

2019CI07793

NO. _____

JENNIFER M. DEEM, Individually, as
Heir at Law, and as Representative of the
Estate of SCOTT PATRICK DEEM,
Deceased, and as Next Friend of D.D., T.D.,
and A.D., Minors

BRAD PHIPPS and TINA PHIPPS,
Individually, and as Next Friends of J.P.
and A.P., Minors
Plaintiffs

vs.

3M COMPANY; JOHNSON CONTROLS,
INC.; SCOTT TECHNOLOGIES, INC.
d/b/a SCOTT SAFETY; and EMOND
JAVOR JOHNSON
Defendants

IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

285th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JENNIFER M. DEEM, Individually, as Heir at Law, and As Representative of the Estate of SCOTT PATRICK DEEM, Deceased, and As Next Friend of D.D., T.D., and A.D., Minors, and BRAD PHIPPS and TINA PHIPPS, Individually, and as Next Friends of J.P. and A.P., Minors, Plaintiffs, complaining of 3M COMPANY; JOHNSON CONTROLS, INC.; SCOTT TECHNOLOGIES, INC. d/b/a SCOTT SAFETY; and EMOND JAVOR JOHNSON, Defendants, and for cause of action would show the Court the following:

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiffs will proceed with discovery under a Level 3 Discovery Control Plan.

PARTIES

2. Plaintiffs are resident citizens of Texas.
3. Defendant 3M Company is a foreign-for-profit entity incorporated in the state of Delaware who does business in the state of Texas, and may be served with process through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3136.
4. Defendant Johnson Controls, Inc. is a foreign-for-profit entity incorporated in the state of Wisconsin who does business in the state of Texas, and may be served with process through its registered agent, CT Corporation, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.
5. Defendant Scott Technologies, Inc. d/b/a Scott Safety is a foreign-for-profit entity incorporated in the state of Delaware who does business throughout the United States, including Texas, as part of its sales of self-contained breathing apparatus (“SCBA”) equipment for use with fire department personnel. Defendant does not maintain a registered agent in the State of Texas and may be served with process by serving the Texas Secretary of State who shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office, 4320 Goldmine Road, Monroe, North Carolina 28110.
6. Plaintiffs will hereafter refer to Defendants 3M Company, Johnson Controls, Inc. and Scott Technologies, Inc. d/b/a Scott Safety collectively as “Scott Safety.”
7. Defendant Emond Javor Johnson (“Johnson”) is an individual who may be served with process at his last known address: 8750 Potlatch Street, San Antonio, Texas 78242-3121, or wherever he may be found.

JURISDICTION AND VENUE

8. Jurisdiction is proper because the amount in controversy exceeds the minimal jurisdictional

limits of this Court. Accordingly, Plaintiffs plead and will prove monetary relief over \$1,000,000.00.

9. Pursuant to Section 15.002(a)(2) of the Texas Civil Practice and Remedies Code, venue is proper in Bexar County, Texas, because all or a substantial part of the events or omissions giving rise to the claim occurred in Bexar County, Texas.¹

FACTUAL BACKGROUND

10. To the general population, a house or structure fire may be an event we only see on television or hear about on the nightly news. As tragic as a fire can be, our minds are unable to tolerate the fact that it is something that could happen to us. To resist our trepidation and fears we may have concerning a possible fire, we sometimes tell ourselves, “that was a random occurrence,” or “that would never happen to me.” We tell ourselves these things because we want to be that exception.

11. As much as we’d like to perceive a fire as a “freak accident,” it is estimated that every 24 seconds, a fire department in the United States responds to a fire somewhere in the nation. In fact, in 2017, firefighters responded to approximately 1,319,500 fires in the United States. Of those fires, 72% occurred in home structures.

12. Statistics show that a fire may not be as random as we would like to believe. Fortunately, in the event of a fire, we have the aid of courageous men and women just a phone call away – our local fire department. Communities nationwide recognize the importance of firefighters and how they bravely put their lives on the line to save a house from burning down, to rescue occupants who are trapped, to save a pet, to ensure our memories are recovered, and, most importantly, to save our lives.

¹ TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2).

13. We recognize the risk firefighters take to help us and we, as civilians, rely on our firefighters to be our sole protectors if we were to be faced with a traumatic event such as a fire. But if firefighters are protecting us, what is protecting them?

14. In 1983, the Standard on Personal Alert Safety Systems (PASS) for Firefighters was adopted. PASS devices are designed to signal for aid via an audible alarm and flashing lights in the event a firefighter becomes trapped, is in danger, or becomes incapacitated. PASS devices are able to sense movement, or lack thereof, and activate a 75-95 decibel alarm as well as flashing lights to help guide rescue personnel to their location.

15. Over the decades, PASS devices have continuously been updated and remodeled to serve as an essential safety device to reduce risk of injuries and/or death to firefighters. Today, PASS devices can now be integrated into self-contained breathing apparatus equipment and are automatically activated when a firefighter equips themselves with the SCBA.

16. As we rely on firefighters to rescue us when we are in danger, firefighters rely on the PASS device to rescue them. Unfortunately, PASS devices can sometimes be defective and/or malfunction.

17. In 2007, firefighter Mitch Dryer of Oneida, New York was called to a structure fire at a local bowling alley. As he and another firefighter searched the bowling alley for the source of the fire, the ceiling collapsed on top of firefighter Dryer and he was pinned under burning debris. For 26 minutes, firefighter Dryer was trapped as the building burned around him. Tragically, his PASS device did not signal an alarm so that his fellow firefighters could locate and remove him from the dangerous and deadly conditions.

18. Finally, firefighter Dryer was discovered beneath the rubble and removed from the burning structure. After his rescue, his fellow firefighters found him with blistering burns all over his body.

Once taken to the hospital, firefighter Dryer was found to have suffered fourth degree burns, burns so deep they reach the muscle of the bone, which led to the amputation of his arm and ear.

19. The manufacturers of PASS devices know their products are *essential* safety devices to the firefighters who use them, and these devices should be properly tested to ensure they operate as intended. If firefighter Dryer's PASS device would have sounded the alarm, which is to begin 20-30 seconds after a firefighter is unable to move and/or becomes incapacitated, firefighter Dryer would have been located immediately and he would have suffered only minor injuries.

20. In the case of firefighter Dryer, the manufacturer of the PASS device he was using at the time he was battling the fire at the bowling alley, was put on notice of its defectiveness and its lack of emitting the audible alarm once firefighter Dryer was down. Scott Technologies, Inc. knew of its failures with its PASS devices but failed to warn firefighters about its failures.

21. Scott Technologies, Inc. had an opportunity to improve their PASS devices and ensure they tested these devices under real world conditions. Safety should have been Scott Technologies, Inc.'s number one priority when manufacturing their PASS devices and it was expected that they subscribed to that idea.

22. Ten years following the fire in which firefighter Dryer's PASS device failed and he suffered catastrophic injuries, Scott Technologies, Inc.'s PASS devices are still failing, as they sacrifice firefighter safety for cost savings and profit. In this case, two firefighters, who were also loving husbands and one-of-a-kind fathers, suffered fatal and catastrophic injuries.

The Fire

23. On May 18, 2017, the San Antonio Fire Department ("SAFD") responded to a structure fire located at the Ingram Shopping Center ("the shopping center"). SAFD Ladder 35 ("L35"), which included firefighters Scott Patrick Deem ("Firefighter Deem" / "Deem" / Decedent") and

Brad Phipps (“Firefighter Phipps” / “Phipps”), arrived on scene. Smoke was observed inside the Spartan Box Gym—one of the several businesses operating within the shopping center.

24. Firefighter Deem and Firefighter Phipps, were ordered to conduct search and rescue operations inside the Spartan Box Gym. While conducting their search, conditions began to rapidly deteriorate. The two brave firefighters found themselves in the midst of an emergency.



Above: The scene of the fire at the shopping center

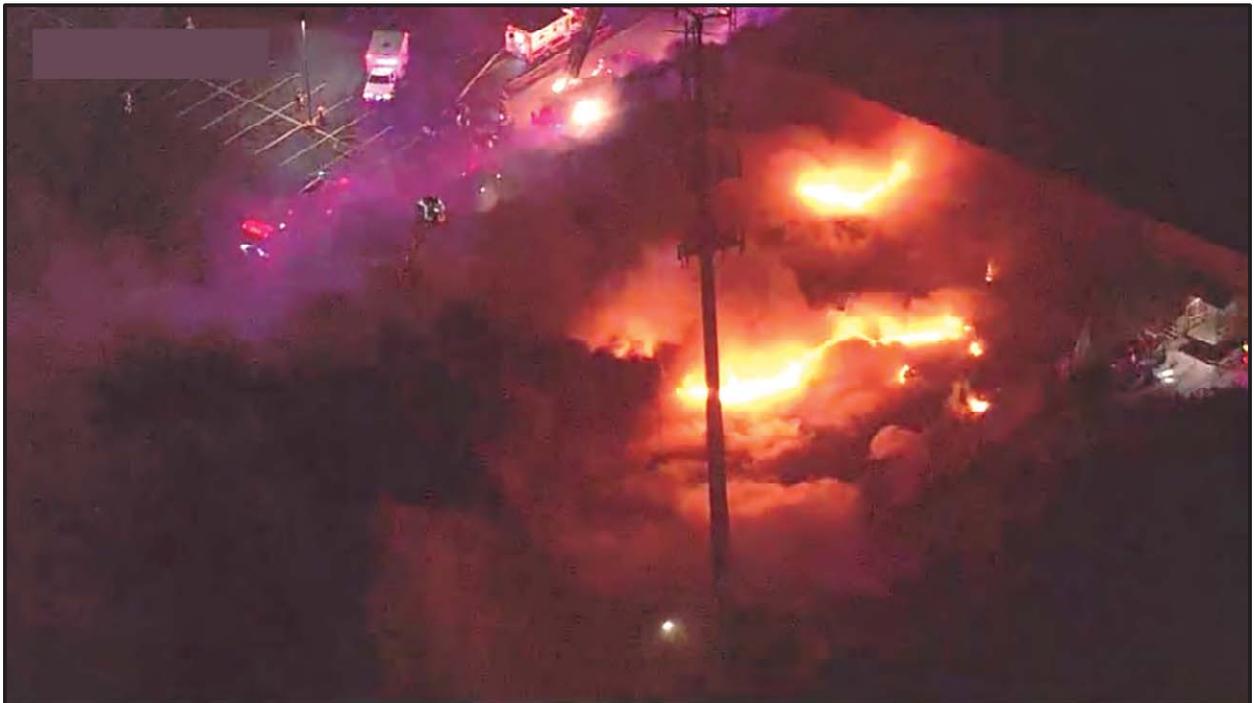
25. Firefighter Phipps declared a “Mayday.” Efforts were then focused on their rescue. As part of a Rapid Intervention Team² (“RIT”), several firefighters, including firefighter Robert Vasquez, made entry into the shopping center in an attempt to locate firefighter Phipps and firefighter Deem. Both firefighters had stopped moving, and neither of their PASS devices were flashing or sounding. Ten minutes after declaring a “Mayday,” a member of the RIT tripped on Firefighter Phipps’ body, and Phipps was pulled from the fire by the RIT. Although firefighter Deem was

² A Rapid Intervention Team (“RIT”) is a team of two or more firefighters dedicated solely to the search and rescue of other firefighters in distress.

only a few feet away from where firefighter Phipps was located, the RIT was unaware of Deem's close proximity because his PASS device was defective and was not sounding.

26. The RIT went back into the Spartan Box Gym to conduct a right-hand search along the walls, continuing their search for firefighter Deem. Again, no one heard firefighter Deem's PASS device because it was defective and was not sounding.

27. Twenty minutes following firefighter Phipps' rescue, firefighters heard the alarm from a PASS device and located firefighter Vasquez, removing him from the structure fire. As heavy smoke and high heat conditions worsened, SAFD was forced to abandon their search for firefighter Deem due to the extreme fire conditions. Firefighter Deem inevitably died from conflagration injuries while firefighter Phipps sustained life-threatening injuries and firefighter Vasquez sustained minor injuries.



*Above: Conditions at the shopping center
30 minutes after "Mayday" declared*

28. Firefighters Deem and Phipps were utilizing a Scott 4.5 Cylinder Air-Pak X-3 SCBA integrated with the Scott PAK-ALERT PASS (Personal Alert Safety System) device (“PASS device”) manufactured by Scott Safety.



Left: Scott 4.5 Cylinder Air-Pak X-3 SCBA

Right: Scott PAK-ALERT PASS (Personal Alert Safety System) device (“PASS device”)

29. Firefighter Deem and Phipps’ PASS device did not sound its alarm as it should have done. If Deem’s PASS device had worked properly, others would have heard it before and when firefighter Phipps was rescued, or when firefighter Vasquez’s PASS device went off and he was located. Further, if firefighter Phipps’ PASS device would have activated, the lights emitted from his PASS device could have radiated light onto firefighter Deem, allowing the RIT to locate him.

30. Despite efforts by other firefighters searching for Deem to listen for the PASS device alarm, the alarm did not sound. The silence was deadly for firefighter Deem. As per the Texas State Fire Marshal’s Investigative report of the structure fire, attempts to hear firefighter Deem’s PASS device were unsuccessful and he could not be located. Nearly two hours after firefighter

Phipps declared a “Mayday”, all available firefighters lined up in front of the Spartan Box Gym hoping that someone would be able to hear his alarm. No PASS device was heard.



Above: Conditions inside the Spartan Box Gym when firefighter Deem was recovered

31. This structure fire at the shopping center was of the size and hazard in which not only an effective PASS device would be needed, but a situation in which firefighters may become incapacitated, in need of assistance or unable to move. This was the specific type of situation where firefighters must rely on their PASS device. It is the exact type of situation where this so-called safety device was supposed to function and sound an alarm. But due to its defective nature, the PASS device failed and no alarm sounded. The Scott Safety PASS device failed yet again and the results were once again tragic for firefighters Deem and Phipps.

32. If firefighter Deem’s integrated PASS device would have set off an alarm as it was intended, the SAFD would have been able to locate him and remove him from the deadly fire.

Deem was eventually found close to where firefighter Phipps had been located. If only firefighter Deem's PASS device would have functioned as intended, Deem's location could have been pinpointed inside the Spartan Box Gym and he would still be alive today.

33. For firefighter Phipps, if his PASS device would have activated as intended, he would have been located immediately rather than ten minutes after he declared a "Mayday." Instead, firefighter Phipps suffered burns to 32% of his total body surface and will require an estimated sixty medical operations in the future to return his body to maximal function. If firefighter Phipps' PASS device, which he relied on to work as intended, would have sounded once he became incapacitated, he would have sustained only minor injuries. Today, Brad Phipps is permanently disabled both from his considerable physical impairments and limitations, and substantial disfigurement associated with burn scarring.



Left: Brad Phipps in the Intensive Care Unit

Right: Brad Phipps, with his wife, Tina, on the day of his hospital discharge – August 1, 2017

34. Further, the injuries to firefighter Vasquez consisted of only smoke inhalation and exhaustion. Firefighter Vasquez's PASS device allowed other firefighters to come to his rescue and remove him from the deadly structure fire, saving his life. If firefighter Deem's PASS device would have sounded as intended, there were **several** opportunities in which he could have been found and removed from the structure fire, only suffering minor injuries. Tragically, firefighter Deem could not rely on his safety device.

35. Defendant Johnson owned and operated the Spartan Box Gym. Johnson set fire to his own business which caused the structure fire.

36. Through the above acts and/or omissions, Defendants Scott Safety and Defendant Johnson should be held liable for the death of firefighter Deem, the life-threatening injuries to firefighter Phipps, and Plaintiffs' damages.

37. A properly designed and manufactured PASS device should be able to prevent the death and catastrophic injuries of firefighters due to its alarm system. The fire made the basis of this suit would have been survivable for firefighter Deem, and firefighter Phipps should have only sustained minor injuries had their PASS device set off alarms to alert others of their location.

38. The Scott Safety 4.5 Cylinder Air-Pak X-3 SCBA had not been changed or altered, and was in substantially the same condition at the time of the subject fire that it had been in when it left the control of Scott Safety.

39. The malfunction and/or defects in the PASS device alarm system exposed firefighter Deem to enhanced injuries and ultimately caused his death, as well as creating the severe injuries to firefighter Phipps.

40. The death of Scott Patrick Deem, the serious injuries and lifelong disability to Brad Phipps, and Plaintiffs' injuries and damages were proximately caused by the negligent acts, both of

commission and omission, of the Defendants.

41. Nothing firefighters Deem or Phipps did or failed to do caused or in any way contributed to the PASS device's failure or their fatal and life-threatening injuries.

42. Plaintiffs seek all elements of actual damages recoverable by law.

FIRST CAUSE OF ACTION
(STRICT PRODUCT LIABILITY – SCOTT SAFETY)

43. All preceding paragraphs are incorporated herein by reference.

44. The Scott 4.5 Cylinder Air-Pak X-3 SCBA (“Air-Pak”) that firefighter Deem and firefighter Phipps were equipped with as they entered the shopping center to battle the fire was designed, manufactured, assembled, marketed and sold by Scott Safety. The Scott 4.5 Cylinder Air-Pak X-3 SCBA integrated with the Scott PAK-ALERT PASS device was unreasonably and dangerously defective in its design, manufacture and marketing. The Air-Pak was defectively designed and manufactured and such defects rendered the SCBA unreasonably dangerous and unfit for its intended purpose and foreseeable use.

45. The Air-Pak was further defectively designed and manufactured in that its integrated PASS device did not set off an alarm once firefighters Deem and Phipps could no longer move rendering the Air-Pak unreasonably dangerous and unsafe for its intended purpose. The defective nature of the Air-Pak and its integrated PASS device were a proximate and producing cause of the death of firefighter Deem and the life-threatening injuries to firefighter Phipps, thus rendering Scott Safety strictly liable.

46. Scott Safety touts itself as a “premier” manufacturer of innovative respiratory, personal protective equipment and safety devices for firefighters. The manufacturer even calls itself “Scott Safety.” As a “premier” manufacturer, you would assume Scott Safety would be in the business of putting safety first for its customers, especially customers who put their lives on the line every

single time they answer a call to battle a fire. Further, Scott Safety claims they protect thousands of individuals each day from environmental hazards. Due to the Air-Pak and its defective PASS device, it can be concluded that Scott Safety is not actually in the business of safety, but rather in the business of profit.

47. The design of the Air-Pak and its PASS device were defective and unreasonably dangerous in the following ways:

- a. The Air-Pak and its PASS device failed to operate as an ordinary firefighter would expect, in that it was unsuccessful in producing an audible alarm once firefighters Deem and Phipps were in need of assistance and could not move within the Spartan Box Gym;
- b. The PASS device integrated into the Air-Pak was improperly and inadequately tested by Defendants Scott Safety;
- c. The PASS device integrated into the Air-Pak was not safe in the event a firefighter became incapacitated, in need of assistance and/or could not move rendering it completely useless when it was most needed as an aid for survival;
- d. The PASS device integrated into the Air-Pak was designed, manufactured, sold and/or supplied in an unsafe, reasonably dangerous and defective condition which created an unreasonable propensity for death during normal and foreseeable conditions; and
- e. The PASS device integrated into the Air-Pak was defective in its design, manufacture and warnings, in that it failed to operate as marketed and advertised, and failed to alert users to the hazardous conditions described herein.

48. Plaintiffs further claim, in the alternative, that a manufacturing defect was a producing cause of firefighter Deem's death and firefighter Phipps' severe injuries. As further support for Plaintiffs' manufacturing defect claims, Plaintiffs provide notice of the intention to rely upon the Malfunction Doctrine (also known as the Malfunction Theory) as set forth in RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 3 (1998).

49. In this instance, it may be inferred that the fatal injuries sustained by firefighter Deem and the life-threatening injuries sustained by firefighter Phipps were caused by a product defect

existing at the time of sale or distribution, without proof of a specific defect, because the injuries suffered by Deem and Phipps: (a) were of the kind that ordinarily occur as a result of a product defect; and (b) were not, in the particular case, solely the result of causes other than the product defect existing at the time of the sale or distribution. RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 3 (1998).

50. Plaintiffs further claim that marketing defects in the product were a producing cause of the fatal injuries to firefighter Deem, catastrophic injuries to firefighter Phipps, and Plaintiffs' injuries and damages.

51. Each of the above negligent acts and omissions of Scott Safety, whether taken singularly or in combination, were a direct, proximate, and producing cause of the fatal injuries to firefighter Deem, life-threatening injuries to firefighter Phipps, and Plaintiffs' damages that are described below. Accordingly, due to Scott Safety's wrongful acts, carelessness, unskillfulness, negligence, gross negligence, recklessness, and deliberate choices, Scott Safety should be held liable for the death of Scott Patrick Deem, the severe injuries to Brad Phipps, and Plaintiffs' damages.

52. Plaintiffs would show that Scott Safety is vicariously liable for the negligent acts and omissions, jointly and severally, by and through its agents, servants, and/or employees, acting in the course and scope of their respective employment, individually and/or collectively.

SECOND CAUSE OF ACTION
(NEGLIGENCE – SCOTT SAFETY)

53. All preceding paragraphs are incorporated herein by reference.

54. The negligence of Scott Safety, including its employees, managers and executives in the course and scope of their employment includes, but is not limited to, the following acts and/or omissions regarding the Air-Pak and its integrated PASS device:

a. Failing to warn firefighters of the dangerous conditions of the PASS device as

described more fully herein;

- b. Failing to provide the firefighters who use their products with a PASS device that is adequate to provide an alarm system which will prevent injury or death in life threatening situations;
- c. Failing to properly and adequately perform tests to assess the performance and effectiveness of the PASS device's alarm system;
- d. Failing to warn firefighters of the dangerous condition of the PASS device and its defective alarms in the event of a life threatening situation;
- e. Failing to provide firefighters with a PASS device that produces audible alarms in a life threatening situation;
- f. Failing to properly and adequately perform tests to assess the alarms of the PASS device once a firefighter is no longer moving so as to assess the alarm system performance and effectiveness of its alarms in such life threatening circumstances;
- g. Failing to properly test the Air-Pak; and
- h. Failing to properly manage product safety and safety hazards.

55. Plaintiffs suffered and continue to suffer injuries and damages because of Scott Safety's negligence and gross negligence. At all relevant times, Scott Safety owed a legal duty to firefighter Deem and firefighter Phipps. They owed a legal duty to exercise reasonable care in designing, manufacturing, assembling, testing, marketing and selling the Scott 4.5 Cylinder Air-Pak X-3 SCBA integrated with the Scott PAK-ALERT PASS device, which would have a PASS device that produced an audible alarm in a life threatening situation and would not present an unreasonable degree of potential harm or danger to others. Scott Safety owed a legal duty to exercise reasonable care while Scott Safety's employees performed their duties in the normal course and scope of their employment.

56. Scott Safety's negligence proximately caused the death of firefighter Deem and the devastating injuries to firefighter Phipps, as well as Plaintiffs' damages through the enumerated wrongful acts and/or omissions.

57. Each of the above negligent acts and omissions of Scott Safety, whether taken singularly or in combination, were a direct, proximate and producing cause of the fatal injuries to firefighter Deem, life-threatening injuries to firefighter Phipps, and Plaintiffs' damages that are described below. Accordingly, due to Scott Safety's wrongful acts, carelessness, unskillfulness, negligence and gross negligence, Scott Safety should be held liable for the death of firefighter Deem, severe injuries to firefighter Phipps, and Plaintiffs' damages.

58. Plaintiffs would show that Scott Safety is vicariously liable for the negligent acts and omissions, jointly and severally, by and through its agents, servants, and/or employees, acting in the course and scope of their respective employment, individually and/or collectively.

THIRD CAUSE OF ACTION
(BREACH OF WARRANTY – SCOTT SAFETY)

59. All preceding paragraphs are incorporated herein by reference.

60. Pleading in the alternative, Plaintiffs further allege that the Air-Pak was expressly and impliedly warranted by Scott Safety to be safe for the use for which it was purchased. In particular, Scott Safety expressly and impliedly warranted that the Air-Pak was integrated with a PASS device that would produce audible alarms intended to locate a firefighter who is incapacitated or in need of assistance, and that the firefighters who used the Air-Pak would be safe in a life threatening situation.

61. The Air-Pak with its integrated PASS device was neither safe nor fit for the purposes for which it was purchased, nor was it of merchantable quality. As a result, the express and implied warranties mentioned above were breached.

62. As a direct and proximate result of the breach of warranties, the Air-Pak with its integrated PASS device proved to be defective at the time of the fire made the basis of this suit, and such failures caused the injuries and damages to Plaintiffs, the death of firefighter Deem, and the drastic

injuries to firefighter Phipps set forth herein.

FOURTH CAUSE OF ACTION
(JOHNSON)

63. All preceding paragraphs are incorporated herein by reference.

64. While the negligence by Scott Safety was the producing and proximate cause of the death of firefighter Deem and firefighter Phipps' severe injuries, Plaintiffs allege that the conduct of Defendant Emond Javor Johnson was inexcusable as he intentionally set fire to the Spartan Box Gym. Defendant Johnson did not consider the danger the fire posed to emergency personnel, such as firefighter Deem and firefighter Phipps. The conduct of Johnson was a proximate cause of the fire that occurred inside the shopping center.

GOVERNMENTAL IMMUNITY

65. It is anticipated that in an effort to shift blame to others, Scott Safety will claim that the brave firefighters and/or the City of San Antonio Fire Department are responsible in some way for the death of firefighter Deem and life-threatening injuries to firefighter Phipps. Plaintiffs further allege and intend to show that any attempt by Defendants to hold the brave firefighters and/or the City of San Antonio Fire Department responsible is evidence of Scott Safety's disregard for its defective PASS device. Plaintiffs would further show that the brave firefighters and members of the City of San Antonio Fire Department were acting in a "sudden emergency" situation as that term is understood under Texas law. Furthermore, any governmental entity liable or proportionately responsible for Plaintiffs' damages is barred by governmental immunity, sovereign immunity, official immunity, and the sudden emergency doctrine and is not allowed or recognized under the Texas Tort Claims Act. No proportionate liability can exist against a governmental entity under the facts of this case.

WRONGFUL DEATH AND SURVIVAL STATUTE DAMAGES
(DEEM PLAINTIFFS)

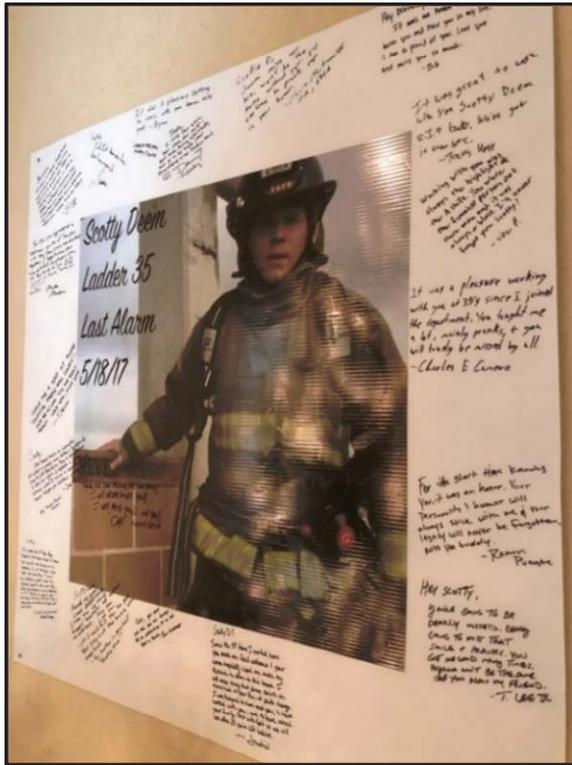
66. As per firefighter Deem's Death Certificate, he died as a result of conflagration injuries, a mixture of inhalation of carbon monoxide and an incineration of the body. According to the Texas State Fire Marshal's Report, firefighter Deem entered the building sometime between 9:17 p.m. and 9:21 p.m. It was not until 11:31 p.m. that Deem's body was observed inside the Spartan Box Gym and he was removed from the building.

67. Because of the nature of the fire and how it rapidly grew out of control, it is unknown how long firefighter Deem suffered before his eventual death. It is known, however, that death by fire is one of mankind's most feared causes of death. Once burns reach second-degree, severe pain is felt throughout the burn areas as the flames have reached the nerve endings and pain receptors of the skin. In addition, the inhalation of smoke causes severe damage to the lungs resulting in shortness of breath, a sensation similar to being smothered. The conscious pain Deem suffered, both pathologically and psychologically, as he was trapped inside the structural fire are a direct result of Scott Safety's negligence in its manufacture of the integrated PASS device.

68. Decedent was a hardworking man adored by not only his family, but also his fellow firefighters. In his six years dedicated to the San Antonio Fire Department, firefighter Deem's SAFD family will miss their fallen brother, a person they all describe as being able to make them laugh. Fellow firefighter Mike Medina says of Deem, "[he] squeezed a lifetime's worth of laughs into the few years we worked together . . . I hope to hear [his] high pitched laugh when it's my turn to go."

69. As a firefighter for L35, Deem was not only a reliable source to turn to for laughter, but he exhibited bravery, integrity and resilience every time he put on his firefighter gear. SAFD Captain Martin Selva fondly recalls that Deem made his job easy, a feat only a courageous firefighter could

accomplish.



Left: L35 Memorial Poster for “Scotty” Deem

“Last Alarm 5/18/17”

70. While the presence of Deem will be forever missed at Ladder 35, it pales in comparison to how missed he will be by his wife and children. Heartbreakingly, infant daughter A.D. never had the chance to meet her father, as she was still growing in her mother’s stomach the night firefighter Deem was tragically killed.

71. Plaintiffs are statutory beneficiaries of Scott Patrick Deem, Deceased, and are entitled to bring an action on account of his wrongful death.

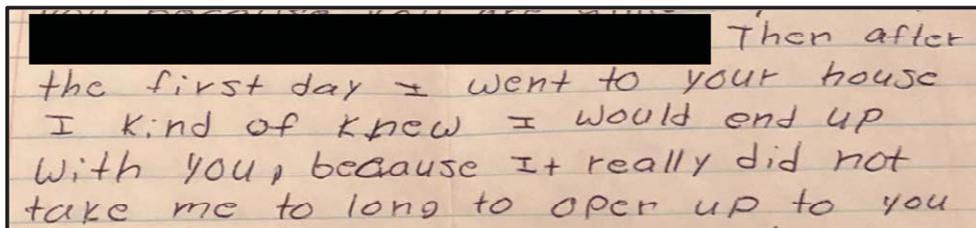
72. Plaintiffs bear the following relationships to Decedent:

- a. Jennifer M. Deem - Wife;
- b. D.D., A Minor - Daughter;
- c. T.D., A Minor - Son; and
- d. A.D., A Minor - Daughter.

73. Jennifer and Deem had tremendous plans for 2017. Not only was Deem studying for a

promotion, but the family was in the process of building a new home, just in time for the arrival of their third child, A.D. “My life was perfect to me,” Jennifer recounts.

74. Long before Jennifer and Deem were married with children, they were just a couple of teenagers working at the fast-food chain, Arby’s. Jennifer can still remember her first thought when she laid eyes on her then co-worker, “Oh, my gosh, he’s the cutest thing ever.” She decided to give Deem her phone number and invite him over to play basketball. Once the two youngsters scheduled their first date, Jennifer realized she was scheduled to work at that very same time. Her adoration for her future husband was so immediate, she quit her job at Arby’s as her date with Deem felt to her like destiny. “I quit to play basketball,” Jennifer says “It felt so right and so natural. Something about it, everything just felt right.” Indeed, it seemed as though Jennifer and Deem were destined to be together as Deem shared the same sentiments as Jennifer.

A photograph of a handwritten note on lined paper. The text is written in cursive and reads: "Then after the first day I went to your house I kind of knew I would end up with you, because I really did not take me to long to open up to you". The first few lines of the note are obscured by a black rectangular redaction box.

Above: Excerpt of a Letter from Teenage Scott to Teenage Jennifer

75. Jennifer’s initial feelings for Deem were indeed “so right” as she puts it, the two moved into an apartment in west San Antonio after high school. Even though the young couple could not even afford a car at that time, Deem’s love for Jennifer did not stop him from buying bouquets of red roses “just because.”

76. “You’re just beautiful — he would tell me that every day. He would always tell me how much he loved me,” Jennifer remembers, “And we were together every single day. We did everything together.”

77. As a firefighter, Deem worked 24 hours on and 48 hours off. On May 18, 2017, he was on. He was on at home, too. There had been a mix-up with the contractor for their new house — siding vs. stucco, and there had been a complication related to a blood clot in Jennifer’s pregnancy. Jennifer asked Deem to call in and stay with her. Deem, ever the easygoing, can-do guy, sorted the issue with the contractor, reassured Jennifer by treating her to breakfast out, and made it to work on time. Jennifer smiles remembering how Deem moved to kiss her, then kissed her pregnant belly.

78. That evening, as usual, Jennifer put their two children to bed, then sent a text to Deem asking her to call him. As a firefighter, she knew Deem would not be able to respond or call immediately, and it did not seem out of the ordinary that she had not heard from him. That all changed when she received a phone call from her mother-in-law asking if she had turned on the evening news.



Left: The Deem family celebrating their last Christmas with Scott Deem, 2016

79. Jennifer, in tears, recounts her memory watching coverage of the shopping center fire. “I knew Scott was there, but I didn’t think he was in there. And I tried calling him. And he didn’t

answer, and then I tried sending texts: ‘Please just answer your phone and hang up just so I know you’re okay.’ And nothing.” Jennifer even resorted to Facebook, hoping to find any bit of information to confirm her husband was okay. She would soon find out that he was not.

80. Around 11:45 p.m. that evening, SAFD confirmed the news to Jennifer. Scott Deem tragically lost his life battling the fire. The rest of the evening was a blur to her. “That had to have been the worst day of my life. I felt like I lost everything. I lost my best friend. I lost my husband, the father of my kids, my protector. I lost everything. Sometimes I still feel like I’m lost without him.”



Above: Jennifer Deem being consoled by an SAFD Firefighter

81. Over a year later, Jennifer continues to think of Deem daily. Now a single parent, she questions her every move: “What would Scott think of this? Or, would Scott like this? That’s what I do all day.” Through her grief, Jennifer tries to fill the void in her children’s lives as a result of Deem’s death.

82. When Jennifer finds herself upset, she visits Deem’s grave and speaks to him. She felt stressed recently and went daily for a week. “I feel like sometimes, why did you leave us? But I know that he would never have left us,” Jennifer says. “I just tell him to never leave us, stay by

our side, and I ask God to give me the strength.”



Above: Jennifer has displayed framed items in Deem’s memory in the home’s stairwell, including a photo a friend took of a red bird — “I believe that red cardinals are from heaven,” Jennifer says.

Also, displayed on their Christmas tree is an ornament decorated with a copy of Scott Deem’s handwriting in his letters to Jennifer: “Love always, Scott.”

83. The loss of a spouse results in a complicated grief process. Throughout the relevant literature, traumatic loss is separated from expected loss and represents an increased risk of developing psychological complications with respect to the bereavement process. The risk of developing complicated grief symptoms is also increased when the death occurs under what are considered tragic or traumatic circumstances like those under which Deem lost his life.

84. No one fully recovers from the tragic and sudden death of a spouse, but Jennifer is trying to adjust to a world without him as best she can, especially for the sake of their three children.

85. For the Deem children, D.D. and T.D., May 18, 2017 seemed like an ordinary day in the life of the Deem family. Their father, who had been diligently studying for his EMS exam, asked their mother to stop by the station and bring him an energy drink. So, just like that, Jennifer along with D.D. and T.D. drove down to the fire station, a rare treat for the two children.

86. “We went to his work, and we dropped it off,” D.D., 14-years-old, remembers, “I was in the front seat. And I started laughing because his shirt was untucked, and he looked chunky.” That moment remains hilarious to D.D. and her mother because the way Deem’s belt was cinched, it

made his stomach “pooch out”, as if he gained a few extra pounds. D.D. pointed it out to her dad and it even made him laugh: “What are you talking about? These are abs.” “He was laughing with me. He was saying, ‘Hi,’ giving us kisses, asking us how our day was,” D.D. says, “Then we left. Whenever we were leaving, you could see him at the front, waving bye.”



Above: Scott, Jennifer and T.D.

Below: Scott Deem holding D.D. as a baby



87. Later that evening, D.D. was having trouble with her math homework, an exercise in converting fractions. She decided to give her dad a call to ask for help and he, being the supportive and helpful father he was, walked her through the problems, then wished her goodnight. “Goodbye, Koda Bear,” he said, using her nickname. “I love you.” “I said, ‘I love you, too.’”

88. D.D. remembers a special trip the Deem family took to Six Flags for her father’s birthday. They enjoyed bumper cars, riding the swings and in the Ferris Wheel, and D.D. even partook in a roller coaster that frightened her, only riding it because it was her dad’s birthday. For him, she would have done anything. That was the type of dad Scott Deem was. Even when D.D. was a cheerleader, it was her father that practiced with her, demonstrating how the moves and cheers should go.



Left: D.D., wearing her father’s firefighter gear

89. “My dad is the type of person, where he will do anything, even if it makes him look childish, he does it anyway,” D.D. says, “That’s him being himself.”

90. Today, D.D. feels stressed and isolated. Her father, her best friend, her confidante is gone.

“It’s hard, and it overwhelms me, and it breaks me inside.”

91. Even though her father is gone, D.D. seeks to honor his memory by being the same type of person that he was. “He was a loyal person. He was a good friend,” D.D. says, “He was brave and strong and athletic, and he was funny. He acted like a little kid, and everybody loved him.”

92. For 8-year-old T.D., his reaction to the loss of his father was different from that of his sister. “Ah, I miss Dad. I wish Dad were here. Why did he have to go to heaven?”, T.D. says. Jennifer remembers a time Deem visited T.D.’s school and wowed all of his friends by walking on his hands around the gym. “T.D. came home super-excited,” Jennifer says, “Oh, my god, Mom, my friends, they said, ‘Your dad’s so strong!’” Scott even signed up to be a “watchdog dad” at T.D.’s school, which entailed volunteering for a day to monitor the campus for strangers, help in the office, play in the gym, and go to lunch with T.D.’s class.



Above: D.D., T.D. and Deem celebrating D.D.’s birthday at Peter Piper Pizza, one of the family’s favorite restaurants

93. For T.D., he leans on his mother when he finds himself missing his father. Even though

T.D. lost his father who bravely fought to protect the City of San Antonio, he's already decided to become a firefighter when he grows up, just like his dad.



Left: Scott and T.D. during happier times
Right: T.D. in his San Antonio Fire Department Gear
in honor of his father

94. D.D. and T.D.'s experience to their father's death is in line with medical psychological literature on how children grieve. When a loved one dies, it is clearly difficult for everyone. Children experience powerful and difficult feelings when a parent dies with which, because of their tender age, they are ill prepared to deal. Young children often have a limited capacity to understand that death is permanent, and older children who do understand that the parent they have lost will not be returning still find coping with feelings of confusion, anger, sadness, yearning, loneliness and abandonment particularly challenging. They feel their circumstances are now unfamiliar or unsafe.

95. When faced with the stress of grieving a parent and coming to terms with such an incredible loss, children begin to act younger than their age. They are in constant need of reassurance. They find it difficult to concentrate. They are irritable. Their emotional upset manifests itself in physical complaints and symptoms. Also, children visit the death and the absence of their loved one over

and over and over for short periods of time during the days, weeks and months following the loss, turning to schoolwork or play to distract themselves from the intense pain of the situation. While this practice helps them avoid becoming overwhelmed, it obviously also prolongs the initial grieving process and the time it takes to address the myriad of concerns the children have. In fact, children actually grieve in stages and over many years.

96. Graduations, leaving home for college, getting married and starting a family all bring new skills to understand the impact of a parent's death on their lives, and such milestones also bring new and additional pain since the parent is not here to share in them.

97. To fully appreciate how the death of a parent affects children like D.D. and T.D., one must also take note that the current available research suggests children or adolescents experiencing the loss of a parent may be at increased risk for developing substance abuse problems as well as limited social and occupational success and satisfaction as a result of the increased responsibilities and demands placed on them because of the absence of a parent they have lost.

98. For infant baby A.D. (who was named after her father posthumously), she will never experience her father's presence, love, companionship, and support in the same ways her siblings have. For A.D., her only experiences with her dad come from inside the womb. Jennifer recalls how Deem would sing and talk to A.D. while she was still growing in her stomach. "I remember the first time she kicked, he was talking to her, and he was like, 'Hey! Kick Mommy, kick Mommy!'", and he was like 'Oh, my God, I felt that!' It was just the funniest, cutest thing because he would always talk to her, and sing to her, and tell her, 'I'm so excited to see you! Daddy loves you!'", Jennifer fondly recalls.

99. Not only does A.D. share a name with her father, but she is already showing similarities to the parent who tragically lost his opportunity to raise her. Sleeping with one arm by her side and

one arm across her chest, A.D. sleeps in the same position as Deem.



Left: Baby Aubrey sleeping in the same position as her father
Right: Baby Aubrey touching her father's gravestone

100. The impact of Deem's death will be felt by each member of this family in their own individual ways for the next 50 years as Deem was only 31-years-old when his life was taken.

101. In addition to the enormous human damages discussed above, Deem contributed support of a pecuniary value to his family. Economic Loss Expert Dr. Gene A. Trevino performed an appraisal of Deem's earning capacity and the economic losses incurred in connection with his death. Based on Scott Deem's age at death (31-years-old), he would have worked an additional 36 years with SAFD. In addition, Deem would have been eligible to receive a pension annuity upon retirement. Future earnings are one of the bases for lost support calculations. Another is the loss of household services Deem provided to his family such as home repairs, lawn maintenance and his involvement with his children.

102. Pursuant to TEX. CIV. PRAC. REM. CODE § 71.001-71.012 ("Texas Wrongful Death Statute"), Plaintiffs, as a wrongful death beneficiaries and as heirs of Scott Patrick Deem, bring

this action to recover just compensation for the damages they have suffered as a result of the death of Scott Patrick Deem, their spouse and father.

103. As a proximate result of the above acts and/or omissions on the part of Defendants, Plaintiffs have suffered pecuniary damages due to the death of Scott Patrick Deem, including loss of care, maintenance, support, services, advice, counsel and contributions of a pecuniary value that they would in reasonable probability have received from Scott Patrick Deem during his lifetime, had he lived.

104. Plaintiffs have suffered additional losses by virtue of the destruction of the spousal and parent/child relationship, including the right to love, affection, solace, comfort, companionship, society, emotional support, and happiness.

105. Plaintiffs have suffered severe mental depression and anguish, grief and sorrow, as a result of the death of Scott Patrick Deem and are likely to continue to suffer for a long time into the future.

106. For these losses, Plaintiffs, as wrongful death beneficiaries, and heirs of Scott Patrick Deem, seek damages in excess of minimal jurisdictional limits of the Court.

107. Further, Plaintiffs, as wrongful death beneficiaries and heirs of Scott Patrick Deem, seek both pre-judgment and post-judgment interest as allowed by law, for all costs of Court, and all other relief both in law and equity, to which he may be entitled.

108. Pursuant to TEX. CIV. PRAC. REM. CODE § 71.021 (“Texas Survival Statute”), Plaintiffs seek recovery from Defendants for the mental anguish suffered by Scott Patrick Deem, from the moment he became aware of the structure fire in question, until the time of his death.

109. Plaintiffs were the spouse and children of Scott Patrick Deem. As a direct and proximate result of the negligence of Defendants, as described above, there has been a sudden and unexpected

severance of the spousal and parent/child relationship between Plaintiffs and Decedent.

110. Plaintiffs respectfully request the Court and jury to determine the amount of loss incurred, not only from a financial standpoint, but also in terms of mental anguish and freedom from grief and worry. The elements of damages to be considered separately and individually for the purpose of determining the sum of money that will be fair and reasonably compensate Plaintiffs for their harms and losses in the past (from the time of the incident until trial), and for those harms and losses they will in all probability experience in the future, as follows:

- a. Plaintiffs' mental pain and anguish, meaning the emotional pain, torment and suffering they have experienced because of the untimely and sudden death of their spouse and father, Scott Patrick Deem;
- b. Plaintiffs' loss of companionship and society from the date of the incident to the time of trial, including but not limited to, the loss of the positive benefits flowing from the love, comfort, companionship, and society that the deceased's spouse and children, in reasonable probability, would have received from Scott Patrick Deem, had he lived;
- c. Plaintiffs' pecuniary losses, including, but not limited to, the loss of Scott Patrick Deem's advice, counsel, services, care, maintenance, and support that the deceased's spouse and children, in reasonable probability, would have received from the deceased had he lived;
- d. All elements of damages under the survival statute;
- e. All elements of damages available under the wrongful death statute; and
- f. Reasonable costs and expenses.

PLAINTIFFS' DAMAGES
(PHIPPS PLAINTIFFS)

111. Firefighter Brad Phipps suffered severe, life-threatening deep burn injuries to 32% of his body.



Above: Brad Phipps suffered severe burns to 32% of his body and required multiple skin grafts.

112. Because of the nature of the fire and how it rapidly grew out of control, it is unknown how long firefighter Phipps suffered before being pulled from the fire. The conscious pain Phipps suffered, both pathologically and psychologically, as he was trapped inside the structural fire are a direct result of Scott Safety's negligence in its manufacture of the integrated PASS device.

113. As a result of the Incident, Firefighter Phipps was hospitalized for seventy-five (75) days. Over the course of that hospitalization, he was critically ill and required deep sedation, ventilation and tube feeding. He was bedridden to the point that he developed a pressure sore on his neck because providers were unable to rule out a cervical injury and remove his cervical collar. Brad Phipps also developed sepsis and multi-system organ failure, including pulmonary failure, renal failure, and liver failure and required frequent blood transfusions for anemia.

114. During his hospitalization, Firefighter Phipps underwent fifteen (15) surgical procedures.

Since the Incident, he has undergone more than thirty (30) surgical procedures, and will require extensive future surgeries, medical treatment and rehabilitation. Dr. Rodney Chan, Reconstructive and Plastic Surgeon and Chief of Plastic Surgery at United States Army Institute of Surgical Research Burn Center, has prepared an expert report detailing past and future medical treatment and operative needs for Brad Phipps. Unfortunately, no amount of surgical intervention or cosmetic repair will ever be able to make Brad Phipps whole or return his physical function and appearance to what it once was.

115. In addition to his severe physical disfigurement and permanent disability, Brad Phipps will always suffer from sensitivity to sunlight and high temperatures. Because healed burn scar lacks the sweat glands and hair follicles found in normal skin, burn survivors have a decreased ability to regulate body temperatures. They cannot sweat through burn scarring, and are prone to developing heat-related syndromes when exposed to moderate temperatures for even a short amount of time, which prevents Phipps from being able to enjoy the family outings and outdoor activities he was once passionate about, such as beach trips, fishing, hunting, coaching youth baseball, and assisting his sons with raising animals for 4-H and FFA. In the brutal heat of the Texas summer, even short walks from the car to a grocery store can cause Brad Phipps to experience a severe heat reaction.

116. Prior to the Incident, Firefighter Phipps was a hardworking man adored by not only his family, but also his fellow firefighters. Phipps spent much of his time off with his family and loved outdoor activities like hunting, fishing, baseball games and trips to the beach; he never shied away from the heat of the Texas sun.



Left: Brad Phipps and Tina Phipps with their sons, J.P. and A.P., at a baseball game.

Below (Left to Right): Brad and Tina at the Texas Gulf Coast; Brad with sons J.P. and A.P.; and Brad displaying a fresh catch after a day of fishing.



117. The experience has left everyone close to him—his immediate family, his extended family and firefighting family at SAFD—with a trauma they will never forget.

118. Recalling the Incident, Tina Phipps says, “May 18, 2017 is a day my family and I will never forget. Putting my boys to bed for the night and turning on the TV to see this massive fire, right when I saw it I knew Brad would be there and that it was right down from the station. My boys heard me cry out and they came down the stairs. I told them to look for the names on the butts of the jackets to see if they could see their dad’s name. We saw them bring a fireman out of

the building and my gut told me it was Brad. It was a feeling I will live with forever.”

119. Upon arrival at the emergency room, Tina was met by doctors and a chaplain. She remembers that night vividly. “He was wrapped from head to toe. He had tubes coming out of everywhere. I remember seeing a blister on his left hand that didn’t get covered. He was pink all over from the medicine that was given to him. I remember grabbing the door to hold me up because it wasn’t my husband that I was looking at. I remember saying “Oh dear God, oh dear God, is he going to make it?” I remember hearing the doctor tell me that he was for the most part is dead and that he will be lucky to make it over the night and for me to get my boys so they can tell their dad goodbye.”

120. During Phipps’ long hospitalization, Tina lived as a single mother, caring for their two sons without the benefit of her husband’s counsel, support and assistance. She was a distraught wife charged with making unthinkable medical decisions on Phipps’ behalf. She recalls, “I had to be the one in charge, I had to make decisions (whether to keep fingers or his leg), take care of finances, making sure my boys’ schedule was uninterrupted, keeping their spirits up, letting them know their dad was fighting to make it.” To this day, she is still haunted by the consequences of those difficult decisions. “It has been a year and I still live May 18, 2017 every day. I still see him laying in that bed wrapped like mummy with a breathing tube in his mouth. I wonder if I made the right choices.”

121. While he was hospitalized, Phipps missed all of his sons’ summer baseball games and both of his sons’ birthdays. One of their sons turned 16 that year, and had hoped his dad would take him to get his learner’s permit and teach him to drive. Sadly, that’s just one of many “big moments” the Phipps family can never get back.

122. When firefighter Phipps was discharged from the hospital on August 1, 2017, his fellow firefighters and the residents of San Antonio celebrated his release, treating him as a hero. The

family was happy that Phipps would finally get to spend a night at home, and they expressed gratitude for the love and support offered to them. But privately, they knew their struggle was far from over.



Left: Brad and Tina Phipps leaving the hospital on August 1, 2017.

123. Speaking of Phipps’ long road to recovery and her new role as his caretaker, Tina says, “After he came home it was like having a new born, I had to be his caregiver, feed him, change him, wash him, wipe him and the most challenging was having to do wound care... He has had 28 surgeries, and each time means having to start all over again. Being the caregiver again, wound care, showering, changing his clothes. Watching him learn how to gain the motions to the body part that was worked on. It sucks having to treat your husband like a five-year-old because I have (feel the need) to watch his every move. I have to cut his food because the use of his hands are limited. He tries and it breaks my heart to no end that he can’t do it. I’m sure it hurts him just has much to ask me for help. Not having your husband be able to touch you like he use to in a romantic way or even hold your hand or give you hugs is something I really can’t describe.”

124. One-third of firefighter Phipps’ body is covered in shocking burn scars. His left hand is missing his pinky finger, and is lacking dexterity in the remaining digits; only his index finger and thumb are capable of partial movement and gripping. His right hand is missing all but the index

finger and pinky finger, which are fused in place. He is unable to straighten his left elbow, and is only bends slightly from its fixed position. He is forced to wear durable medical devices on both ankles to keep his feet in a position that allows him to stand and walk. Tina says of Brad's disfigurement, "He is limited to what he can do. He can't put his socks on, so I have to do it for him. He has drop foot on both of his feet and has had to relearn how to walk. this condition does not allow him to pick up his feet or toes. Now when he is on his feet his ankles swell up drastically due to the lack of proper circulation."



Left: Burn scarring and missing fingers on both of Brad's hands following the Incident.

125. Plaintiffs Tina Phipps, J.P., and A.P. bear the following relationships to Plaintiff Brad Phipps:

- a. Tina Phipps - Wife;
- b. J.P., A Minor - Son; and
- c. A.P., A Minor - Son.

126. The impact of Brad Phipps' severe injuries, disfigurement and permanent disability will be felt by both Brad Phipps himself as well as each member of his family in their own individual ways, for the next 50 years, if not longer.

127. In addition to the enormous human damages discussed above, Phipps contributed support of a pecuniary value to his family. Economic Loss Expert Dr. Gene A. Trevino performed an appraisal of Phipps' earning capacity and the economic losses incurred in connection with his death. Based on Brad Phipps' age at the time of his disability (38 years old), he would have worked an additional 16 years with SAFD, and intended to work full-time as a Captain with Bexar County Emergency Services District 2 upon retiring from SAFD. In addition, Phipps would have been eligible to receive a pension annuity upon retirement. Future earnings are one of the bases for lost support calculations. Another is the loss of household services Phipps provided to his family such as home repairs, lawn maintenance and his involvement with his children.

128. As a proximate result of the above acts and/or omissions on the part of Defendants, Plaintiffs Tina Phipps, J.P., and A.P. have suffered pecuniary damages due to the severe bodily injuries, disfigurement and permanent disability of Brad Phipps — including loss of care, maintenance, support, services, advice, counsel and contributions of a pecuniary value — that they would in reasonable probability have received from Brad Phipps during his lifetime, had he not been disfigured and permanently disabled as a result of the Incident.

129. Plaintiffs have suffered additional losses by virtue of the destruction of the spousal and parent/child relationship, including the right to love, affection, solace, comfort, companionship, society, emotional support, and happiness.

130. Plaintiffs have suffered severe mental depression and anguish, grief and sorrow, as a result of the severe bodily injuries, disfigurement and permanent disability of Brad Phipps, and are likely to continue to suffer for a long time into the future.

131. For these losses, Plaintiffs seek damages in excess of minimal jurisdictional limits of the Court.

132. Further, Plaintiffs seek both pre-judgment and post-judgment interest as allowed by law, for all costs of Court, and all other relief both in law and equity, to which he may be entitled.

133. Plaintiffs Tina Phipps, J.P., and A.P. were the spouse and minor children of Plaintiff Brad Phipps. As a direct and proximate result of the negligence of Defendants, as described above, there has been a sudden and unexpected disturbance of the spousal and parent/child relationships between Plaintiff Brad Phipps and Plaintiffs Tina Phipps, J.P., and A.P.

134. Plaintiffs respectfully request the Court and jury to determine the amount of loss incurred, not only from a financial standpoint, but also in terms of mental anguish and freedom from grief and worry. The elements of damages to be considered separately and individually for the purpose of determining the sum of money that will be fair and reasonably compensate Plaintiffs for their harms and losses in the past (from the time of the incident until trial), and for those harms and losses they will in all probability experience in the future.

135. Because of firefighter Phipps' bodily injuries, proximately caused by Defendants' negligence, Phipps is entitled to reasonable and proper compensation for the following legal damages:

- a. Past and future medical expenses;
- b. Past and future physical pain and mental anguish; meaning the emotional pain, torment and suffering he has experienced as a result of this Incident, including but not limited to the physical and psychological agony of being burned alive, the extensive hospitalization and more than thirty (30) surgical procedures to graft skin and repair damage done to his body in the fire, his inability to perform even the most basic self-care activities, and his inability to be physically intimate with his wife or participate in activities with his two sons to the same extent he did prior to the Incident;
- c. Past and future physical impairment and permanent disability, including but not limited to inability to walk without the assistance of durable medical equipment and the loss of use of multiple fingers on both hands, both of which will prevent him from ever returning to work as a firefighter;

- d. Past and future disfigurement, including but not limited to severe scarring over a large percentage of his body and lost fingers on both hands; and
- e. Past lost wages and future loss of wage-earning capacity.
- f. Reasonable costs and expenses.

136. Because of Defendants' negligence, Plaintiff Tina Phipps suffered damages as a result of the severe, debilitating, and permanent injuries sustained by her husband Brad Phipps. Her damages proximately caused by Defendants' negligence, consist of:

- a. Mental pain and anguish, meaning the emotional pain, torment and suffering Tina Phipps experienced because of the sudden and severe injuries sustained by her husband, Brad Phipps, including but not limited to watching the fire grow on television as the news reported that multiple firefighters were lost in the building, seeing a charred jacket with the name "B. Phipps" flash across the television screen, being told by doctors on more than one occasion to bring her children to the hospital to say goodbye to their father, and the extensive burden of caring for Brad in the form of assisting with basic self-care tasks such as toileting, showering, and eating, performing at-home wound care on severe burn injuries, and watching her husband's agonizing pain as her pushed through physical therapy and relearned fundamental movements such as walking and feeding himself;
- b. Loss of household services sustained in the past and that in reasonable probability will be sustained in the future, including but not limited to the loss of advice, counsel, services, care, and maintenance Brad Phipps would have provided had he not been severely injured, hospitalized and permanently disabled by the Incident;
- c. Loss of consortium sustained in the past and that in reasonable probability will be sustained in the future, from the date of the incident to the time of trial, including but not limited to, the loss of the positive benefits flowing from the love, comfort, companionship, and society that Tina Phipps, in reasonable probability, would have received from Brad Phipps while he was hospitalized and recovering from his injuries, and as it pertains to Brad Phipps' reduced ability to participate in family outings and activities due to his severe, debilitating injuries and permanent disability; and
- d. Reasonable costs and expenses.

137. Minors J.P. and A.P. suffered damages as a result of the severe, debilitating, and permanent injuries sustained by their father, Brad Phipps. Their damages, proximately caused by Defendants' negligence, consist of:

- a. Loss of consortium sustained in the past and that in reasonable probability will be sustained in the future, from the date of the incident to the time of trial, including but not limited to, the loss of the positive benefits flowing from the love, comfort, companionship, and society that J.P. and A.P., in reasonable probability, would have received from Brad Phipps while he was hospitalized and recovering from his injuries, and as it pertains to Brad Phipps' reduced ability to participate in family outings and activities due to his injuries and disability; and
- b. Reasonable costs and expenses.

PRODUCTION OF DOCUMENT SELF-AUTHENTICATING

138. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, this is the “actual” written notice that all documents produced in this litigation shall be used by Plaintiffs at pre-trial proceedings and trial. Hence, all documents produced in this litigation are deemed self-authenticating for use in any pre-trial proceeding or at trial. Any objections thereto by Defendants shall be in writing or place on the record, giving Plaintiffs a reasonable opportunity to establish the challenged document's authenticity.

REQUEST FOR DISCLOSURE

139. Pursuant to Rule 194, each Defendant herein is requested to disclose within the time period set forth in Rule 194.3, the information or material described in Rule 194.2(a) – 194.2(l).

JURY DEMAND

140. Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Plaintiffs respectfully request and demand a trial by jury. The appropriate jury fee is tendered with the filing of this pleading.

PRAYER

For these reasons, Plaintiffs pray that upon trial hereof, said Plaintiffs have and will recover damages as would reasonably and justly compensate them in accordance with the evidence, rules of law, and procedure. In addition, Plaintiffs request the award of pre-judgment and post-judgment interest as allowed by law, and for any other and further relief, both in law and in equity, to which

Plaintiffs may be justly entitled.

Respectfully submitted,

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