerous, andwas a producing cause of injuries to Plaintiff.

177. The System was used for its intended and foreseeable purpose.

178. The defective marketing of The System directly and proximately caused Plaintiffs' injuriesand damages.

E. PRODUCTS LIABILITY- DESIGN DEFECT

179. Incorporating by reference the above paragraphs, The System was originally designed,manufactured, sold, assembled, installed and maintained by Defendant Western. At the time The System was constructed, these Defendants were in the business of designing, manufacturing, selling, assembling, and/or otherwise placing systems, such as The System in question, into the stream of commerce.

180. At the time The System was designed, manufactured, assembled, and constructed by Defendant Western, it was defective in design and unreasonably dangerous. The defective and unreasonably dangerous condition of The System was a direct and proximate cause of the damages to Plaintiffs.

181. The defects regarding The System include but are not limited to the telemetry system and lack of coordination with the shut off devices.

182. Such alternative designs for the defects of The System were available in the market and were technologically and economically feasible at the time The System was designed, manufactured, and assembled. Such alternative designs would not have impaired the utility of The System.

183. At the time of the incident made the basis of this lawsuit, The System was in the same or substantially similar condition as it was at the time it Defendant Western‘s constructed it.

184. As a direct and proximate result of the failure of Defendant Western to properly design, sell, assemble, and deliver The System, Plaintiffs suffered severe personal injuries, property damage, and other compensable injuries.

F. GROSS NEGLIGENCE

185. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts,

conduct, and/or omissions on the part of Defendant Western taken singularly or in combination, constitutedgross negligence and were the proximate cause of Plaintiffs' injuries and damages.[17]

186. Among other things, Matheson had a previous Propylene Supply Agreement with Western("2012 Supply Agreement") effective since July 2012 for Western to provide propylene on behalfof Matheson. The 2012 Supply Agreement automatically renewed each year after the first three- year term unless terminated according to its provisions. Upon information and belief, neither partyhad terminated the 2012 Supply Agreement, and it was in effect in 2020 when the explosion occurred.

187. Under the terms of the Watson-Matheson Agreement, Matheson was required to install a bulk storage system, including any safety and control apparatus, telemetry systems, and low temperature device, vaporization equipment ("System").

188. Matheson subcontracted with its subsidiary, Western, to install The System at the SubjectPremises. Western made deliveries of propylene from the time of the contract between Watson Grinding and Matheson until the week of the explosion. Matheson and Western expressly acknowledged: (a) the necessity of "us[ing] best efforts to comply with all applicable recommendations of the Compressed Gas Association and all government rules, regulations, statutes and ordinances;"[18] (b) "full knowledge of the hazards associated with the storage, use, handling, transport and filling of cylinders with [propylene];" and (c) the duty to warn Matheson's "employees and independent contractors of all such hazards." 2012 Supply Agmt. ¶¶3, 9(c) & 13. The 2012 Supply Agreement also memorialized numerous contractual duties that Matheson had undertaken in the Matheson-Watson Agreement and Western agreed to provide on Matheson's behalf with respect to each "Consuming Location," including the Watson site. *Id.* ¶5 & Addendum as to propylene, Western retained ownership and title to all "equipment needed for the storage,

control and vaporization of the [propylene]." *Id.* ¶¶4-5.Western was also specifically obligated: to comply with rules and regulations regarding propylene storage, use, handling and transport; to furnish a site with the equipment needed for the safe distribution of propylene; to provide and install the necessary equipment in good repair and operating condition; to inspect the Subject Tank owned by Matheson; and to take all safety precautions and comply with all applicable regulations and requirements for propylene distribution. *Id.* at ¶¶4-6. Western and Matheson retained control over the Subject Tank and equipment necessary to the delivery and acceptance of propylene to the Subject Tank on the Watson site. Western and Matheson were contractually bound by the Watson-Matheson and 2012 Supply Agreements to ensure a safety program for the ultimate customer, Watson Grinding.

189. On August 29, 2018, Western and Matheson were put on notice via email communication about a substantial leak in the piping system at the Subject Premises. Watson Grinding had reachedout to Defendant Matheson's sales representative, Carrie Walker, seeking advice regarding the adequacy of their propylene system. Specifically, Watson Grinding was inquiring to see if a certainpipe material was adequate for fixing the leak.

190. After hearing of a substantial leak in the piping system, neither Western nor Matheson exercised their contractual right/obligation to refuse delivery. Instead, they continued making deliveries to the Subject Premises. Neither Defendant Matheson nor Defendant Western took any steps to address the leak reported to them at the Subject Premises, despite their individual duties of care, both under contract and common law.

191. Prior to the incident occurring, Defendant Western was aware that there was a significant volume loss of what they indisputably knew was a highly volatile and combustible gas leaking from a 2,000 gallon tank located within very close proximity to hundreds of homes and

businesses.This volume loss would have been similar to a propylene leak that previously occurred at the Subject Premises in 2018. Defendant Western was contacted regarding the prior leak and concernsabout the adequacy of the piping system. Defendant Western took no steps to address the 2018 leak reported to them at the Subject Premises.

192. Defendant Western's acts and/or omissions, when viewed objectively from Defendant Western's standpoint at the time such acts and/or omissions occurred, involved an extreme degreeof risk, considering the probability and magnitude of the potential harm to others. Defendant Western had actual, subjective awareness of the risk, but proceeded with conscious indifference tothe rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligencewas a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffsare entitled to punitive and/or exemplary damages.

IX.
CAUSES OF ACTION AGAINST THE AUTOMATION DEFENDANTS

A. NEGLIGENCE

193. Incorporating by reference the above paragraphs, at the time and on the occasion in question, the Automation Defendants committed acts and omissions, which collectively and separately constituted negligence. The Automation Defendants had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. The Automation Defendants individually and/or collectivelybreached that duty in one or more of the following ways:

a. Failing to properly design and install the propylene system, including its monitorsand sensors;

b. Failing to properly service, inspect, maintain, and repair the propylene system,sensors and its piping, to prevent, identify, and warn about leaks;

c. Failing to recognize and remediate hazards with an extreme degree of risk; and

d. Other acts or omissions deemed negligent.

B. GROSS NEGLIGENCE

194. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of the Automation Defendants constituted gross negligence and are the proximate cause of Plaintiffs' injuries and damages.[19] The Automation Defendants' acts and/oromissions, when viewed objectively from the Automation Defendants' standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. The Automation Defendants had actual, subjectiveawareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of theoccurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/orexemplary damages.

X.
CAUSES OF ACTION AGAINST DETCON, TELEDYNE DETCON AND 3M

A. NEGLIGENCE

195. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendants, Detcon, Teledyne Detcon and 3M committed acts and omissions, which collectively and separately constituted negligence. These Defendants had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. These Defendants individually and/or collectively breached that duty in one or more of the following ways:

a. Failing to properly service, inspect, maintain, test and repair the propylenesystem and its piping, sensors and alarms to prevent leaks, identify leaks and in the event of a leak to issue warnings and shut down the system;

b. Failing to modify/engineer the automatic shut off valve;

c. Failing to recognize and remediate hazards with an extreme degree of risk;and

d. Other acts or omissions deemed negligent.

B. NEGLIGENT INSPECTION

196. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendants, Detcon, Teledyne Detcon, and 3M committed acts and omissions, which collectively and separately constituted negligence in the inspection of the gas monitors that they regularly services. These Defendants had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. These Defendants individually and/or collectively breached that duty when the gas monitors and piping system were not inspected in a manner that a reasonably prudent person in the same or similar circumstances would have inspected them. As a direct and proximate result of the Defendants' negligent inspection of the subject monitors, Plaintiffs suffered severe injuries and damages.

C. NEGLIGENT SERVICE

197. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendants, Detcon, Teledyne Detcon and 3M committed acts and omissions, which collectively and separately constituted negligence in the service of the gas monitors that they regularly serviced. These Defendants had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. These Defendants individually and/or collectively breached that duty when the gas monitors and piping system were not serviced in a manner that a reasonably prudent person in the

same or similar circumstances would have performed service. As a direct and proximate result of the Defendants' negligent service of the subject monitors, Plaintiffs suffered severe injuries and damages.

D. NEGLIGENT CALIBRATION

198. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendants, Detcon, Teledyne Detcon and 3M committed acts and omissions, which collectively and separately constituted negligence in the calibration of the gas monitors that they regularly calibrated. These Defendants had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. These Defendants individually and/or collectively breached that duty when the gas monitors and piping system were not calibrated in a manner that a reasonably prudent person in the same or similar circumstances would have calibrated them. As a direct and proximate result of the Defendants' negligent calibration of the subject monitors, Plaintiffs suffered severe injuries and damages.

E. PRODUCTS LIABILITY—DESIGN DEFECT

199. Incorporating by reference the above paragraphs, gas monitors that were installed to detectpropylene levels at the premises were originally designed, manufactured, sold, installed and maintained by Defendants, Detcon, Teledyne Detcon and 3M. At the time the monitors were sold, these Defendants were in the business of designing, manufacturing, selling, and/or otherwise placing monitors, such as the monitors in question, in the stream of commerce.

200. At the time the subject monitors were designed, manufactured and sold by Defendants, they were defective in design and unreasonably dangerous. The defective and unreasonably dangerous condition of the monitors were a direct and proximate cause of the damages

to Plaintiffs.

201. The defects regarding the monitors include but are not limited to the ability to turn off thealarm, which is supposed to sound and shut down the flow of propylene in the event of a leak. Safer alternative designs existed other than the one used, which were economically and technologically feasible and would have prevented or significantly reduced the risk of accident and/or injury in question without substantially impairing the monitors utility. Specifically, Defendant could have designed the monitors so that the alarm could not be turned off and disabled.

202. Such alternative designs for the above identified defects were available in the market and were technologically and economically feasible at the time the monitors were designed and manufactured and would not have impaired the utility of the subject gas monitors.

203. At the time of the incident made the basis of this lawsuit, the subject monitors were in thesame or substantially similar condition as they were at the time when they left Defendants' controland were placed into the stream of commerce.

204. No mandatory safety standard or regulation adopted and promulgated by the federal government, or an agency of the federal government, was applicable to the subject monitors at the time they were manufactured that governed any product risk that caused the accident and/or injuries to Plaintiffs. To the extent Defendants attempt, pursuant to § 82.008 of the Texas Civil Practice & Remedies Code, to rely on any standards or regulations of the federal government, such standards or regulations were inadequate to protect against the risk of accident and/or injuries that occurred in this accident and/or Defendants withheld or misrepresented information to the government regarding the adequacy of the safety standard at issue.

205. As a direct and proximate result of the failure of Defendants to properly design, test, sell, and deliver the subject monitors, Plaintiffs suffered severe personal injuries and damages.

F. GROSS NEGLIGENCE

206. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendants, Detcon, Teledyne Detcon and 3M constituted gross negligence and are the proximate cause of Plaintiffs' injuries and damages.[20] Defendants, ARC, Detcon, Teledyne Detcon, and 3M's acts and/or omissions, when viewed objectively from their standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants, ARC, Detcon, Teledyne Detcon and 3M had actual, subjective awareness of the risk, but proceeded withconscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries anddamages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

XI.
CAUSES OF ACTION AGAINST ARC

A. NEGLIGENCE

207. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant ARC committed acts and omissions, which collectively and separately constituted negligence. This Defendant had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. This Defendant breached that duty in one or more of the following ways:

a. Failing to properly service, inspect, maintain, test and repair the control panels of the propylene system to prevent leaks, identify leaks and in the event of a leak to shut the system down and issue warnings;

b. Failing to modify/engineer the automatic shut off valve;

c. Failing to recognize and remediate hazards with an extreme degree of risk; and

d. Other acts or omissions deemed negligent.

B. GROSS NEGLIGENCE

208. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of ARC constituted gross negligence and are the proximate cause ofPlaintiffs' injuries and damages.[21] ARC's acts and/or omissions, when viewed objectively from itsstandpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. ARC had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

XII.
CAUSES OF ACTION AGAINST TRCC

A. NEGLIGENCE

209. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant TRCC committed acts and omissions, which collectively and separately constituted negligence. This Defendant had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. This Defendant breached that duty in one or more of the following ways:

a. Failing to recognize and ensure remediation of hazards with an extreme degree of risk;

b. Failure to design and implement an adequate risk management plan;

c. Failing to modify/engineer the automatic shut off valve;

d. Failing to read, understand, and follow published safe work policies and

procedures; and

e. Other acts or omissions deemed negligent.

B. GROSS NEGLIGENCE

210. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of TRCC constituted gross negligence and are the proximate cause of Plaintiffs' injuries and damages.[22] TRCC's acts and/or omissions, when viewed objectively from its standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk,considering the probability and magnitude of the potential harm to others. TRCC had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximatecause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

XIII.
CAUSES OF ACTION AGAINST DATAONLINE

A. NEGLIGENCE

211. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant DataOnline committed acts and omissions, which collectively and separately constituted negligence. This Defendant had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. This Defendant breached that duty in one or more of the following ways:

a. Failing to properly monitor telemetry readings from the subject tank;
b. Failing to modify/engineer the automatic shut off valve;

c. Failure to properly identify, notify and warn others regarding the propyleneleak; and

d. Other acts or omissions deemed negligent.

B. GROSS NEGLIGENCE

212. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of DataOnline constituted gross negligence and are the proximate cause of Plaintiffs' injuries and damages.[23] DataOnline's acts and/or omissions, when viewed objectively from its standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. DataOnline had actual, subjective awareness of the risk, but proceeded with conscious indifferenceto the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

XIV.
CAUSES OF ACTION AGAINST INDUSTRIAL

A. PRODUCTS LIABILITY—DESIGN DEFECT

213. Incorporating by reference the above paragraphs, gas monitors that were installed to detect propylene levels at the premises were originally designed, manufactured and sold by Defendant Industrial. At the time the monitors were sold, Industrial was in the business of designing, manufacturing, selling, and/or otherwise placing monitors, such as the monitors in question, in thestream of commerce.

214. At the time the subject monitors were designed, manufactured and sold by Industrial, they were defective in design and unreasonably dangerous. The defective and unreasonably dangerous condition of the monitors were a direct and proximate cause of the damages to Plaintiffs.

215. The defects regarding the monitors include but are not limited to the ability to turn off thealarm, which is supposed to sound and shut down the flow of propylene in the event of a

leak. Safer alternative designs existed other than the one used, which were economically and technologically feasible and would have prevented or significantly reduced the risk of accident and/or injury in question without substantially impairing the monitors utility. Specifically, Defendant could have designed the monitors so that the alarm could not be turned off and disabled.

216. Such alternative designs for the above identified defects were available in the market and were technologically and economically feasible at the time the monitors were designed and manufactured and would not have impaired the utility of the subject gas monitors.

217. At the time of the incident made the basis of this lawsuit, the subject monitors were in thesame or substantially similar condition as they were at the time when they left Defendants' controland were placed into the stream of commerce.

218. No mandatory safety standard or regulation adopted and promulgated by the federal government or an agency of the federal government was applicable to the subject monitors at the time they were manufactured that governed any product risk that caused the accident and/or injuries to Plaintiffs. To the extent Defendants attempt, pursuant to § 82.008 of the Texas Civil Practice & Remedies Code, to rely on any standards or regulations of the federal government, such standards or regulations were inadequate to protect against the risk of accident and/or injuries that occurred in this accident and/or Defendants withheld or misrepresented information to the government regarding the adequacy of the safety standard at issue.

219. As a direct and proximate result of the failure of Defendants to properly design, test and sell deliver the subject monitors, Plaintiffs suffered severe personal injuries, property damage, andother compensable injuries.

B. <u>GROSS NEGLIGENCE</u>

220. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts,

conduct, and/or omissions on the part of Defendant Industrial constituted gross negligence and is the proximate cause of Plaintiffs' injuries and damages.[24] Industrial's acts and/or omissions, when viewed objectively from its standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant Industrial had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

XV.
CAUSES OF ACTION AGAINST TOTAL SAFETY

A. NEGLIGENCE

221. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant Total Safety committed acts and omissions, which collectively and separately constituted negligence. Defendant Total Safety had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendant Total Safety breached that duty in one or more of the following ways:

a. Failing to properly service, inspect, maintain, test and repair the propylene systemand its piping, sensors and alarms to prevent leaks, identify leaks and in the event of a leak to issue warnings and shut down the system;

b. Failing to modify/engineer the automatic shut off valve;

c. Failing to recognize and remediate hazards with an extreme degree of risk; and

d. Other acts or omissions deemed negligent.

B. NEGLIGENT INSPECTION

222. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant Total Safety committed acts and omissions, which collectively and separately

constituted negligence in the inspection of the gas monitors that they regularly service. Defendant Total Safety had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendant Total Safety breached that duty when the gas monitors and piping system were not inspected in a manner that a reasonably prudent person in the same or similar circumstances would have inspected them. As a direct and proximate result of the Defendant Total Safety's negligent inspection of the subject monitors, Plaintiffs suffered severe injuries and damages.

C. NEGLIGENT SERVICE

223. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant Total Safety committed acts and omissions, which collectively and separately constituted negligence in the service of the gas monitors that they regularly serviced. Defendant Total Safety had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendant Total Safety breached that duty when the gas monitors and piping system were not serviced in a manner that a reasonably prudent person in the same or similar circumstances would have performed service. As a direct and proximate result of the Defendants' negligent service of the subject monitors, Plaintiffs suffered severe injuries and damages.

D. NEGLIGENT CALIBRATION

224. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant Total Safety committed acts and omissions, which collectively and separately constituted negligence in the calibration of the gas monitors that they regularly calibrated. Defendant Total Safety had a duty to exercise ordinary care, meaning the degree of care that would

be used by any entity of ordinary prudence under the same or similar circumstances. Defendant Total Safety breached that duty when the gas monitors and piping system were not calibrated in a manner that a reasonably prudent person in the same or similar circumstances would have calibrated them. As a direct and proximate result of Defendant Total Safety's negligent calibration of the subject monitors, Plaintiffs suffered severe injuries and damages.

E. PRODUCTS LIABILITY—DESIGN DEFECT

225. Incorporating by reference the above paragraphs, gas monitors that were installed to detectpropylene levels at the premises were originally designed, manufactured, sold, installed and maintained by Defendant Total Safety. At the time the monitors were sold, Defendant Total Safety was in the business of designing, manufacturing, selling, and/or otherwise placing monitors, such as the monitors in question, in the stream of commerce.

226. At the time the subject monitors were designed, manufactured and sold by Defendant Total Safety, they were defective in design and unreasonably dangerous. The defective and unreasonablydangerous condition of the monitors was a direct and proximate cause of the damages to Plaintiffs.

227. The defects regarding the monitors include but are not limited to the ability to turn off thealarm, which is supposed to sound and shut down the flow of propylene in the event of a leak. Safer alternative designs existed other than the one used, which were economically and technologically feasible and would have prevented or significantly reduced the risk of the accident and/or injuries in question without substantially impairing the monitors' utility. Specifically, Defendant Total Safety could have designed the monitors so that the alarm could not be turned off and disabled.

228. Such alternative designs for the above identified defects were available in the

market and were technologically and economically feasible at the time the monitors were designed and manufactured and would not have impaired the utility of the subject gas monitors.

229. At the time of the incident made the basis of this lawsuit, the subject monitors were in thesame or substantially similar condition as they were at the time when they left Defendant Total Safety's control and were placed into the stream of commerce.

230. No mandatory safety standard or regulation adopted and promulgated by the federal government, or an agency of the federal government, was applicable to the subject monitors at the time they were manufactured that governed any product risk that caused the accident and/or injuries to Plaintiffs. To the extent Defendants attempt, pursuant to § 82.008 of the Texas Civil Practice & Remedies Code, to rely on any standards or regulations of the federal government, such standards or regulations were inadequate to protect against the risk of accident and/or injuries that occurred in this accident and/or Defendants withheld or misrepresented information to the government regarding the adequacy of the safety standard at issue.

231. As a direct and proximate result of the failure of Defendant Total Safety to properly design,test, sell, and deliver the subject monitors, Plaintiffs suffered severe personal injuries, property damage, and other compensable injuries.

F. GROSS NEGLIGENCE

232. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendant Total Safety constituted gross negligence and are the proximate cause of Plaintiffs' injuries and damages.[25] Defendant Total Safety's acts and/or omissions, when viewed objectively from their standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant Total Safety had actual, subjective

awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

XVI.
CAUSES OF ACTION AGAINST NADER SALIM

A. NEGLIGENCE

233. Incorporating by reference the above paragraphs, at the time and on the occasion in question, Defendant Salim committed acts and omissions, which collectively and separately constituted negligence. This Defendant had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. This Defendant breached that duty in one or more of the following ways:

a. Failing to recognize and ensure remediation of hazards with an extreme degree of risk;

b. Failure to design and implement an adequate risk management plan;

c. Failing to modify/engineer the automatic shut off valve;

d. Failing to read, understand, and follow published safe work policies and procedures; and

e. Other acts or omissions deemed negligent.

B. GROSS NEGLIGENCE

234. Incorporating by reference the above paragraphs, Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendant Salim constituted gross negligence and are the proximate cause of Plaintiffs' injuries and damages.[26] Defendant Salim's acts and/or omissions, when viewed objectively from its standpoint at the time such acts and/or omissions occurred,

involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant Salim had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

XVII.
DAMAGES

235. As a result of MDL Defendants' actions and/or inactions, Plaintiffs bring this lawsuit forthe following damages:

a. Past and future physical pain and suffering;

b. Past and future mental anguish;

c. Past and future medical expenses;

d. Past and future lost wages and loss of earning capacity;

e. Past and future physical impairment;

f. Past and future disfigurement;

g. Property damage;

h. Diminished Value;

i. Depreciation;

j. Costs of replacement or completion;

k. Expenses of temporary/alternate housing;

l. Business interruption damages;

m. Court costs;

n. Exemplary damages[28]; and

o. Any and all other damages, both general and special, at law and in equity, to whichPlaintiffs may be justly entitled.

236. Plaintiffs also seek both prejudgment and post judgment interest as allowed by law, for allcosts of court, actual damages, and all other relief, both at law and in equity, to which Plaintiffs may be entitled.

XVIII.
PRAYER

For the foregoing reasons, Plaintiffs pray that upon final trial Plaintiffs are entitled to have judgment, jointly and severally, against MDL Defendants and request that the Court award money damages as listed above, in such amounts that the jury may deem appropriate and are allowable by law, along with any and all other relief the Court may deem appropriate. Pursuant to Texas Rule of Civil Procedure 47, discovery is ongoing and given the extraordinary nature of the vast destruction and harm (both bodily harm and damage to property) caused by the explosion made the basis of this lawsuit, the amount of damages is still being ascertained, including the amount of punitive damages to be awarded by the jury, but the best calculation that can be made at this time for the maximum amounts claimed is set forth in Rule 47 Disclosure Statement that will be filed for each Plaintiff and is incorporated here by reference.

Respectfully submitted,

KWOK DANIEL LTD., L.L.P.

/s/ Robert S. Kwok

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on allcounsel of record on the 21st day of January, 2022 pursuant to the Texas Rules of Civil Procedure:

/s/Robert S. Kwok
Robert S. Kwok

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Melanie Peltier on behalf of Robert Kwok
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Status as of 1/21/2022 3:39 PM CST

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