

CAUSE NO. 2016-CCV-62787-1

MD HAYNES, INC. D/B/A CICI'S
PIZZA #88 (AYERS), M/M HAYNES,
INC. D/B/A CICI'S PIZZA #120
(AIRLINE), M&R HAYNES, INC. D/B/A
CICI'S PIZZA #136 (CALALLEN),
INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED;
COIFFURES OF COUNTRY CLUB,
INC. D/B/A ANTHONY'S AVEDA
CONCEPT SALON, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED; AND PAULA
PORTER, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

vs.

VALERO TERMINALING AND
DISTRIBUTION COMPANY; AND
ERGON ASPHALT & EMULSIONS,
INC.; VALERO MARKETING AND
SUPPLY COMPANY; VALERO SOUTH
TEXAS MARKETING COMPANY;
VALERO BILL GREEHEY PLANT;
VALERO REFINING-TEXAS, LP;

Defendants.

IN THE COUNTY COURT

AT LAW NO. 1

NUECES COUNTY, TEXAS

PLAINTIFFS' VERIFIED SECOND AMENDED CLASS ACTION PETITION,
REQUEST FOR TEMPORARY RESTRAINING ORDER AND
REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW MD Haynes, Inc. d/b/a CiCi's Pizza #88 (Ayers), M/M Haynes, Inc. d/b/a CiCi's Pizza #120 (Airline), M&R Haynes, Inc. d/b/a CiCi's Pizza #336 (Calallen), Individually and on Behalf of All Others Similarly Situated; Coiffures of Country Club, Inc. d/b/a Anthony's Aveda Concept Salon, Individually and on Behalf of All Others Similarly Situated, and Paula Porter, Individually and on Behalf of All Others Similarly Situated (collectively "Class

Plaintiffs”), and file this their Second Amended Class Action Petition, Request for Temporary Restraining Order, and Request for Disclosure, complaining of Defendants, Valero Terminaling and Distribution Company, Ergon Asphalt & Emulsions, Inc., Valero Marketing and Supply Company, Valero South Texas Marketing Company, Valero Bill Greehey Plant, and Valero Refining-Texas, LP. This case demonstrates the human and societal suffering caused when the drive for corporate profits takes priority over the safety of ordinary people. Valero Terminaling and Distribution Company, Ergon Asphalt & Emulsions, Inc., Valero Marketing and Supply Company, Valero South Texas Marketing Company, and Valero Bill Greehey Plant have wantonly and recklessly contaminated their water and forced the closure of their businesses.

I.
CLASS ACTION ALLEGATIONS

1.1 This is a class action filed on behalf of the natural or artificial persons or entities served or otherwise dependent on water provided by the Corpus Christi municipal water supply, plus any natural or artificial persons or entities in Texas who were harmed by the negligent actions of the Defendants or their agents governed by Texas law. The damages suffered include economic harm from lost access to the watter supply for the purposes for which class members rely on the water.

1.2 This class action alleges harm arising in Texas against a class of persons essentially defined by their presence in a geographic limit wholly in Texas. This is a local issue that is not dependent on national or interstate matters or laws. Nueces County, Texas has a distinct nexus to the Plaintiffs, claims, and Defendants.

1.3 The putative class is comprised of thousands of natural and artificial persons and entities, sufficiently numerous, the joinder of whom is impractical. The disposition of their claims in a class action will provide substantial benefits both to the parties and the Court. There

is a well-defined community of interest in the questions of law and fact involved and affecting the parties to be represented. The questions of law and fact common to the class predominate over questions which may affect the Class Plaintiffs. The number of persons for whom this action is filed who are citizens of Texas effectively exhausts the membership of the class, with the potential exception of some few, but unknown, transients in Texas or residents of Texas who happen to be citizens of other states.

1.4 The Class Representatives are asserting claims that are typical of claims of the entire class, and they will fairly and adequately represent and protect the interest of the Class in that they have no interests antagonistic to those of the putative Class.

1.5 The damages suffered by each individual member of the Class may be relatively small, but the expense and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them. Class Plaintiffs and the members of the class have all suffered harm and damages as a result of Defendants' unlawful and wrongful conduct. Absent a class action, Defendants will likely not have to compensate victims for Defendants' wrongdoings and unlawful acts or omissions, and will continue to commit the same kinds of wrongful and unlawful acts or omissions in the future.

1.6 Greater than two-thirds of the members of the proposed Class are citizens of Texas. At least one Defendant, from whom significant relief is sought by members of the Class, whose alleged conduct forms a significant basis for the claims asserted by the proposed Class, is a citizen of Texas. Defendants' acts or omissions caused Class Plaintiffs' principal injuries in Texas. Further, no similar class action has been brought by these plaintiffs against these Defendants in the last three years.

1.7 This action, which is brought pursuant to Rule 42 of the Texas Rules of Civil Procedure, is properly maintainable as a class action. Class Plaintiffs bring this class action for injunctive relief and damages on behalf of the following Class:

Class:

All natural or artificial persons or entities served or otherwise dependent on water provided by the Corpus Christi municipal water supply, who were affected by Defendants' actions or omissions which resulted in the contamination of the water supply and consequent tap water usage ban, governed by Texas law.

1.8 Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class are any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff. Also excluded from the Class are claims arising from individual personal injuries.

1.9 **Numerosity:** The proposed Class is so numerous that individual joinder of all of their members is impracticable. Due to the nature of the trade and commerce involved, Class Plaintiffs believe that the total number of Class Plaintiffs is at least in the thousands and members of the Class are numerous and geographically dispersed across Texas. While the exact number and identities of the Class Plaintiffs are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class Plaintiffs in a single class action will provide substantial benefits to all parties and the Court.

1.10 **Common Questions of Law and Fact Predominate:** There are many questions of law and fact common to the claims of the Class Plaintiffs, and those questions substantially

predominate over any questions that may affect individual Class Plaintiffs. Common questions of fact and law include, but are not limited to, the following:

- a. Whether Defendants acted or failed to act to ensure the safety of the city's water supply;
- b. Whether Defendants negligently acted or failed to act;
- c. Whether Defendants acts or omissions amount to gross negligence;
- d. Whether Defendants' acts or omissions caused contaminants to enter the city's water supply;
- e. Whether Defendants' acts or omissions resulted in contaminants entering the city's water supply causing Class Plaintiffs to suffer damages;
- f. Whether the members of the Class sustained damages and are entitled to compensation as a consequence of Defendants' acts or omissions, and, if so, what is the proper measure and appropriate formula to be applied in determining such damages and compensation; and
- g. Whether the members of the Class are entitled to injunctive relief.

1.11 These common questions of law and fact predominate over questions that may affect individual Class members in that the claims of all Class members for each of the claims herein can be established with common proof. Additionally, a class action would "superior to other available methods for the fair and efficient adjudication of the controversy," because (1) Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings; (2) on information and belief, Class Plaintiffs are the first to file a proposed Class Action against Defendants on behalf of the members of the Class; and (3) because the actions or omissions attributed to Defendants caused damages common to all Class members and because resolution of the claims of Class Plaintiffs will resolve the claims of the remaining Class, certification does not pose manageability problems.

1.12 **Typicality:** Class Plaintiffs' claims are typical of the claims of the members of the Class. Class Plaintiffs and all members of the Class have been similarly affected by Defendants' common course of conduct because they all were either forced to close or alter business operations, cease using tap water, and/or purchase bottled water for business and personal use.

1.13 **Adequacy of Representation:** Class Plaintiffs will fairly and adequately represent and protect the interest of the Class. Class Plaintiffs have retained counsel with substantial experience in handling complex, class action litigation. Class Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so.

1.14 **Superiority of Class Action:** Class Plaintiffs and the members of the Class suffered and will continue to suffer harm as a result of Defendants' willful, knowledgeable, unlawful, and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings. In sum, for many, if not most, Class members, a class action is the only feasible mechanism that will allow them an opportunity for legal redress and justice.

1.15 Adjudication of individual class members' claims with respect to the Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impeded the ability of other class members to protect their interests.

II. PARTIES

2.1 Plaintiff MD Haynes, Inc. d/b/a CiCi's Pizza #88 (Ayers) is a Texas corporation, with its principal place of business at 4918 Ayers Street, Suite 120 in Corpus Christi, Nueces County, Texas.

2.2 Plaintiff M/M Haynes, Inc. d/b/a CiCi's Pizza #120 (Airline) is a Texas corporation, with its principal place of business at 1502 Airline Road, Suite 230 in Corpus Christi, Nueces County, Texas.

2.3 Plaintiff M&R Haynes, Inc. d/b/a CiCi's Pizza #336 (Calallen) is a Texas corporation, with its principal place of business at 4101 Hwy 77, Suite N4-7, 78410 in Corpus Christi, Nueces County, Texas.

2.4 Plaintiff MD Haynes, Inc. d/b/a CiCi's Pizza #88 (Ayers), M/M Haynes, Inc. d/b/a CiCi's Pizza #120 (Airline) and M&R Haynes, Inc. d/b/a CiCi's Pizza #336 (Calallen) are hereinafter collectively referred to as "CiCi's".

2.5 Plaintiff Coiffures of Country Club, Inc. d/b/a Anthony's Aveda Concept Salon ("Anthony's") is a Texas corporation, with its principal place of business in Corpus Christi, Nueces County, Texas.

2.6 Plaintiff Paula Porter ("Porter") is a resident of Corpus Christi, Nueces County, Texas.

2.7 Defendant Valero Terminaling and Distribution Company is a Texas corporation doing business in Texas with its principal office located in San Antonio, Bexar County, Texas. Valero Terminaling and Distribution Company can be served through its registered agent, CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. Service will be made by private process server. Service is hereby requested at this time.

2.8 Defendant Ergon Asphalt & Emulsions, Inc. is a Mississippi corporation doing business in Texas with its principal office located in Jackson, Mississippi. Ergon Asphalt & Emulsions, Inc. can be served through its registered agent, CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. Service will be made by private process server. Service is hereby requested at this time.

2.9 Defendant Valero Marketing and Supply Company is a Texas corporation doing business in Texas with its principal office located in Bexar County, San Antonio, Texas. Valero Marketing and Supply Company can be served through its registered agent, CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. Service will be made by private process server. Service is hereby requested at this time.

2.10 Defendant Valero South Texas Marketing Company is a Texas corporation doing business in Texas with its principal office located in Bexar County, San Antonio, Texas. Valero South Texas Marketing Company can be served through its registered agent, CT Corporation System at 1021 Main Street, Suite 1150, Houston, Texas 77002. Service will be made by private process server. Service is hereby requested at this time.

2.11 Defendant Valero Bill Greehey Plant is a Texas corporation doing business in Texas with its principal office located in Corpus Christi, Nueces County, Texas. Bill Greehey Plant can be served through its registered agent, CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. Service will be made by private process server. Service is hereby requested at this time.

2.12 Defendant Valero Refining-Texas, LP is a Texas corporation doing business in Texas with its principal office located in San Antonio, Bexar County, Texas. Valero Refining-Texas, LP can be served through its registered agent, CT Corporation System at 1999 Bryan

Street, Suite 900, Dallas, Texas 75201-3136. Service will be made by private process server. Service is hereby requested at this time.

III. DISCOVERY LEVEL, VENUE, AND JURISDICTION

3.1 Pursuant to the provisions of Texas Rule of Civil Procedure 190.3, Class Plaintiffs propose to conduct discovery according to Discovery Control Plan Level 3.

3.2 Venue is proper in Nueces County pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(3) because Defendants are not natural persons and maintain their principal offices in Texas in Nueces County, Texas. Additionally, the incident made a basis for this lawsuit occurred in Corpus Christi, Nueces County, Texas.

3.3 Class Plaintiffs seek monetary relief in the aggregate of over \$1,000,000.00. The damages sought herein are within the jurisdictional limits of the court.

3.4 The Court has jurisdiction over the lawsuit pursuant to Texas Civil Practice & Remedies Code § 71.002, because the amount in controversy exceeds the Court's minimum jurisdictional requirements, and because Defendants are residents of the State of Texas and regularly conduct business in the State of Texas. Class Plaintiffs further demand judgment for all other relief to which the Class Plaintiffs deem themselves justly entitled.

IV. FACTUAL BACKGROUND

4.1 Late in the evening on December 14, 2016, the City of Corpus Christi sent a notice informing citizens that a **“Back-Flow¹ Incident Leads to Discontinuation of Tap Water Usage Citywide Until Further Notice.”** See Exhibit A, Dec. 15, 2016, City of Corpus Christi News Release (“Contamination Notice”). The Contamination Notice stated: “Late today an

¹ “Backflow” is a term referring to the unwanted flow of water in the reverse direction, which can pose a serious health risk for the contamination of potable water supplies with foul and chemically-laden water.

unknown chemical substance may have contaminated the City of Corpus Christi drinking water due to a recent back-flow incident in the industrial district,” and further advised citizens to “avoid tap water usage until further notice.” *Id.* Citizens were specifically warned against treating the water themselves, that “[b]oiling, freezing, filtering, adding chlorine or other disinfectants, or letting the water stand will not make the water safe,” and that all contact with tap water should be avoided— “[o]nly bottled water should be used for all drinking, beverage and food preparation (including baby formula and juice), making ice, brushing teeth, washing dishes or clothes, washing hands, and bathing until further notice.” *See id.*

4.2 CiCi’s is a long-standing restaurant located in Corpus Christi, Texas, which, like any other business that utilizes or is dependent upon the Corpus Christi municipal water supply, has been forced to cease business operations because of the incident. As of the date of this filing, the water restriction has not been lifted and CiCi’s and other Class Plaintiffs are forced to keep their businesses closed.

4.3 Plaintiff Anthony’s is a full-service beauty salon located in Corpus Christi, Texas, which, like any other business that utilizes or is dependent upon the Corpus Christi municipal water supply, has been forced to cease business operations because of the incident. As of the date of this filing, the water restriction has not been lifted and Anthony’s and other Class Plaintiffs are forced to keep their businesses closed.

4.4 Plaintiff Porter is a citizen and resident of Corpus Christi, Texas who, like all other similarly situated Class Plaintiffs, utilizes or is dependent upon the Corpus Christi municipal water supply.

4.5 Based on information and belief, Defendants’ conduct caused the “backflow incident” at the Valero plant in Corpus Christi, Texas (the “plant”) which put an asphalt

emulsifier pollutant, called Indulin AA-86, into the water supply. Indulin AA-86 is considered hazardous by the OSHA Hazard Communication Standard. *See* http://www.sfm.state.or.us/CR2K_SubDB/MSDS/INDULIN_AA_86.PDF. Indulin AA-86 causes respiratory tract, eye and skin burns, can cause an allergic skin reaction, and can cause target organ damage. *See id.* Indulin AA-86 is corrosive to the respiratory system and can cause serious health effects. *See id.* The Material Safety Data Sheet for Indulin AA-86 reveals its dangerous effects:

2. Hazards identification	
<u>Emergency overview</u>	
Physical state	: Liquid. [Viscous liquid.]
Color	: Amber. [Dark]
Signal word	: DANGER!
Hazard statements	: CAUSES RESPIRATORY TRACT, EYE AND SKIN BURNS. MAY CAUSE ALLERGIC SKIN REACTION. CAN CAUSE TARGET ORGAN DAMAGE.
Precautionary measures	: Do not breathe vapor or mist. Use only with adequate ventilation. Do not get in eyes. Do not get on skin. Do not eat, drink or smoke when using this product. Avoid prolonged or repeated contact with skin. Keep container tightly closed. Wash thoroughly after handling.
OSHA/HCS status	: This material is considered hazardous by the OSHA Hazard Communication Standard (29 CFR 1910.1200).
Routes of entry	: Dermal contact. Eye contact. Inhalation. Ingestion.
<u>Potential acute health effects</u>	
Inhalation	: Corrosive to the respiratory system. Exposure to decomposition products may cause a health hazard. Serious effects may be delayed following exposure.
Ingestion	: May cause burns to mouth, throat and stomach.
Skin	: Corrosive to the skin. Causes burns. May cause sensitization by skin contact.
Eyes	: Corrosive to eyes. Causes burns.
<u>Potential chronic health effects</u>	
Chronic effects	: Can cause target organ damage. Once sensitized, a severe allergic reaction may occur when subsequently exposed to very low levels.
Carcinogenicity	: No known significant effects or critical hazards.
Mutagenicity	: No known significant effects or critical hazards.
Teratogenicity	: No known significant effects or critical hazards.
Developmental effects	: No known significant effects or critical hazards.
Fertility effects	: No known significant effects or critical hazards.
Target organs	: Causes damage to the following organs: upper respiratory tract, skin, eye, lens or cornea. May cause damage to the following organs: digestive system, gastrointestinal tract.

Id.

V.
CAUSES OF ACTION

A. NEGLIGENCE

5.1 Class Plaintiffs re-allege each and every allegation set forth above.

5.2 Upon information and belief, Class Plaintiffs aver that the backflow incident and the resulting injuries suffered by Class Plaintiffs were caused by the negligence and fault of Defendants in the following non-exclusive particulars:

- a. Failure to maintain a safe work place;
- b. Failure to have a reliable system or device at its Plant to prevent the release or warn of the release;
- c. Failure to perform work in a safe and prudent manner;
- d. Failure to exercise reasonable and prudent care in the operations which were occurring at the Plant on the date(s) at issue;
- e. Failure to implement, follow and enforce proper operations procedures;
- f. Failure to implement, follow and enforce proper safety procedures;
- g. Failure to implement, follow, and enforce proper hazard analysis;
- h. Operating the Plant with institutional ignorance of or defiance to a culture of safety and accountability;
- i. Failing to inspect and maintain the equipment associated with the refining process;
- j. Ignoring process safety hazard data related to past incidents and toxic/chemical releases at the Plant;
- k. Causing and permitting to be caused a release of numerous toxic chemicals which resulted in contamination of the Corpus Christi water supply on which Plaintiffs rely;
- l. Operating the Plant without appropriate and trained staffing and supervision of plant units;

- m. Operating the Plant with equipment and processes that defy reasonable engineering, industry and regulatory practices;
- n. Managerial acceptance or encouragement of normalized deviation from appropriate refining procedures;
- o. Failing to implement, follow, enforce and/or train regarding proper hazard analysis;
- p. Failing to maintain a reliable system and/or device at the Plant to prevent the release or to warn of the release of toxic and poisonous chemicals;
- q. Undertaking a conscious effort to reduce costs and staffing at the expense of safety;
- r. Continuing to operate damaged and dysfunctional equipment at the expense of safety and well-being of the workers at the Plant and the Corpus Christi/Nueces County community;
- s. Failing to adopt proper operating procedures;
- t. Failing to comply with proper operating procedures;
- u. Improperly supervising and failing to supervise operation of the Plant unit at issue;
- v. With respect to the backflow incident, failing, purely out of consideration of costs and profits, to shut down the implicated unit to make the necessary repairs for the protection of the community;
- w. Failing to warn residents of the affected community after it was known that dangerous and toxic chemicals were being released into the water supply;
- x. Ratifying and approving improper and dangerous operating procedures, routines and practices;
- y. Failing to make proper modifications and perform appropriate maintenance;
- z. Failing to budget proper maintenance and required modifications, improvements and updates to the equipment and facility;
- aa. Failing to properly warn and notify the neighboring residents regarding the release and dangers from prior and subsequent contamination events;

- bb. Such other acts and omissions which may be discovered through discovery and presented at trial.

5.3 As a result of these negligent acts and omissions, Class Plaintiffs have been damaged.

B. GROSS NEGLIGENCE

5.4 Class Plaintiffs re-allege each and every allegation set forth above.

5.5 Class Plaintiffs would show the Court and Jury that the conduct of Defendants described herein constitutes gross negligence as defined in Texas Civil Practice & Remedies Code § 41.001(11)(A)-(B). Defendants are liable to Class Plaintiffs for gross negligence—to wit:

- a. Defendants consciously and/or deliberately engaged in recklessness, willfulness, wantonness and/or malice through Defendants' actions and/or inactions and Defendants should be held liable in punitive and exemplary damages to the Class Plaintiffs;
- b. Defendants' actions or inactions directly and proximately caused injuries to the Class Plaintiffs, which resulted in the damages detailed below.

5.6 Defendants' grossly negligent conduct proximately caused Class Plaintiffs severe injuries and damages. As a result of such gross negligence of Defendants, Class Plaintiffs are entitled to exemplary damages.

C. NEGLIGENCE PER SE

5.7 Class Plaintiffs re-allege each and every allegation set forth above.

5.8 Defendants' actions violate Texas law which are intended to protect the public's health and safety by regulating plant operations, emissions and the reporting of toxic chemical

emissions, releases, leaks and spills. Class Plaintiffs are among those classes of persons intended to be protected by the environmental laws of this state.

5.9 As a result of these unprecedented acts and omissions by Defendants, such violations of state law have resulted in a breach of duty to Class Plaintiffs. The aforementioned flagrant, historic and continuous violations by the Defendants of state laws and regulations have been and are presents the proximate cause of Class Plaintiffs damages.

D. RES IPSA LOQUITOR

5.10 Class Plaintiffs re-allege each and every allegation set forth above.

5.11 Class Plaintiffs also specifically plead the doctrine of *res ipsa loquitur*. Class Plaintiffs would show that the character of the water contamination is such that it would not ordinarily happen in the absence of negligence and the acts or omissions of the equipment and personnel that led to the releases were under the control of Defendants, its agents, servants, employees and vice-principals at all relevant times.

E. STRICT LIABILITY FOR ULTRAHAZARDOUS ACTIVITY

5.12 Class Plaintiffs re-allege each and every allegation set forth above.

5.13 Class Plaintiffs further allege that the operation of the Plant in its original and damaged/defective condition was extremely hazardous and fraught with danger, and therefore, constituted an ultra-hazardous activity under Texas law. Accordingly, Defendants are strictly liable for Class Plaintiffs injuries and damages proximately caused by the release of toxic chemicals into the water supply.

F. PUBLIC AND PRIVATE NUISANCE AND NUISANCE AS A MATTER OF LAW

5.14 Class Plaintiffs re-allege each and every allegation set forth above.

5.15 Class Plaintiffs own or occupy land near the Plant and affected by Defendants' conduct during the relevant time period.

5.16 Defendants' acts and omissions, beginning in December 2016, if not earlier, caused the Plant to be a private and public nuisance and a nuisance *per se*.

5.17 The ongoing release of chemicals substantially trespassed upon, interfered with, and invaded the Class Plaintiffs use and enjoyment of their land, as well as the interests of those owning or occupying land in or near the area served by the Corpus Christi municipal water supply by Defendants' intentional conduct, negligence, gross negligence, and negligence as a matter of law. Defendants' acts and omissions clearly impair the comfortable enjoyment of life and property for those who own or occupy property near the Plant and have caused such persons extreme annoyance, discomfort, fear and loss of peace of mind.

5.18 Further, the acts and omissions complained herein caused contamination of the Class Plaintiffs property, and the water on, coming to, and adjacent to the Class Plaintiffs property, and further caused the Class Plaintiffs properties to be contaminated with toxins. This contamination was and is offensive to their senses and will obstruct the free use and enjoyment of their property.

5.19 Defendants, for their own purpose and economic profit, chose to create, handle and maintain the aforementioned toxins at the Plant. In doing so, Defendants released contaminants into the water system, surface water and/or subsurface water, which, as a matter of law, constitutes an abnormally dangerous activity.

5.20 Defendants' conduct in producing toxins and causing them to contaminate the property and water of the Class Plaintiffs is actionable under the rules controlling liability for

negligent or reckless conduct, or for abnormally dangerous conditions or activities or instrumentalities.

5.21 Because Defendants created an abnormally dangerous condition and because Defendant engaged in an abnormally dangerous activity, Defendants are strictly liable to the Plaintiffs for any harm and injury caused by the abnormally dangerous toxins.

5.22 As a direct and proximate consequence of the nuisance created by Defendants, Plaintiffs have been damaged.

G. TRESPASS

5.23 Class Plaintiffs re-allege each and every allegation set forth above.

5.24 Class Plaintiffs would show that Defendants, in furtherance of their business interests, caused the aforementioned toxins to be produced and released during the conduct of their business at the Plant.

5.25 Defendants, at all relevant times, negligently, recklessly or intentionally, or as a result of the abnormally dangerous activity of producing toxins at the Plant, caused the property of Class Plaintiffs to be invaded by the aforementioned toxins, causing great and substantial harm to land, chattels and interests of the property-owning Class members.

5.26 As a direct and proximate result of Defendants' trespass, Class members have been damaged.

VI. APPLICATION FOR TEMPORARY RESTRAINING ORDER

6.1 Class Plaintiffs Application for Temporary Restraining Order is authorized by Tex. Civ. Prac. & Rem. Code § 65.0011(1)-(3), (5). Class Plaintiffs seek a Temporary Restraining Order to prevent Defendants from selling, destroying, altering, or modifying any documents or evidence related to this incident.

6.2 If the evidence is changed or altered, including the above listed items, such evidence will be lost and will cause irreparable harm to Class Plaintiffs. Class Plaintiffs request that an Order be entered restraining Defendants from altering, deleting, erasing, discarding or modifying the above listed items.

6.3 Further, Class Plaintiffs request the Court enter an Order allowing Class Plaintiffs counsel retain an expert to visit and investigate the site involved in this incident.

6.4 It is probable that Class Plaintiffs will recover from Defendants after a trial on the merits because Plaintiffs is entitled to the relief requested and for damages resulting from the negligent actions of Defendants which resulted in Class Plaintiffs injuries and damages.

6.5 If Class Plaintiffs application is not granted, harm is imminent because Class Plaintiffs may be unable to identify and locate evidence related to the incident and such evidence may be lost. Class Plaintiffs will be harmed if they cannot examine and locate evidence related to the incident. The harm that will result if a temporary restraining order is not issued is irreparable because Class Plaintiffs cannot be adequately compensated in damages for evidence that may be lost and such damages cannot be measured by any certain pecuniary standard.

6.6 Class Plaintiffs have no other adequate remedy at law that will give it complete, final and equal relief.

6.7 Class Plaintiffs are willing to post bond.

VII. **REQUEST FOR TEMPORARY INJUNCTION**

7.1 Class Plaintiffs ask the Court to set this Application for Temporary Injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants.

7.2 Class Plaintiffs have joined all indispensable parties under Texas Rule of Civil Procedure.

VIII.
DAMAGES

8.1 Class Plaintiffs seek unliquidated damages in an amount that is within the jurisdictional limits of the court, including compensatory and monetary damages from Defendants to compensate it for the damages incurred.

8.2 As a proximate result of the conduct of the Defendants, Class Plaintiffs are entitled to damages for the injuries they sustained as a result of this incident, including but not limited to: loss of wages/earnings; loss of enjoyment of real property and homes, and loss/diminution of property value, past and future; lost profits, customers, and business opportunities; and such other damages as will be shown at trial.

IX.
EXEMPLARY DAMAGES

9.1 The conduct of Defendants was more than momentary thoughtlessness, inadvertence, or error of judgment and was of such a character as to make the Defendants guilty of gross negligence. The Defendants' acts or omissions involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others of which the Defendants had actual awareness, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Therefore, Class Plaintiffs sues for the maximum amount of exemplary damages, pursuant to Texas Civil Practice and Remedies Code § 41.003, in the amount determined by the trier of fact.

X.
CONDITIONS PRECEDENT

10.1 All conditions precedent to Class Plaintiffs' right to recover the relief sought herein have occurred or have been performed.

XI.
PRE-JUDGMENT AND POST-JUDGMENT INTEREST

11.1 Class Plaintiffs seek pre- and post-judgment interest as allowed by law.

XII.
JURY DEMAND

12.1 Class Plaintiffs request a jury trial on this matter.

XIII.
REQUEST FOR DISCLOSURE

13.1 Under Texas Rule of Civil Procedure 194, Class Plaintiffs request that Defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Class Plaintiffs and Class members respectfully pray that Defendants be cited to appear and required to answer herein accordingly to law, that this cause be set for trial before a jury, that Class Plaintiffs and Class members recover judgment of and from said Defendants, jointly and severally, for their actual damages in this cause in such amounts as the evidence may show and the jury may determine to be proper, together with the costs of suit, pre-judgment interest and post judgment interest, and for all such other and further relief, both in equity and at law, to which Class Plaintiffs and Class members may show that they are justly entitled.

Respectfully submitted,

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