

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRUCE AND THERESA ABBOTT, h/w §
3535 Louis Road
Crosby, TX 77532 §
and
MICHAEL AND MONICA BARNETT, §
h/w §
4306 Gatewood Road §
Crosby, TX 77532 §
and §
CHRISTOPHER BARNETT §
4306 Gatewood Road §
Crosby, TX 77532 §
and §
JOHN AND BEVERLY BERTONE, h/w §
18006 Ladue Road §
Crosby, TX 77532 §
and §
ROBERT AND BEVERLY BRYANT, §
h/w §
4014 Harvey Road §
Crosby, TX 77532 §
and §
JOHN AND KAREN BURCL, h/w §
5019 Melanie Lane §
Crosby, TX, 77532 §
and §
MARIA LUISA CHACON §
17325 Adlong School Road §
Crosby, TX 77532 §
and §

THERESA CLARK §
3417 Kennings Road §
Crosby, TX 77532 §
and

EXHIBIT 2

ROSE AND DAVID CLEVELAND, h/w
in their own right and as parents and
natural guardians of minor plaintiffs S.C.
and S.C. II
4619 Highway 90 §
Crosby, TX 77532 §
and
EULALIA CONTRERAS §
c/o Jorge and Marguerita Vasquez
17325 Adlong School Road §
Crosby, TX 77532 §
and
MARLAR AND ROSE DONNELL, h/w §
4208 Sherri Lane §
Crosby, TX 77532 §
and
ALAN AND LUCRETIA HARDEN, h/w §
4216 Gatewood Road §
Crosby, TX 77532 §
and
BRICE AND DEBRA HESCHE, h/w §
4414 Sherri Lane §
Crosby, TX 77532 §
and
SHELBY AND JUDY HOWELL, h/w §
3425 Kennings Road §
Crosby, TX 77532 §
and
ROBERT AND PAMELA HUNTER, h/w §
in their own right and as parents and
natural guardians of minor plaintiff J.H. §
4502 Sherri Lane §
Crosby, TX 77532 §
and §
JEREMEY HUNTER §
4502 Sherri Lane §
Crosby, TX 77532 §
and
ROBERT HUNTER §
4502 Sherri Lane
Crosby, TX 77532 §

and §
ERIC AND ABEER JENNINGS, h/w §
in their own right and as parents and §
natural guardians of minor plaintiffs §
F.J. and E.J. §
4914 Harvey Road §
Crosby, TX 77532 §
and §
KEITH AND LINDA JOHNSON, h/w §
4302 Sherri Lane §
Crosby, TX 77532 §
and §
JAMES AND LINDA JORDAN, h/w §
in their own right and as parents and §
natural guardians of minor plaintiff J.J. §
310 S. 6th Street §
Highlands, TX 77562 §
and §
JESUS AND CLAUDIA LLANES, h/w §
in their own right and as parents and §
natural guardians of minor plaintiff J.L. §
3910 Gatewood Road §
Crosby, TX 77532 §
and §
JESUS LLANES, JR. §
3910 Gatewood Road §
Crosby, TX 77532 §
and §
SHELLEY LEGGIO, in her own right §
and as parent and natural guardian of §
minor plaintiff K.L. §
6210 Miller Wilson Road §
Crosby, TX 77532 §
and §
JIMMIE AND JOE MANGUM, h/w §
18404 Adlong-Johnson Road §
Crosby, TX 77532 §
and §
PHILIP MINCEY AND JANESEA §
ZEILER §
3832 Gatewood Road §
Crosby, TX 77532 §
and §
VICKI MOTSKO §
214 Crosby Village Drive §
Crosby, TX 77532 §

and §
EPHRAIM PATTERSON AND §
CHERISSA JORDAN, h/w in their own §
right and as parents and natural §
guardians of minor plaintiff J.P. §
4928 Harvey Road §
Crosby, TX 77532 §
and §
ALEJANDRO PEREZ §
20610 Plaza Circle §
Crosby, TX 77532 §
and §
BYRON PHILLIPS, JR. §
18008 Ladue Road §
Crosby, TX 77532 §
and §
MATT ROBERSHAW §
6210 Miller Wilson Road §
Crosby, TX 77532 §
and §
ANGEL AND ELISA SALAZAR, h/w §
in their own right and as parents and §
natural guardians of minor plaintiffs A.S. §
III and E.S. §
5005 Lord Road §
Crosby, TX 77532 §
and §
MARIA SARABIA §
20610 Plaza Circle §
Crosby, TX 77532 §
and §
MARSHALL AND JUDY STETSON, §
h/w §
20227 Shady Lane §
Crosby, TX 77532 §
and §
CHEYENNE SWINDLE §
4619 Highway 90 §
Crosby, TX 77532 §
and §
JORGE AND MARGARITA §
VASQUEZ, h/w in their own right and as §
parents and natural guardians of minor §
plaintiff A.V. §
17325 Adlong School Road §

CIVIL ACTION NO.: 4:17-CV-03068

Crosby, TX 77532 §
and §
GUADALUPE AND MARIA VELA, h/w §
5031 Melanie Lane §
Crosby, TX 77532 §
and §
STEPHANIE VILLENEUVE AND §
KEVIN SCHWERDTFEGER, in their §
own right and as parents and natural §
guardians of minor plaintiffs J.S. and §
C.S. §
17415 Port O Call Street §
Crosby, TX 77532 §

COMPLAINT (CIVIL ACTION)

I. NATURE OF ACTION

1. This is an action for damages and other relief arising from the release of toxic and noxious chemicals from the industrial facility owned and operated by defendant Arkema, Inc. in Crosby Texas in the aftermath of Hurricane Harvey in August and September, 2017.

II. JURISDICTION AND VENUE

2. Jurisdiction is vested in this Court by virtue of the complete diversity in the citizenship of the parties and the amount(s) in controversy, 28 U.S.C. §1332.

3. Venue is proper in this judicial district, as all parties are found therein, and the acts and omissions giving rise to the action occurred therein. 28 U.S.C. §1391(b),(d).

III. PARTIES

4. Defendant Arkema, Inc. [hereinafter referenced as “Arkema”] is a Pennsylvania corporation with a principal office located at 900 1st Avenue in King of Prussia, Pennsylvania. It is a subsidiary of a French corporation, Arkema, S.A. Arkema regularly conducts business in the State of Texas, and, at all times material hereto, owned and operated the aforementioned industrial facility in Crosby, Texas that is the subject of this lawsuit. Arkema’s Texas headquarters is located at 9502B Bayport Boulevard, in Pasadena, Texas.

5. At all times material hereto, all plaintiffs are or were residents and/or property owners in Crosby, Texas who have suffered harms and damages as a result of defendant’s culpable acts and omissions, as described in greater detail hereinbelow.

6. The individual plaintiffs¹ are as follows:

(1) Bruce and Theresa Abbott, husband and wife, reside in a home they own at 3535 Louis Road.

(2) Michael and Monica Barnett, husband and wife, reside in a home they own at 4306 Gatewood Road. Their adult son, plaintiff Christopher Barnett, resides there with them.

(3) John and Beverly Bertone, husband and wife, reside in a home they own at 18006 Ladue Road.

¹ Minor plaintiffs are designated herein by initials only. Unless otherwise indicated, all plaintiffs’ addresses are in Crosby, Texas.

(4) Robert and Beverly Bryant, husband and wife, reside in a home they own at 4014 Harvey Road.

(5) John and Karen Burcl, husband and wife, reside in a rented home at 5019 Melanie Lane.

(6) Maria Luisa Chacon, mother of plaintiff Margarita Vasquez, resides with the Vasquez family at 17325 Adlong School Road.

(7) Theresa Clark resides in a home she owns at 3417 Kennings Road.

(8) Rose and David Cleveland, husband and wife, live in a home they own at 4619 Highway 90, together with their adult daughter, plaintiff Cheyenne Swindle, and their children, minor plaintiffs S.C. and S.C. II. Rose and David Cleveland are the parents and natural guardians of S.C. and S.C. II and bring the minor plaintiffs' claims in that capacity.

(9) Eulalia Contreras was a visitor at 17325 Adlong School Road, the home of plaintiffs Jorge and Margarita Vasquez, during the incident which is the subject of this complaint.

(10) Marlar and Rose Donnell, husband and wife, live in a home they own at 4208 Sherri Lane.

(11) Alan and Lucretia Harden, husband and wife, live in a home they own at 4216 Gatewood Road.

(12) Brice and Debra Hesche, husband and wife, live in a home they own at 4414 Sherri Lane.

(13) Shelby and Judy Howell, husband and wife, live in a home they own at 3425 Kennings Road.

(14) Robert and Pamela Hunter, husband and wife, live in a home they own at 4502 Sherri Lane, together with their adult sons, plaintiffs Jeremy and Robert Hunter, and their daughter, minor plaintiff JH. Robert and Pamela Hunter are the parents and natural guardians of JH, and bring his claim in that capacity.

(15) Eric and Abeer Jennings live in a home they own at 4914 Harvey Road, together with their children, minor plaintiffs F.J. and E.J. Eric and Abeer Jennings are the parents and natural guardians of F.J. and E.J., and bring the minor plaintiffs' claims in that capacity.

(16) Keith and Linda Johnson, husband and wife, live in a home they own at 4302 Sherri Lane.

(17) James and Linda Jordan, husband and wife, reside at 310 S. 6th Street in Highlands, Texas, together with their son, minor plaintiff J.J. They own several parcels of real estate and homes in Crosby, including but not limited to 5003 Lord Road, and the home occupied by the Burcls at 5019 Melanie Lane. At times material hereto, the Jordans, including J.J., were exposed to deleterious substances at their Crosby property.

(18) Shelley Leggio resides at a rented home at 6210 Miller Wilson Road, together with plaintiff Matt Robershaw, and her child, minor plaintiff K.L. Shelley Leggio is the parent and minor guardian of K.L. and brings the minor plaintiff's claims in that capacity.

(19) Jesus and Claudia Llanes, husband and wife, live in a home they own at 3910 Gatewood Road, together with their son, adult plaintiff Jesus Llanes, Jr. and minor plaintiff

JL. Jesus and Claudia Llanes are parents and natural guardians of minor plaintiff JL, and bring his claims in that capacity.

(20) Jimmie and Joe Mangum, husband and wife, live in a home they own at 18404 Adlong-Johnson Road.

(21) Philip Mincey and Janessa Zeiler live in a home they own at 3832 Gatewood Road.

(22) Vicki Motsko lives in a home she owns at 214 Crosby Village Drive.

(23) Ephraim Patterson and Cherissa Jordan, husband and wife, live in a home they own at 4928 Harvey Road, together with their child, minor plaintiff JP. Ephraim Patterson and Cherissa Jordan are the parents and natural guardians of JP, and bring her claims in that capacity.

(24) Byron Phillips, Jr. lives in a home he owns at 18008 Ladue Road.

(25) Angel and Elisa Salazar, husband and wife, live in a home in which they have an ownership interest at 5005 Lord Road, together with their sons, minor plaintiffs AS III and ES. Angel and Elisa Salazar are the parents and natural guardians of AS III and ES, and bring the minor plaintiffs' claims in that capacity.

(26) Maria Sarabia lives in a home she owns at 20610 Plaza Circle, together with her adult son, plaintiff Alejandro Perez.

(27) Marshall and Judy Stetson, husband and wife, live in a home they own at 20227 Shady Lane.

(28) Jorge and Margarita Vasquez, husband and wife, live in a home they own at 17325 Adlong School Road, together with their child, minor plaintiff A.V. Jorge and Margarita Vasquez are the parents and natural guardians of A.V. and bring the minor plaintiff's claims in that capacity.

(29) Guadalupe and Maria Vela, husband and wife, live in a home they own at 5031 Melanie Lane.

(30) Stephanie Villeneuve and Kevin Schwerdtfeger live in a rented home at 17415 Port O Call Street, together with their sons, minor plaintiffs JS and CS. Stephanie Villeneuve and Kevin Schwerdtfeger are the parents and natural guardians of JS and CS, and bring their claim in that capacity.

IV. MATERIAL FACTUAL ALLEGATIONS

7. Arkema is a specialty chemicals manufacturer that "supports the chemical industry by developing intermediate products which are essential to manufacturing processes. Its products are also used in the operating processes of industrial facilities."

<https://www.arkema.com/en/markets-and-solutions/plastics-and-additives/>. Worldwide, Arkema has annual sales of EUR 5.7 billion (US \$7 billion) and 15,200 employees, 80 industrial sites in more than 40 countries and six research and development centers.

8. Arkema owns and operates plants and facilities throughout the world, including facilities in Bayport, Texas, Beaumont, Texas, Clear Lake, Texas, Houston, Texas, and Crosby, Texas. Its Crosby facility is located at 18000 Crosby Eastgate Road, Crosby, Texas 77532. The site, at 18000 Crosby Eastgate Road, is located in a floodplain and has experienced flooding in the past.

9. For years before August 29, 2017, Arkema used its Crosby plant to produce, process and store large amounts of chemicals and chemical products, to be used primarily to manufacture plastic bottles and other plastic goods, plastics and acrylic, resins, polypropylene and PVC and polyester reinforced fiberglass.

10. The chemicals and chemical products included a large volume of manufactured organic peroxides with the brand name Luperox®, and a large volume of raw materials and other chemicals, including but not limited to isobutylene, mineral oil, mineral spirits, acetone, sulfuric acid, propylene glycol, hydrogen peroxide, chloride compounds, cumene compounds and caustic soda.

11. The materials produced, processed and stored at Arkema's Crosby plant, their constituents, contaminants and by products, alone and in combination are highly noxious, corrosive and toxic, containing or capable of producing classes of dangerous materials such as polycyclic aromatic hydrocarbons, volatile and semi-volatile organic contaminants, and dioxins. When ignited or burned, they generate pollution by releasing into the air particulate matter dangerous to humans.

12. Because many of them are flammable and chemically unstable, posing a high risk of explosion, safe storage of the material present at the Crosby plant requires special precautions, including but not limited to keeping them refrigerated.

13. Arkema has long followed a haphazard approach to the safe handling of chemicals at its Crosby facility, rendering the plant one of the most dangerous industrial sites in Texas.

14. For example:

(a) In 1999, a violent explosion of organic peroxides required nearby residents to be sheltered in place;

(b) In 2006, the State of Texas sought to impose penalties on Arkema for its improper storage of organic peroxides, which had resulted in the discharge of more than a ton of volatile organic compounds to the environment;

(c) In 2011, the Texas Commission on Environmental Quality ["TCEQ"] found that over a period of months, Arkema had failed properly to maintain pollution control devices known as thermal oxidizers;

(d) In 2012, the U.S. Occupational Safety and Health Administration ["OSHA"] formally advised Arkema that its chemical storage plants lacked "design calculations for the worst case scenario."

(e) In 2016, OSHA fined Arkema for multiple violations, which OSHA characterized as "serious," relating to the handling of hazardous chemicals, including the improper "process safety management of highly hazardous chemicals."

15. And while Arkema purportedly maintains "an accidental release prevention program" to "minimize the risk of hazardous chemical releases," those programs have clearly failed. Arkema and its Crosby facility have racked up over a dozen violations and "informal enforcement actions" over safety and environmental problems over the past five years, according to records from the Environmental Protection Agency and OSHA.

16. Records indicate that Arkema has had a history of utilizing equipment even when safety systems were not working properly. Those records further indicate that Arkema failed to inspect and/or test as recommended. In one unit, the company also failed to ensure equipment there was safe and/or failed to keep its nearly sixty employees up to date on their training.

17. These incidents and regulatory citations were not the only events that provided Arkema with notice of the dangers inherent in its Crosby operations, and the need to take precautions against well known risks of explosion and chemical releases.

18. Indeed, as long ago as 2009, Arkema, a sophisticated and highly profitable chemical producer, explicitly identified floods and hurricanes, common in East Texas, with related power failures, as potential hazards to its Crosby plant.

19. In 2013, Arkema conducted a “process hazard analysis,” identifying safety concerns for the Crosby facility including risks of equipment failure, loss of cooling capability, power failures, floods and hurricanes.

20. In 2016, engineers from Arkema’s own insurer identified flood risks to the Crosby facility, including the site’s placement within a significant floodplain, and the need to establish protective measures “independent” of flooding. Not only did Arkema fail to implement such measures, it also failed to inform relevant personnel of the existence of the insurer’s report.

21. Its awareness of risk to the Crosby plant notwithstanding, Arkema failed to take necessary precautions against explosions, such as implementing additional backup equipment, elevating generators above flood levels, taking steps to shelter hazardous materials from wind or water, or abating the explosive or ignitable nature of the chemicals produced or stored there.

22. In 2008, Hurricane Ike made landfall over Galveston, killing 103 people and causing more than \$50 billion in damage. The following year, Arkema identified floods and hurricanes – *as well as power failure and loss of cooling* – as threats to its Crosby site. Still, Arkema did little to update its contingency plans. The plans, which the company must file with the EPA every four years, likewise failed to include any measures to raise critical equipment like backup generators above possible flood levels. Nor did the plans call for isolating hazardous materials from high wind or water – two very common hazards of any hurricane or tropical storm that could foreseeably and regularly hit the gulf coast.

23. Thus, it should come as no surprise that as news reports began warning of the devastating rains that could be expected from Hurricane Harvey – nearly a week before its landfall, few steps were taken at the Crosby facility to guard against the very threats that Arkema had identified following Hurricane Ike. Arkema did not transfer its highly volatile products from its warehouse to a location off site---despite the fact that the Crosby facility is in a flood plain – but instead transferred the products to diesel-powered refrigerated containers on site. Those containers were not raised or elevated.

24. In late August, Hurricane Harvey pounded the Houston area, including Crosby, with high winds and more than forty inches of rain, flooding Arkema’s Crosby plant.

25. On August 29, 2017, Arkema officials advised local authorities that the Crosby plant had lost all electrical power including backup generators, and that the materials onsite “could now explode and cause a subsequent, intense fire” which Arkema now had “no way to prevent.”

26. This catastrophic condition would have been avoided had Arkema acted promptly to remove its large volumes of organic peroxides to an appropriately elevated “laydown” area of the site, but Arkema failed to do so.

27. Arkema’s advice resulted in the State of Texas employing National Guard troops to carry out an immediate, forced evacuation of all residents located within a 1.5 mile radius, including the vast majority of plaintiffs.

28. Arkema failed to properly disclose and warn plaintiffs of the dangers associated with the chemicals at the facility. Information obtained post-incident indicates that a toxic soup of chemicals was released from the Crosby facility, including: Acetic acid; Cumene; Isoprene;

Propylene; Acetone; Diborane; Isopropanol; Propylene Oxide; Acrolein; 1,1-Dichloroethene; Isopropyl Acetate; Silicon Tetrafluoride; Acrylonitrile; Dichloromethane; MAPP; Sulfur Dioxide; Acrylic Acid; Dichlorodifluoromethane; Methyl Acetate; Sulfur Hexafluoride; Allyl Alcohol; 1,1-Difluoroethane; Methyl Ethyl Ketone; Sulfur Mustard; Ammonia; Difluoromethane; Methanol; Nitrogen Mustard; Arsine; Ethanol; Methylbromide; Phosgene; Bis-Chloroethyl Ether; Ethyl Acetate; Methylene Chloride; Phosphine; Boron Tribromide; Ethyl Formate; Methyl Methacrylate; Tetrachloroethylene; Boron Trifluoride; Ethylene; MTED; 1,1,1-Trichloroethane; 1,3-Butadiene; Formic Acid; Naphthalene; Trichloroethylene; 1-Butene; Freon 134a; n-Butyl Acetate; Trichloromethane; 2-Butene; GA (Tabus); n-Butyl Alcohol; Triethylamine; Carbon Chloride; Germane; Nitrogen Trifluoride; Trimethylamine; Carbon Tetrafluoride; Hexafluoroacetone; Phosphorus Oxychloride; Trimethyl Phosphite; Chlorodifluoromethane; Isobutylene; Propyl Acetate; and Vinyl Acetate.

29. The sudden and rushed nature of the evacuation referenced in paragraph 27 was itself traumatic to plaintiffs. By way of example, the Burcls were required to leave their home within 18 minutes after they were contacted by the National Guard, informed only that “chemicals may be released into the water” and it was not safe to stay. Unable to bring adequate clothing or other supplies with them, including John Burcl’s medication for a serious respiratory condition, they were loaded onto a military truck with other residents and transported to a temporary shelter more than six miles from their home. The shelter lacked showers and the only bedding available was in the form of air mattresses placed on the floor. The mattresses supplied to the Burcls failed to hold air, so they essentially slept on the floor until their son-in-law was able to retrieve them, and lodge them at his house in Humble, Texas. The Barnetts were ordered

out of their home by Harris County deputy sheriffs. They had two minutes to leave, and were required to turn off all electricity servicing the home.

30. Residents in the mandatory evacuation zone, including plaintiffs herein, were forced to leave their homes, unable to prevent or abate the damage done by Harvey and its floodwater. Others whose homes remained intact after the Hurricane, were forced to abandon their homes, livestock, even family pets, as law enforcement came door-to-door forcing them to leave their homes.

31. Plaintiffs' properties have been diminished in value as a result of the above-referenced releases and the culpable conduct of Arkema.

32. Arkema completely evacuated its Crosby facility by 7:00 p.m. on August 29, 2017.

33. As a result of the highly predictable loss of power at the Arkema plant, its refrigeration systems shut down, beginning an equally predictable decomposition of chemicals stored there.

34. Arkema personnel removed some of the chemicals to refrigerated trailers on site, but flood waters soon compromised that refrigeration, and between August 31 and September 3, 2017, nine trailers – containing approximately 10,000 plastic containers of organic peroxides – exploded, emitting a plume of thick black smoke into the air and onto surrounding properties including those within the 1.5 mile evacuation zone.

35. The smoke was noxious, caustic and irritating to human respiratory systems, and, as it spread throughout the area, deposited layers of ash and particulate matter onto properties inside and outside the evacuation zone, including those owned by plaintiffs. Plaintiffs suffered

the immediate physical symptoms normally caused by exposure to such materials, including difficulty breathing, headaches and nausea.

36. In addition to these general, immediate symptoms, plaintiffs suffered specific, adverse health effects as a result of their exposure to the materials released from Arkema and the aftermath of the release. For example:

(a) Beverly Bertone suffered pneumonia as a result of her transport in an open military truck during the evacuation. Her condition required hospitalization and other medical treatment, including use of supplemental oxygen, which continues through today;

(b) Debra Hesche suffered respiratory symptoms requiring medical evaluation;

(c) Robert Hunter developed an itchy, red rash on his arms, together with severe coughing and difficulty breathing, all of which required medical treatment;

(d) Linda Johnson developed abdominal symptoms, including pain, nausea, diarrhea and vomiting, together with an exacerbation of her pre-existing emphysema. During the evacuation, she also fell, suffering injuries to her hips, ribs and hand;

(e) Janessa Zeiler suffered a prolonged sinus and respiratory infection, related to the high levels of mold present in her home;

(f) Vicki Motsko suffered severe headaches, itching skin, eye and nasal irritation, and difficulty breathing;

(g) Cherissa Jordan suffered severe headaches and sustained a dog bite during the chaotic evacuation;

(h) Cherissa's daughter, minor plaintiff JP, suffered an allergic reaction requiring medical treatment;

(i) Maria Sarabia suffered an exacerbation of a pre-existing asthmatic condition, with related physical symptoms;

(j) Stephanie Villeneuve and Kevin Schwerdtfeger, and their children, minor plaintiffs JS and CS all suffered severe respiratory infections and related bacterial infections, including sinus and ear infections, strep throat, pneumonia and fevers, as well as rashes on their whole bodies and severe headaches;

(k) Margarita Vasquez suffered severe allergic reactions, burning eyes and rashes, all of which required medical treatment.

37. An additional, similar plume of contaminants was released on September 3, 2017, when Arkema deliberately exploded six additional trailers in an effort to control the destruction of the by now decomposing, unstable chemicals within them.

38. The known byproducts associated with the organic peroxide that burned and released into the air include the following: Carbon Dioxide, Ethane, Acetone, t-amyl alcohol, branched Nonanes, methane, 2-Butanone, heptane, heptenes, 2-ethylhexanoic acid, benzene, benzoic acid, t-butyl phenyl ether, t-butyl alcohol, 2,5-dihydroxy-2,5, dimethylhexane, methyl ethyl ketone, mesityl oxide.

39. These releases into the air were not merely irritating. Testing including that conducted by the Texas Department of Environmental Quality (TDEQ) on surface water and soil on affected properties has revealed that the explosions caused the release of more than 62,000 pounds of toxins, including naphthalene and other polycyclic aromatic hydrocarbons such as the carcinogen benzo-a-pyrene and chrysene, as well as other toxins including acetone, carbon monoxide and diesel byproducts.

40. On or about August 29, 2017, a storage tank containing organic peroxides and two waste water tanks failed, causing releases of additional toxic materials into flood waters migrating onto and off-site into the evacuation zone. The containment area surrounding the waste water tanks was insufficient to prevent the overflow onto and off of the site.

41. The TDEQ has estimated that more than 20,000 pounds of contaminants, including but not limited to petroleum distillates and their byproducts, mineral spirits, organic peroxide and trimethyl benzene were released from the tanks.

42. In keeping with its longstanding policy, Arkema refused to disclose to the public, including plaintiffs and neighboring residents, the identity, ingredients, toxic or the dangerous nature of the chemicals stored at its Crosby plant until well after plaintiffs' evacuation had taken place. Instead, Arkema's officers and managers consistently denied and/or understated the true risks of harm to plaintiffs.

43. Residents, including plaintiffs herein, who had no health issues before the evacuation, soon began complaining of upper respiratory infections, bronchitis, pneumonia, itchy, burning eyes, tight, burning throats, and the like – illnesses and injuries that did not exist prior to the explosions and fires at the Arkema facility and illnesses resulting from and exacerbated by the explosions and fire at the Arkema facility.

44. When plaintiffs were finally permitted to return to their homes, they discovered damages to their properties that would not have occurred but for the evacuation.

45. Plaintiffs' properties were littered with soot, ash and oily residues deposited by the Arkema releases into the air. Due to the lack of electricity during the evacuation, plaintiffs incurred spoilage of their food supplies and other damage to their personal property. The material deposited on plaintiffs' properties contain the toxins referenced above, as well as toxic heavy metals, including lead, nickel and cyanide. Plaintiffs' soil, surface water and drinking water wells have been damaged as a result.

46. Because of their forced absence from the property, plaintiffs were unable to mitigate the effects of high volumes of rain and resultant moisture in their homes. The houses owned and occupied by many plaintiffs are now infested with excessive levels of mold.

47. Plaintiffs have been and will be required to expend money in an effort to remediate the damage to their properties resulting from Arkema's culpable conduct.

48. Both during and since their evacuation, plaintiffs have been deprived of the quiet enjoyment of their properties, all with accompanying annoyance, inconvenience, and disturbance of their daily lives.

49. Plaintiffs have been physically exposed to toxic, noxious substances with potential adverse health effects, further adding to their discomfort, loss of a sense of safety in their own homes, and emotional distress. These exposures, all occurring above normal background levels, will require plaintiffs to undergo medical surveillance and/or monitoring.

50. Plaintiffs' properties have been diminished in value as a result of the above-referenced releases and the culpable conduct of Arkema.

51. Plaintiffs also suffered damage to or loss of personal property, including clothing, furniture, food, bathroom and kitchen fixtures, appliances, personal and commercial equipment and vehicles, carpets, and children's toys.

52. Plaintiffs suffered the loss of pets and livestock due to their forced absence and related inability to tend to the animals and/or the animals' exposure to hazardous conditions.

53. Various plaintiffs have also suffered a loss of business income, wages and earnings as a result of the damage to their property or to their person.

54. Plaintiffs suffered the foregoing harms and damages, all of which are or may be permanent, as a result of the culpable acts and omissions of defendants, as set forth in the following causes of action.

V. CAUSES OF ACTION

COUNT ONE

NEGLIGENCE

PLAINTIFFS VS. ARKEMA

55. Plaintiffs hereby incorporate by reference paragraphs 1-54 above, in their entirety.

56. Plaintiffs' harms and damages were proximately caused by Arkema's negligence, all of which was committed by Arkema's employees, servants and/or agents acting within the course and scope of their employment, service and/or agency at all times material hereto.

57. Said negligence consisted, *inter alia*, of:

- a) negligent handling and storing of hazardous materials;
- b) negligent failure to have in place appropriate emergency preparedness, spill prevention and control, or pollution prevention plans at the Crosby plant;
- c) negligent failure to carry out appropriate emergency spill prevention or pollution prevention plans at the Crosby plant;
- d) negligent failure to place and maintain equipment necessary for the safe storage of hazardous materials at the Crosby plant, including adequate refrigeration and "backup" generators and other equipment;
- e) negligent failure to take any steps to reduce hazardous characteristics of chemicals employed and produced at the Crosby plant;
- f) improper siting of the plant in an area vulnerable to flooding;

g) maintenance of inadequate contamination containment and other pollution prevention facilities at the Crosby plant;

h) failure to warn plaintiffs or the public regarding certain releases from the Crosby plant, including the above-referenced releases from its storage and waste water tanks;

i) failure to take prompt appropriate action to prevent harm done to plaintiffs' properties during the evacuation or to remediate the harm that was done;

j) negligent training of Crosby plant personnel in the safe handling, processing and storage of hazardous materials on site, and the prevention of off-site releases;

k) negligent supervision of the Crosby plant's personnel and operations;

l) negligent failure to take special precautions required to protect against severe environmental risks of which defendant had actual notice, including the risks posed by hurricanes and floods; and

m) negligent failure to inform relevant supervisory staff regarding documented environmental risks faced by the Crosby facility;

n) negligent failure to comply with regulatory, commercial and industrial standards, including but not limited to those promulgated by the American Institute of Chemical Engineers and federal agencies including the Environmental Protection Agency and the Federal Emergency Management Agency;

o) failure to exercise due care under the circumstances.

COUNT TWO
GROSS NEGLIGENCE
PLAINTIFFS VS. ARKEMA

58. Plaintiffs hereby incorporate by reference paragraphs 1-57 above, in their entirety.

59. Defendant unconscionably and wantonly neglected to take the actions reasonably required to correct its past mistakes and omissions and unconscionably and wantonly neglected to reasonably protect the citizens of Crosby, Texas and surrounding communities from the unreasonably dangerous condition it created. These acts of omission and commission, included, but were not limited to those as described herein.

60. Defendant committed acts of omission and commission, which collectively and severally, constituted malice under Texas law, which malice was a proximate cause of the accident described herein. Plaintiffs seek exemplary damages as allowed by law in an amount to be determined at trial. These acts of malice involved an extreme degree of risk considering the probability and magnitude of harm to others; and of which defendant had actual, subjective awareness of such risks involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others.

COUNT THREE
NEGLIGENCE *PER SE*
PLAINTIFFS VS. ARKEMA

61. Plaintiffs hereby incorporate by reference paragraphs 1-60 above, in their entirety.

62. Defendant's conduct described herein constitutes an unexcused breach of duty imposed by law. Plaintiffs are members of the class that the law was designed to protect.

Defendant's unexcused breach of the duty imposed by the law proximately caused the plaintiffs' injuries described herein.

COUNT FOUR
NUISANCE
PLAINTIFFS V. ARKEMA

63. Plaintiffs hereby incorporate by reference paragraphs 1-62 above, in their entirety.

64. Defendant's above-referenced conduct in the operation of its Crosby plant comprised a nuisance which substantially interfered with plaintiffs' right to the quiet enjoyment of their properties, and caused them unreasonable discomfort and annoyance, and resulted in the other harms and damages alleged herein above.

COUNT FIVE
TRESPASS
PLAINTIFFS V. ARKEMA

65. Plaintiffs hereby incorporate by reference paragraphs 1-64 above, in their entirety.

66. Arkema's culpable conduct, which caused hazardous materials to invade plaintiffs' properties without their permission comprised a trespass.

67. Plaintiffs' harms and damages resulted from said trespass.

COUNT SIX
ULTRAHAZARDOUS ACTIVITY
PLAINTIFFS VS. ARKEMA

68. Plaintiffs hereby incorporate by reference paragraphs 1-67 above, in their entirety.

69. Arkema's conduct and operation of its Crosby, Texas plant, including but not limited to its handling, processing and storage of hazardous materials in a location in close proximity to a heavily populated area and important natural resources, comprised ultrahazardous activity subjecting it to strict liability for plaintiffs' harms and damages, all of which were proximately caused by the ultrahazardous activity.

VI. CLAIM FOR PUNITIVE DAMAGES

70. Arkema's above-referenced culpable conduct was conducted in willful, wanton and reckless disregard for the rights, health and safety of plaintiffs and Arkema's conduct, including its failure to take measures it knew were necessary to protect the environment and the health and safety of plaintiffs and the public, was motivated by Arkema's self-interest and desire for profit.

71. Accordingly, plaintiffs seek an award of exemplary damages in an amount sufficient to punish Arkema and to deter others from similar wrongdoing.

VII. JURY TRIAL DEMAND

72. Plaintiffs demand a jury determination of all issues so triable.

VIII. PRAAYER FOR RELIEF

WHEREFORE, plaintiffs ask the Court to provide them the following relief:

- a) judgment in their favor and against Arkema;
- b) an award of general and compensatory damages;
- c) an award of punitive damages;
- d) such interest, costs and fees as allowed by law;
- e) an order requiring Arkema to:
 - i) pay for the costs of an environmental investigation sufficient to determine the full areal extent and impact of the releases from the Crosby plant;
 - ii) pay for the costs of an appropriate scientific study to determine and inform the public of actual and potential adverse health effects caused by the releases from the Crosby plant; and
- f) such other relief the Court deems just and equitable.

Respectfully submitted,

/s/ Lance N. Walters

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Dated: June 26, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 26th day of June, 2018 that a copy of the foregoing document was served upon counsel of record via the Court's eFiling system.

/s/ Lance N. Walters

LANCE N. WALTERS