

II.
PARTIES

2. Plaintiffs Oscar and Keeli Galvan are residents of Jefferson County, Texas.

3. Defendant **TPC Group, LLC** is a Texas entity with its principal place of business in Houston, Texas. This Defendant is authorized to conduct business in the State of Texas and may be served with process through its registered agent for service of process in the State of Texas: CT Corporation Systems, 1999 Bryan Street, Suite 900, Dallas, TX 75201.

4. Defendant **TPC Group, Inc. d/b/a TPC Group (Holding) Inc.** is a Delaware Corp. with its principal place of business in Houston, Texas. This Defendant is authorized to conduct business in the State of Texas and may be served with process through its registered agent for service of process in the State of Texas: CT Corporation Systems, 1999 Bryan Street, Suite 900, Dallas, TX 75201.

5. Defendants **TPC Group, LLC and TPC Group, Inc. d/b/a/ TPC Group (Holding) Inc.** are hereinafter jointly referred to as “**TPC Group**” or “**Defendants.**”

JURISDICTION AND VENUE

6. Plaintiffs seeks damages within the jurisdictional limits of this Court.

7. This Court has personal jurisdiction over Defendants because Defendants engaged in foreseeable, intentional, continuous, and/or systematic contacts within Texas, so that there is both general and specific personal jurisdiction.

8. Furthermore, exercising jurisdiction over those Defendants based outside of Texas will not offend the notions of fair play and substantial justice.

9. Although Plaintiffs seek damages in excess of \$75,000.00, exclusive of interest and costs, federal courts lack subject matter jurisdiction over this action as there is no federal question and there is incomplete diversity of citizenship due to the presence of Plaintiffs and a Defendant who are both residents and citizens of the State of Texas. Removal would be improper.

10. No party is asserting any claims arising under the Constitution, treaties or laws of the United States.

11. Venue is proper in Jefferson County, Texas pursuant to Texas Civil Practice & Remedies Code §15.002(a)(1) because Jefferson County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

IV. **CLASS ACTION ALLEGATIONS**

12. Plaintiffs, **Oscar and Keeli Galvan, a married couple; on behalf of themselves and all others similarly situated**, bring this lawsuit on behalf of themselves and the proposed Class under Texas Rule of Civil Procedure 42, and any other applicable laws or rules of civil procedure. In addition to statutory damages, the Class members, this action seeks recovery of injunctive and equitable relief, attorneys' fees, and any all other damages, in law or in equity, arising from Defendants actions.

13. The proposed Class definition is as follows, "Residents, businesses, and public entities living in and around the TPC Group, including persons in Jefferson and Orange County, whose homes and personal property were damaged by the explosion at the TPC Group facility which occurred at approximately 1:00 am Wednesday, November 27, 2019."

14. The Class is so numerous that joinder of all members of the Class is impracticable. The precise number of members of the Class and their addresses are presently unknown to plaintiffs, but is believed to exceed 5,000. The precise number of persons in the Class and their identities may be ascertained by determining the magnitude of the explosion and the resulting blast radius. Structures closer to the blast were more likely to sustain damages such as roof or ceiling collapse, while homes further out might only have suffered blown out windows. If deemed necessary by the Court, members of the Class may be notified of the pendency of this action by mail supplemented by published.

15. The proposed Class is ascertainable, the litigation of questions of fact and law involved in this action will resolve the rights of all members of the Class and hence will binding effect on all Class

members. These Class members can be readily identified through limited and minimally intrusive discovery.

16. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The common question of law and fact exist as to all members of the Class and predominate over the questions over the questions affecting individual members of the Class. The common legal and factual questions include primarily, but without limitation, the cause of the explosion and fire that occurred at approximately 1:00 am Wednesday, November 27, 2019 at the TPC Group facility in Port Neches.

17. Plaintiffs claims are typical of the proposed Class because Plaintiff and all Class members received physical damages to the residence or business.

18. Plaintiffs will fairly and adequately represent and protect the interest of the proposed Class. Plaintiffs do not have any interest that are antagonistic to the proposed Class. Plaintiffs have retained counsel competent and experienced in this type of litigation.

19. The proposed Class has a well defined community of interest of questions of fact and law to be litigated. The common questions of law and fact predominate with respect to the liability issues, relief issues, and anticipated affirmative defenses. The named plaintiffs have claims typical of the Class members. Without limitation as a result of the TPC Group's conduct, as alleged herein, Plaintiffs were suffered physical damage to their property as well as emotional.

20. A Class action is the superior method for fair and just adjudication of this controversy. The expense and burden of individual suits makes it impossible and impracticable for members of the proposed Class to prosecute their claims individually. Class adjudication will conserve judicial resources and will avoid to the possibility of inconsistent rulings. Individualized litigation increased the delay and expense to all parties and the Court system presented by the complex legal and factual issues of the case. By contrast, Class adjudication presents far fewer management difficulties, and provides the

benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court.

V.
FACTS

21. People who do not live in Southeast Texas cannot really understand the anxiety that goes with living near refineries. It's just something that you have to accept, but the fear of something catastrophic is always in the back of your mind. Today those worst fears happened.

22. An explosion and fire occurred at approximately 1 am on Wednesday, November 27, 2019 at the TPC Group Plant in Port Neches, Texas. This plant produces butadiene, a gas used to make synthetic rubber that causes cancer in humans when inhaled. The damage injured at least three plant workers and caused significant physical damages to homes and businesses in the surrounding areas. The massive blast was felt for miles around, into neighboring Orange County. The initial explosion shattered windows, collapsed roofs and ceilings in homes, blew doors out (including those at nearby Port Neches Grove High School). The heat from the fire also allegedly melted or warped doors to the point where they were not operable. Several smaller explosions were reported as attempts were made to get the fire under control.

23. The area within a half a mile of the facility was put under a mandatory evacuation order. A shelter in place was ordered for locations outside of that radius, but within a mile of the plant, but the evacuation was latter expanded to other areas of Port Neches and Groves. Additional, shelter in place orders were put into effect for portions of Orange County, TX.

24. The Plaintiffs Oscar and Keeli Galvan live less than a mile from the TPC Group facility at 1720 10th St. Port Neches, TX. Oscar is a fire fighter and Keeli is a school teacher. According to their doorbell video monitoring system, the blast occurred at 12:58 am. They were awakened by the blast, and immediately checked their children, a four month old and a two year old. After silencing their alarm, they sheltered in place briefly in their home hallway. A few minutes later, because they did not know what the plant was releasing, they grabbed some basic necessities and headed to Beaumont to stay

with a relative. Because they left in the middle of the night they could not do a full assessment of damages to their home. Later this morning they received pictures from a neighbor showing blown out windows, and a caved in garage door. It is expected that this story, or something similar, will be repeated by hundreds, if not thousands of families in the Port Neches area.

25. The TPC Group is headquartered in Houston, Texas, TPC Group and is a leader in providing highly specialized lines of chemical products to major chemical and petroleum-based companies worldwide. One of their facilities is located at 2102 TX-136 Spur, Port Neches, TX 77561. This is where the explosion and fire occurred.

26. Operations at facilities like the TPC Group is governed by OSHA 1910.119 which governs process safety management. 29 C.F.R. 1910.119. The purpose of OSHA 1910.119 is to prevent or minimize “the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. *Id.*

27. Blasts like this do not occur without a significant failure of process safety management. The magnitude of this explosion and the resulting fire clearly show a breakdown on the part of the TPC Group.

VI.
CAUSE OF ACTION - NEGLIGENCE

28. On the occasion in question, all Defendants, either individually or collectively, by and through its officers, employees, agents and representatives, committed acts or omissions, which collectively and severally constituted negligence as that term is known in Texas. Defendants were negligent in:

- a. Failing to provide sufficient personnel to perform operations;
- b. Failing to properly follow protocols and policies, proper safety monitoring and control practices;
- c. Failing to exercise due care and caution;
- d. Failing to avoid this incident;

- e. Failing to maintain the plant equipment;
- f. Creating an environment and condition that allowed an explosion and fire at the TPC Group;
- g. Failing to comply with OSHA 1910.119 Process Safety Management regulations;
- h. Other acts of negligence which will be shown more fully at trial.

VII.
CAUSE OF ACTION - GROSS NEGLIGENCE

29. Plaintiff incorporates by reference the foregoing as if set forth at length herein.

30. Defendants' acts and omissions that caused the fire described herein involved an extreme degree of risk to Plaintiffs and others, considering the probability and magnitude of the potential harm to others, especially in light of certain facts which were known to Defendants before Plaintiffs sustained their injuries and damages as described herein. Further, Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others.

31. Defendants' acts and omissions are of such a character as to lead to the conclusion that they not only constitute negligence, but rise to the level of gross negligence/malice. Defendants acted with conscious indifference to the rights, safety, and welfare of Plaintiff, and proximately caused their death through the enumerated acts or omissions.

VIII.
CAUSE OF ACTION - NUISANCE

32. Plaintiffs repeat and re-allege each allegation above herein.

33. The incident created a *private nuisance* that substantially interfered with Plaintiffs' property owners' interest in the use and enjoyment of their properties and caused them unreasonable discomfort or annoyance. These Plaintiffs seek recovery of all of its actual, special, consequential, incidental, and other damages, harms, and losses resulting from the nuisance created by Defendants.

34. The incident created a *public nuisance* causing harm that was different in kind from that suffered by the general public because Defendants' acts or omissions interfered with Plaintiffs' ability to access, operate and use their property.
35. Defendants' conduct interfered with a public right. Defendants' conduct adversely affected all or a substantial part of the community. Defendants' conduct was unreasonable because it involved a significant interference with the public's health, safety, peace, comfort, or convenience and is continuing in nature and produced a permanent or long-lasting effect that ITC knew or should have known would have a significant effect on a public right.
36. Defendants' conduct caused a special injury to Plaintiffs, for which they seek recovery of all special, consequential, incidental, and other damages, harm and losses resulting from the nuisance it created.

IX.

TRESPASS

37. Plaintiffs repeat and re-allege each allegation above herein.
38. Defendants trespassed against Plaintiffs when it physically, intentionally, and voluntarily interfered with Plaintiffs' right to possess their properties. Defendants' acts or omissions caused air contaminants and contaminated water to intrude onto Plaintiffs' property, which caused injury to Plaintiffs' right of possession. Accordingly, Plaintiffs seek recovery of all of its actual, special, consequential, incidental, and other damages, and losses, including cost of restoration or repair, loss of use of land, loss of expected profits from the use of land, loss of market value of land, loss of market value of buildings, and lost profits caused by Defendants' trespass. Plaintiffs also seek recovery of exemplary damages.

X.

DAMAGES

32. As a direct and proximate result of the above Defendants' negligence, Plaintiff suffered

damages. As a result of the incident, Plaintiff suffered the following damages, all of which are within the jurisdictional limits of this court:

- a) Property damage;
- b) Loss of value to property;
- c) Mental anguish in the past and future;
- d) Loss of use of their home.
- e) Attorneys fees.

33. The Defendants have been guilty of reckless disregard for the rights of others, have acted intentionally and with malice towards others and engaged in conduct life-threatening to humans. Plaintiff is, therefore, entitled to an award of punitive damages.

IX.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND APPLICATION TO ENTER PREMISES TO INSPECT, FILM & PHOTOGRAPH

34. Plaintiff asserts that Defendants may change, alter or destroy documents or physical evidence related to or involved in the incident made the basis of this lawsuit, or unless this Court enters a Temporary Restraining Order (“TRO”) restraining Defendants from changing, altering, or destroying any tangible evidence related to the incident.

35. In order for Plaintiff to properly investigate and pursue his claims, recover damages and see that justice is done, this Court should restrain Defendants and their agents, corporate parents, servants, employees, contractors, independent contractors and other contract employees attorneys and those acting in concert with the foregoing Defendants from changing, altering and/or destroying and/or moving evidence of any kind.

X.

REQUEST FOR TEMPORARY INJUNCTION

36. Plaintiff ask the Court to set his application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants.

XI.
NOTICE OF DEMAND FOR PRESERVATION OF
ELECTRONICALLY STORED INFORMATION

37. Plaintiff demands that ALL DEFENDANTS named preserve all documents, tangible things and electronically stored information potentially relevant to the issues in this cause, in accordance with specific notice provisions as if same was set forth herein for all purposes.

XII.
REQUEST FOR DISCLOSURE

38. Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

XIII.
REQUIREMENT UNDER RULE 47 OF THE TEXAS RULES OF CIVIL PROCEDURE

39. Discovery in this case is in its infancy, and Plaintiff believes it is the sole province of the jury to determine the amount of monetary compensation that is appropriate in this case. However, under the newly established Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff is required to specifically plead the amount of monetary compensation being sought. In an abundance of caution, and with deference to the right of the jury to determine the amount of monetary compensation to be awarded, Plaintiff respectfully pleads for monetary compensation over \$1,000,000 under Rule 47(c), subsection 5 of the Texas Rules of Civil Procedure.

XIV.
DEMAND FOR JURY TRIAL

40. Plaintiff asserts his right to a trial by jury, under Texas Constitution article 1, §15, and makes this demand for a jury trial in accordance with Texas Rule Civil Procedure 216.

XV.
CONDITIONS PRECEDENT

41. All conditions precedent to Plaintiff's right to recover herein and to Defendants' liability have

been performed or have occurred.

XV.
CONCLUSION AND PRAYER

WHEREFORE, PREMISES, CONSIDERED Plaintiffs **Oscar and Keeli Galvan, a married couple; on behalf of themselves and all others similarly situated**, on behalf of themselves and those similarly situated, prays:

1. That the Court enter and order certifying this action as a Class action;
2. That Defendants be cited to appear and answer for their conduct;
3. For money damages in an amount to be determined by a jury;
4. For exemplary and punitive damages according to proof;
5. For cost of suit, including reasonable attorneys fees,
6. And all other and further relief to which Plaintiffs may show themselves be justly entitled.

Respectfully submitted,

BRENT COON & ASSOCIATES

By:  _____

BRENT COON
Texas State Bar No. 04769750
brent@bcoonlaw.com
ERIC NEWELL
Texas State Bar No. 24046521
eric_newell@bcoonlaw.com
215 Orleans
Beaumont, TX 77701
Telephone: 409-835-2666
Facsimile: 409-835-1912

ATTORNEY(S) FOR PLAINTIFFS