

GERMEL T. CABALLES, a Florida Citizen and Resident, as Personal Representative of the Estate of SHERYLL GRACE DELFIN CABALLES, deceased, and GERMEL T. CABALLES, Individually, as Surviving Spouse and as Parent and Natural Guardian of S.G.D.C., a surviving minor child, S.G.D.C., a surviving minor child, S.G.D.C., a surviving minor child, and S.G.D.C., a surviving minor child, and SYMONE GABRIELLE DELFIN CABALLES, individually, a surviving natural child,

Plaintiffs,

v.

EAST LAKE R2G OWNER LLC, a Foreign Limited Liability Company, CIRCLE K STORES INC., a Foreign Profit Corporation, SHELL USA, INC. f/k/a SHELL OIL COMPANY, a Foreign Profit Corporation, SHELL OIL PRODUCTS COMPANY LLC, a Foreign Limited Liability Company, MOTIVA ENTERPRISES LLC, a Foreign Limited Liability Company, STILLWATER TECHNOLOGIES, INC., a Florida Corporation, FALL RIVER USTY LLC d/b/a PENN ENVIRONMENTAL SERVICES, a Florida Limited Liability Company, ELECTRICAL PETROLEUM SERVICES CORP., a Florida Corporation, NATIONAL OILWELL VARCO, L.P., a Foreign Limited Partnership, GILBARCO INC. d/b/a GILBARCO VEEDER-ROOT, a Foreign Profit Corporation, OPW FUELING COMPONENTS, LLC, a Foreign Limited Liability Company, GUARDIAN FUELING TECHNOLOGIES, LLC, a Florida Limited Liability Company, VALLEY TANK TESTING, L.L.C., a Florida Limited Liability Company, D&H UNITED FUELING SOLUTIONS, INC., a Foreign Corporation, LISA HERBOLSHEIMER BLACK, a Florida Citizen and Resident, PAULA ANTUNES, a Florida Citizen and Resident, and BRANDY

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA

CASE NO.:

MCCANN-MERILA, a Florida Citizen and Resident,

Defendants.

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COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiffs, GERMEL T. CABALLES, a Florida Citizen and Resident, as Personal Representative of the Estate of SHERYLL GRACE DELFIN CABALLES, deceased, and GERMEL T. CABALLES, Individually, and as Parent and Natural Guardian of S.G.D.C., a surviving minor child, S.G.D.C., a surviving minor child, S.G.D.C., a minor child, and S.G.D.C., a minor child and SYMONE GABRIELLE DELFIN CABALLES, Individually, surviving natural child (hereinafter “PLAINTIFFS”), and sues Defendants, EAST LAKE R2G OWNER LLC (hereinafter “EAST LAKE”), a Foreign Limited Liability Company, CIRCLE K STORES INC. (hereinafter “CIRCLE K”), a Foreign Profit Corporation, SHELL USA, INC. (hereinafter “SHELL USA” or collectively as “SHELL”), a Foreign Profit Corporation, SHELL OIL PRODUCTS COMPANY LLC (hereinafter “SHELL OIL” or collectively as “SHELL”), a Foreign Limited Liability Company, MOTIVA ENTERPRISES LLC (hereinafter “MOTIVA”), a Foreign Limited Liability Company, STILLWATER TECHNOLOGIES, INC., a Florida Corporation (hereinafter “STILLWATER”), FALL RIVER USTY LLC d/b/a PENN ENVIRONMENTAL SERVICES, a Florida Limited Liability Company (hereinafter “PENN”), ELECTRICAL PETROLEUM SERVICES CORP., a Florida Corporation (hereinafter “EPS”), NATIONAL OILWELL VARCO, L.P., a Foreign Limited Partnership (hereinafter “NATIONAL”), GILBARCO INC. d/b/a GILBARCO VEEDER-ROOT, a Foreign Profit Corporation (hereinafter “GILBARCO”), OPW FUELING COMPONENTS, LLC, a Foreign Profit Corporation (hereinafter “OPW”), GUARDIAN FUELING TECHNOLOGIES, LLC, a Florida Limited Liability Company (hereinafter “GUARDIAN”), VALLEY TANK TESTING, L.L.C., a Florida Limited Liability Company

(hereinafter “VALLEY”), D&H UNITED FUELING SOLUTIONS, INC., a Foreign Corporation (hereinafter “D&H”), LISA HERBOLSHEIMER BLACK (hereinafter “BLACK”), a Florida Citizen and Resident, PAULA ANTUNES, a Florida Citizen and Resident (hereinafter “ANTUNES”) and BRANDY MCCANN-MERILA (hereinafter “MERILA”), and states as follows:

JURISDICTIONAL AND VENUE ALLEGATIONS

1. This is an action for damages in excess of \$30,000.00 (Thirty Thousand Dollars), exclusive of attorneys’ fees, interest and costs, and plaintiff(s) hereby demand a trial by jury; accordingly, although, to file this complaint, undersigned counsel is being required by order of the Supreme Court of Florida to contemporaneously complete a civil cover sheet with a dollar figure as an estimated amount of claim for data collection and clerical processing purposes only, the full monetary value of the damages suffered by plaintiff(s) is yet to be determined and will be decided in a verdict by the jury that judges the facts of this action in compliance with Article I, Section 21, Florida Constitution.

2. At all times material hereto, PLAINTIFF, GERMEL T. CABALLES, was and is a citizen and resident of Tarpon Springs, Pinellas County, Florida, and was the spouse of the decedent, SHERYLL GRACE DELFIN CABALLES, and is the duly appointed Personal Representative for the Estate of the decedent, SHERYLL GRACE DELFIN CABALLES.

3. At all times material hereto, SHERYLL GRACE DELFIN CABALLES, deceased, was a citizen and resident of Tarpon Springs, Pinellas County, Florida.

4. At all times material hereto S.G.D.C. (Age 23), the surviving minor child of PLAINTIFF and the deceased, whose date of birth is August 4, 1998, was and is a citizen and resident of Tarpon Springs, Pinellas County, Florida, Georgia.

5. At all times material hereto, S.G.D.C. (Age 20), the surviving minor child of PLAINTIFF and the deceased, whose date of birth is October 6, 2001, was and is a citizen and resident of Tarpon Springs, Pinellas County, Florida.

6. At all times material hereto, S.G.D.C. (Age 14), the minor child of PLAINTIFF and the deceased, whose date of birth is June 14, 2007, was and is a citizen and resident of Tarpon Springs, Pinellas County, Florida.

7. At all times material hereto, S.G.D.C. (Age 11), the minor child of PLAINTIFF and the deceased, whose date of birth is November 26, 2010, was and is a citizen and resident of Tarpon Springs, Pinellas County, Florida.

8. At all times material hereto, SYMONE GABRIELLE DELFIN CABALLES, individually, the surviving natural child of PLAINTIFF and the deceased, whose date of birth is February 28, 1994, was and is a citizen and resident of Tarpon Springs, Pinellas County, Florida.

9. At all times material hereto, Defendant, EAST LAKE, was and is a Foreign Limited Liability Company, which owned, maintained, controlled, operated, and/or supervised the subject property located at 3470 East Lake Road, Palm Harbor, Florida 34685.

10. At all times material hereto, Defendant, CIRCLE K, was and is a Foreign Profit Corporation, and was licensed to do and is doing business throughout the State of Florida, including Pinellas County. Defendant, CIRCLE K is a wholly owned subsidiary of Circle K Delaware, Inc. which is a wholly owned subsidiary of the Circle K Corporation, a privately held Delaware Corporation which is a wholly owned subsidiary of Couche-tard, U.S.G.P., a Delaware General Partnership. Alimentation Couche-Tard is a publicly held company that owns 10% or more of CIRCLE K's ownership interests. CIRCLE K conducted its daily business in the State of Florida and also in Pinellas County, Florida.

11. At all times material hereto, Defendant, SHELL USA, was and is a Delaware Corporation with its principal place of business in Texas, and conducted its daily business in the State of Florida and also in Pinellas County, Florida. Defendant, SHELL USA, is a wholly owned subsidiary of Shell Petroleum, Inc. Shell Petroleum, Inc. is a wholly owned subsidiary of Shell Petroleum N.V. Royal Dutch Shell PLC owns 100% of Shell Petroleum N.V.

12. At all times material hereto, Defendant, SHELL OIL, was and is a Delaware Limited Liability Company with its principal place of business in Texas, organized and existing under the laws of Texas. Defendant, SHELL OIL, is wholly owned by SHELL USA. SHELL USA is wholly owned by subsidiary of Shell Petroleum N.V. Royal Dutch Shell PLC owns 100% of Shell Petroleum N.V. SHELL OIL conducted its daily business in the State of Florida and also in Pinellas County, Florida.

13. At all times material hereto, Defendant, MOTIVA, was and is a Delaware Limited Liability Company with its principal place of business in Texas, organized and existing under the laws of Texas. MOTIVA conducted its daily business in the State of Florida and also in Pinellas County, Florida. MOTIVA is a joint venture owned by Saudi Refining, Inc., SOPC Holdings East LLC and TRM. SOPC Holdings East LLC and TRM are each indirectly owned by Royal Dutch & Shell Transport and Trading. MOTIVA's businesses include commercial fuels, distribution, refining and retail. MOTIVA manufactures, markets, and sells Shell gasoline in the eastern United States, including to CIRCLE K.

14. At all times material hereto, Defendant, STILLWATER was a Florida Corporation registered and licensed to conduct business throughout the State of Florida, including, but not limited to, Pinellas County, Florida, providing design, engineering, and consulting services relative to the construction, installation, maintenance, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities.

15. At all times material hereto, Defendant, PENN was a Florida Corporation registered and licensed to conduct business throughout the State of Florida, including, but not limited to, Pinellas County, Florida, and was engaged in services relative to the construction, installation, maintenance, inspection, service, and repair of gasoline dispensers, equipment, tanks, and storage facilities.

16. At all times material hereto, Defendant, EPS was a Florida Corporation registered and licensed to conduct business throughout the State of Florida, including, but not limited to, Pinellas County, Florida, and was engaged in the construction, installation, maintenance, inspection, service, and repair of gasoline dispensers, equipment, tanks, and storage facilities.

17. At all times material hereto, Defendant, NATIONAL was a Delaware limited partnership registered and licensed to conduct business throughout the State of Florida, including, but not limited to, Pinellas County, Florida, and was engaged in the construction, installation, maintenance, inspection, service, and repair of gasoline dispensers, equipment, tanks, and storage facilities.

18. At all times material hereto, Defendant, GILBARCO, was and is a Delaware corporation, registered and authorized to conduct business throughout the State of Florida, including, but not limited to, Pinellas County, Florida, and was engaged in the design, manufacturer, and distribution of gasoline dispensers, equipment, tanks, and storage facilities.

19. At all times material hereto, Defendant, OPW, was and is an Ohio limited liability company, registered and authorized to conduct business throughout the State of Florida, including, but not limited to, Pinellas County, Florida, and was engaged in the design, manufacturer, and distribution of gasoline dispensers, equipment, tanks, and storage facilities.

20. At all times material hereto, Defendant, GUARDIAN was a Florida Corporation registered and licensed to conduct business throughout the State of Florida, including, but not limited

to, Pinellas County, Florida, and was engaged in the construction, installation, maintenance, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities.

21. At all times material hereto, Defendant, VALLEY was a Florida Limited Liability Company registered and licensed to conduct business throughout the State of Florida, including, but not limited to, Pinellas County, Florida, and was engaged in the construction, installation, maintenance, inspection, service, and repair of gasoline dispensers, equipment, tanks, and storage facilities.

22. At all times material hereto, Defendant, D&H was a Foreign Corporation registered and licensed to conduct business throughout the State of Florida, including, but not limited to, Pinellas County, Florida, and was engaged in the construction, installation, maintenance, inspection, service, and repair of gasoline dispensers, equipment, tanks, and storage facilities.

23. At all times material hereto, Defendant, CIRCLE K, owned, controlled, maintained and/or operated a gas station/convenience store located at 3470 East Lake Road, Palm Harbor, Florida 34685.

24. At all times material hereto, Defendant, LISA HERBOLSHEIMER BLACK, was and is a resident of Pinellas County, Florida.

25. At all times material hereto, Defendant, PAULA ANTUNES, was and is a resident of Pinellas County, Florida.

26. At all times material hereto, Defendant, BRANDY MCCANN-MERILA, was and is a resident of Pinellas County, Florida.

27. Jurisdiction is appropriate pursuant to §48.193, Florida Statutes (2021), as the subject tortious act occurred at the property located at 3470 East Lake Road, Palm Harbor, Florida 34685, in Pinellas County, Florida.

28. Venue is proper in Pinellas County, Florida, as the Defendants' conduct regular and systematic business in Pinellas County, Florida, and the property where the incident occurred that is the subject of this case is located in Pinellas County, Florida.

ALLEGATIONS COMMON TO ALL COUNTS

29. At all times material hereto, Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and/or MOTIVA, owned, maintained, controlled, operated, and/or supervised the subject property where the subject incident occurred at 3470 East Lake Road, Palm Harbor, Florida 34685.

30. The subject SHELL/CIRCLE K gas station was designed and constructed by STILLWATER on or about October 30, 1985. Defendant, STILLWATER, in conjunction with Defendants PENN, EPS, and GUARDIAN conducted an upgrade of the existing fuel systems at the subject property in 2007.

31. The 2007 fuel system upgrade was performed using fuel dispensing equipment designed, manufactured, distributed, and sold by Defendants, NATIONAL, GILBARCO, OPW, and GUARDIAN.

32. At all times material hereto, SHELL USA, SHELL OIL, and MOTIVA provided gasoline and gasoline dispensing equipment to CIRCLE K at the subject premises.

33. At all times material hereto, CIRCLE K contracted with VALLEY, D&H, and GUARDIAN to provide various services including the supply and installation of new products related to the retail sale of fuel and the maintenance, inspection, and certification of fuel dispensing equipment (both above and below ground components and systems) and areas around the gas dispensers, including but not limited to, Gas Dispenser #7/8 and all related components including but not limited to shear valves.

34. On or about December 22, 2021, at approximately 2:08 p.m., SHERYLL GRACE DELFIN CABALLES, deceased, was pumping gas at Dispenser #7/8 at the CIRCLE K located at 3470 East Lake Road, Palm Harbor, Florida 34685, while her two children, S.G.D.C. (Age 14), a minor child, and S.G.D.C. (Age 11), a minor child, were inside her black Honda Pilot SUV. The Defendant, BLACK was operating 2006 Nissan 350Z that made contact with Gas Dispenser #7/8 while SHERYLL GRACE DELFIN CABALLES' was standing outside of her black Honda Pilot SUV, which caused SHERYLL GRACE DELFIN CABALLES to become trapped between her vehicle, the fuel dispenser equipment, and the ground. For several minutes, the decedent's minor children, S.G.D.C. (Age 14), and S.G.D.C. (Age 11), to frantically pull their mother from her trapped position. Ultimately, a fire began in the area of the fuel dispenser equipment which continued to grow larger as it was fed by fuel that was continuously supplied to the fuel dispenser. S.G.D.C. (Age 14), and S.G.D.C. (Age 11), were forced to escape the growing flames and leave their mother trapped and burning to death three days prior to the Christmas holiday and witnessed her gruesome death as a result of this incident from a safe distance—an image that these two minor children will have to cope with for the rest of their lives

35. At all times material hereto, ANTUNES and MERILA were employees of EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL, and/or MOTIVA, and were the attendants at the subject property in charge of the day-to-day operations and were present at the time of the incident.

36. At all times material hereto, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and/or MOTIVA, had a duty to use reasonable care in the supply, inspection, maintenance and repair of the above described premises, gasoline dispensers, nozzles and fire extinguishers, in order to provide for the safety of business invitees, including, SHERYLL GRACE DELFIN CABALLES, deceased, S.G.D.C. (Age 14), a minor child, and S.G.D.C. (Age 11), a minor child.

37. Gasoline is a highly flammable and dangerous substance that requires persons and companies involved in the distribution and sale of this hazardous product to exercise care commensurate with the magnitude of the hazard.

38. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, failed to notify or warn SHERYLL GRACE DELFIN CABALLES, deceased, of the existing hazards on the premises, including but not limited to, defective gasoline dispensing equipment, defective safety equipment, and defective fire extinguishers.

39. EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA's employees and subcontractors were required by company policies and procedures to report defective gasoline dispensing equipment, defective safety equipment, and defective fire extinguishers and other hazards to their managers and supervisors.

40. Additionally, none of CIRCLE K's employees attempted to help SHERYLL GRACE DELFIN CABALLES—who was engulfed in flames in front of her minor children's very eyes—nor did they properly or reasonably attempt to put the fire out – which includes but is not limited to their total failure to ever engage the Emergency Stop systems in place. The Emergency Stop was engaged long after SHERYLL GRACE DELFIN CABALLES's death—not by CIRCLE but by emergency personnel responding to the incident.

41. By choosing not to address the hazards posed by defective gasoline dispensing equipment, defective safety equipment, defective fire extinguishers, and other hazards, the Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, and/or their managing partners, and employees, were so recklessly or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

42. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, are vicariously liable for the grossly negligent conduct of its employees.

43. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, as employers, principals, and corporations, actively and knowingly participated in the grossly negligent conduct described herein.

44. The officers, directors or managers of the Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, knowingly condoned, ratified, or consented to the grossly negligent conduct.

45. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, as employers, principals and corporations, engaged in conduct that constituted gross negligence, which was a substantial cause of the loss, damages, and horrifying and painful death suffered by SHERYLL GRACE DELFIN CABALLES, and the loss, damages, and injuries sustained by the PLAINTIFFS.

46. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, or their managing partners, and employees' failure to shut down the ignited gas dispenser at the time that the fire ignited constituted gross negligence, which was a substantial cause of the loss, damages, and horrifying and painful death suffered by SHERYLL GRACE DELFIN CABALLES, and the loss, damages, and injuries sustained by the PLAINTIFFS.

47. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, or their managing partners' failure to properly train employees on how to assist right when a fire ignites with putting out a fire constituted gross negligence which was a substantial cause of the loss, damages, and horrifying and painful death suffered by SHERYLL GRACE DELFIN CABALLES, and the loss, damages, and injuries sustained by the PLAINTIFFS.

48. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, or their managing partners' failure to properly train employees on how to assist an individual, such as SHERYLL GRACE DELFIN CABALLES, deceased, that is engulfed in flames,

with putting out a fire on and around their body, constituted gross negligence which was a substantial cause of the loss, damages, and horrifying and painful death suffered by SHERYLL GRACE DELFIN CABALLES, and the loss, damages, and injuries sustained by the PLAINTIFFS.

49. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, or their managing partners' failure to properly train employees on how to assist minor children, such as S.G.D.C. (Age 14), a minor child, and S.G.D.C. (Age 11), a minor child, with safely getting out of a vehicle that is next to a gasoline pump which has ignited in flames, and bringing them to safety a distance away from the ignited gasoline pump, constituted gross negligence which was a substantial cause of the loss, damages, and injuries sustained by the PLAINTIFFS.

50. The Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL and MOTIVA, or their managing partners' failure to properly train employees to properly inspect fire extinguishers to ensure that they are working properly, constituted gross negligence which was a substantial cause of the loss, damages, and horrifying and painful death suffered by SHERYLL GRACE DELFIN CABALLES, and the loss, damages, and injuries sustained by the PLAINTIFFS.

51. The loss, damages, injuries, and death of the decedent, SHERYLL GRACE DELFIN CABALLES, was a direct and proximate result of the negligence of the Defendants, EAST LAKE, CIRCLE K, SHELL USA, SHELL OIL, MOTIVA, STILLWATER, PENN, EPS, GILBARCO, GUARDIAN, VALLEY, D&H, and BLACK.

52. The decedent, SHERYLL GRACE DELFIN CABALLES, is survived by her spouse, GERMEL T. CABALLES, and five natural children, SYMONE GABRIELLE DELFIN CABALLES (Age 27), S.G.D.C. (Age 23), S.G.D.C. (Age 20), S.G.D.C. (Age 14), and S.G.D.C. (Age 11), all of whom, with the exception of SYMONE GABRIELLE DELFIN CABALLES, are under the age of 25 years and therefore are minors according to Florida's Wrongful Death Act, with three children being older than 18 years of age.

53. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the Plaintiffs, GERMEL T. CABALLES, a Florida Citizen and Resident, as Personal Representative of the Estate of SHERYLL GRACE DELFIN CABALLES, deceased, and GERMEL T. CABALLES, individually, as Surviving Spouse and as Parent and Natural Guardian of S.G.D.C. (Age 23), a surviving minor child, S.G.D.C. (Age 20), a surviving minor child, S.G.D.C. (Age 14), a minor child, and S.G.D.C. (Age 11), a minor child, and SYMONE GABRIELLE DELFIN CABALLES, individually, a surviving natural child, are entitled to damages provided by the Florida Wrongful Death Statute § 768.21, including but not limited to those damages as follows:

- a. GERMEL T. CABALLES, surviving spouse, has incurred mental pain and suffering, both in the past and future; loss of support and services of SHERYLL GRACE DELFIN CABALLES, both in the past and future, and lost spousal companionship both in the past and future;
- b. SYMONE GABRIELLE DELFIN CABALLES, as a surviving natural child, has incurred mental pain and suffering, both in the past and future; loss of support and services of SHERYLL GRACE DELFIN CABALLES, both in the past and future, and loss of parental companionship, instruction, guidance, and protection of SHERYLL GRACE DELFIN CABALLES, both in the past and future;
- c. GERMEL T. CABALLES, as parent and natural guardian of S.G.D.C. (Age 23), surviving natural minor child, has incurred mental pain and suffering, both in the past and future; loss of support and services of SHERYLL GRACE DELFIN CABALLES, both in the past and future, and loss of parental companionship, instruction, guidance, and protection of SHERYLL GRACE DELFIN CABALLES, both in the past and future;

- d. GERMEL T. CABALLES, as parent and natural guardian of S.G.D.C. (Age 20), surviving natural minor child, has incurred mental pain and suffering, both in the past and future; loss of support and services of SHERYLL GRACE DELFIN CABALLES, both in the past and future, and loss of parental companionship, instruction, guidance, and protection of SHERYLL GRACE DELFIN CABALLES, both in the past and future;
- e. GERMEL T. CABALLES, as parent and natural guardian of S.G.D.C. (Age 14), surviving natural minor child, has incurred mental pain and suffering, both in the past and future; loss of support and services of SHERYLL GRACE DELFIN CABALLES, both in the past and future, and loss of parental companionship, instruction, guidance, and protection of SHERYLL GRACE DELFIN CABALLES, both in the past and future;
- f. GERMEL T. CABALLES, as parent and natural guardian of S.G.D.C. (Age 11), surviving natural minor child, has incurred mental pain and suffering, both in the past and future; loss of support and services of SHERYLL GRACE DELFIN CABALLES, both in the past and future, and loss of parental companionship, instruction, guidance, and protection of SHERYLL GRACE DELFIN CABALLES, both in the past and future;
- g. GERMEL T. CABALLES, as Personal Representative of the Estate of SHERYLL GRACE DELFIN CABALLES, has incurred medical bills and funeral expenses; and
- h. GERMEL T. CABALLES, as Personal Representative of the Estate of SHERYLL GRACE DELFIN CABALLES, has incurred loss of net accumulations.

54. At all times material hereto, all of the injuries and damages set forth above are continuing and permanent in nature.

**COUNT I- CLAIM FOR NEGLIGENCE AGAINST THE DEFENDANT, EAST LAKE R2G
OWNER, LLC**

55. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

56. The Defendant, EAST LAKE R2G OWNER, LLC, owned, controlled, maintained and/or operated the subject premises. The Defendant, EAST LAKE R2G OWNER, LLC, had a non-delegable duty to its invitees, including SHERYLL GRACE DELFIN CABALLES, deceased, to exercise reasonable and ordinary care to keep and maintain the premises located at 3470 East Lake Road, Palm Harbor, Florida 34685 (hereinafter “the subject premises”), in a reasonably safe condition and to warn its invitees of dangerous conditions on its property.

57. The Defendant, EAST LAKE R2G OWNER, LLC, breached its duty by failing to maintain its property in a reasonably safe condition, allowing hazard conditions to exist on its property, and failing to warn invitees, including SHERYLL GRACE DELFIN CABALLES, deceased, of hazards on its property.

58. As a direct and proximate result of the acts and omissions of the Defendant, CIRCLE K STORES, INC., by and through its agents, servants, and/or employers acting within the course and scope of their employment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

59. As a direct and proximate result of the Defendant’s negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, EAST LAKE R2G OWNER, LLC, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper,

and further demands trial by jury.

COUNT II - CLAIM FOR NEGLIGENCE AGAINST THE DEFENDANT, CIRCLE K STORES, INC.

60. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

61. The Defendant, CIRCLE K STORES, INC., owned, controlled, maintained and/or operated the subject premises. The Defendant, CIRCLE K STORES, INC., had a duty to exercise reasonable care in the installation, inspection, maintenance, operation, and repair of its gasoline dispensers/nozzles on its premises. The Defendant, CIRCLE K STORES, INC., breached its duty of care in that:

- i. The Defendant, CIRCLE K STORES, INC., knew or should have known that the above-described conditions on and about its property posed a foreseeable danger to persons using the gasoline dispensers/nozzles such as business invitees like SHERYLL GRACE DELFIN CABALLES, deceased;
- ii. The Defendant, CIRCLE K STORES, INC., failed to warn business invitees, including but not limited to SHERYLL GRACE DELFIN CABALLES, deceased, of the hazardous conditions;
- iii. The Defendant, CIRCLE K STORES, INC., knowingly and negligently allowed gasoline to remain on the ground where business invitees pumped gas, thereby creating and maintaining an unsafe condition;
- iv. The Defendant, CIRCLE K STORES, INC., knowingly and negligently allowed a poorly maintained and malfunctioning gas dispenser to be operated by invitees, including GRACE DELFIN CABALLES, deceased, despite it being a hazard;
- v. The Defendant, CIRCLE K STORES, INC., failed to close the gas dispenser at issue which was not properly functioning;
- vi. Failed to shut down the gas dispenser in spite of complaints about gasoline on the pavement;
- vii. Failed to shut down the gas dispenser in spite of visible damage which posed a hazard;

- viii. Failed to shut down the gas dispenser in spite of seeing Plaintiff, SHERYLL GRACE DELFIN CABALLES, deceased, on fire;
- ix. Failed to properly utilize emergency equipment, including but not limited to fire extinguishers and emergency controls to prevent severe injury to and death of GRACE DELFIN CABALLES, deceased;
- x. Failed to have and/or failed to follow proper policies and procedures to address hazardous conditions, such as the one that existed on the day of the incident;
- xi. Failed to notify business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased, that the gas dispenser/nozzles would not shut off when damaged;
- xii. Failed to post proper notice to business invitees such as the Plaintiff, SHERYLL GRACE DELFIN CABALLES, deceased, of the known hazardous condition and gas dispenser malfunction;
- xiii. Failed to notify the fire department of the known fire hazard so that appropriate safety measures and plans could be implemented; and
- xiv. Permitted the malfunctioning gas dispenser to operate for purposes of economic gain despite the potential severe safety risk to business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased.

62. As a direct and proximate result of the acts and omissions of the Defendant, CIRCLE K STORES, INC., by and through its agents, servants, and/or employers acting within the course and scope of their employment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

63. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

64. WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, CIRCLE K STORES, INC., for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems

proper, and further demands trial by jury.

COUNT III - NEGLIGENCE, TRAINING, RETENTION, SUPERVISION AND/OR ENTRUSTMENT AGAINST CIRCLE K STORES, INC.

65. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

66. Defendant, CIRCLE K STORES, INC., had a duty and responsibility to conduct background investigations of its employees, agents, and/or apparent agents to determine their suitability. Defendant, CIRCLE K STORES, INC., failed to perform such investigations or performed them negligently.

67. An appropriate investigation by the Defendant, CIRCLE K STORES, INC., would have revealed the unsuitability of these employees, agents and/or apparent agents for the duties to be performed and/or for employment in general.

68. It was unreasonable for the Defendant, CIRCLE K STORES, INC., to hire these employees, agents and/or apparent agents, in light of the information that Defendant, CIRCLE K STORES, INC., knew or should have known.

69. CIRCLE K STORES, INC. had a duty to investigate and take corrective action to resolve problems with its employees, agents, and/or apparent agents.

70. Once the Defendant, CIRCLE K STORES, INC., received actual or constructive notice of problems with its employees, agents, and/or apparent agents, it was unreasonable for the Defendant, CIRCLE K STORES, INC., not to investigate or take corrective action such as discharge or reassignment.

71. Defendant, CIRCLE K STORES, INC., failed to sufficiently train its employees, agents, and/or apparent agents to immediately notify the Defendant, CIRCLE K STORES, INC.'s, management or supervisors of problems it knew or should have known existed regarding gas pumps

which did not safely *and* effectively function, including but not limited to Gas Dispenser #7/8. As a result, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a brutal, horrific death.

72. Furthermore, Defendant, CIRCLE K STORES, INC., failed to train and/or supervise its employees, agents, and/or apparent agents to hit the emergency button to stop gas from pumping which, if timely pushed, would have limited Plaintiff's injuries and prevented her death.

73. Furthermore, Defendant, CIRCLE K STORES, INC., failed to train and/or supervise Its employees, agents, and/or apparent agents to shut down Gas Dispenser #7/8 or forbid customers from using it when they knew or should have known that it was not working properly and was creating serious safety hazards.

74. Instead, the Defendant, CIRCLE K STORES, INC., entrusted these incompetent employees, agents, and/or apparent agents to run the store and premises in whatever fashion they so chose.

75. Defendant, CIRCLE K STORES. INC., knew or should have known that its employees, agents, and/or apparent agents, failed to possess the required training, skill, and/or judgment to properly and safely maintain a gas station and gas pumps which distributed a dangerous product of gasoline.

a. Defendant, CIRCLE K STORES, INC., did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Pinellas County, Florida, or any similar community;

- i. Failure to supervise and/or train its employees, agents, and/or apparent agents to the extent necessary to protect business invitees such as, SHERYLL GRACE DELFIN CABALLES, deceased;
- ii. Failure to perform a background investigation of its employees, agents, and/or apparent agents prior to hiring and/or retaining them;
- iii. Failed to investigate or take corrective action to prevent problematic employees from endangering business invitees, such as SHERYLL GRACE

DELFIN CABALLES, deceased; and

- iv. Negligently entrusted and/or retained its employees, agents, and/or apparent agents which would foreseeably permit them to expose business invitees such as the Plaintiff, SHERYLL GRACE DELFIN CABALLES, deceased, to dangerous conditions.

76. As a direct and proximate result of the acts and omissions of the Defendant, CIRCLE K STORES, INC., SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

77. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

78. WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, CIRCLE K STORES, INC., for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT IV - CLAIM FOR NON-DELEGABLE DUTY AGAINST THE DEFENDANT
CIRCLE K STORES, INC.**

79. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

80. The Defendant, CIRCLE K STORES, INC. had a non-delegable duty to SHERYLL GRACE DELFIN CABALLES, deceased, to provide non-negligent services to her pursuant to Florida Statutes, Government Regulations, Florida Administrative Code including but not limited to Florida Statute §526.141, FAC 69A-3.012, and NFPA 30A. Section 9A-9.5.

81. The Defendant, CIRCLE K STORES, INC. undertook a duty to all invitees including but not limited to the, SHERYLL GRACE DELFIN CABALLES, deceased, to sell gasoline in a safe environment.

82. The Defendant, CIRCLE K STORES, INC., hired and contracted with contractors and subcontractors including but not limited to STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H, to fulfill and perform CIRCLE K's non-delegable duties at the subject premises involving ultra-hazardous and inherently dangerous activities.

83. CIRCLE K's non-delegable duty to ensure its property and operations were reasonably safe, includes the duty to ensure that the specific fuel components it was using, such as the subject dispenser and shear valves, were not defective, operated in a safe manner, and were properly maintained.

84. CIRCLE K and its contractors and subcontractors breached these non-delegable duties in that they failed to install or maintain a dispenser and shear valves that were free of defectives, safe to operate, and/or failed to properly maintain the same.

85. CIRCLE K is vicariously liable for the negligent acts and omissions of CIRCLE K's contractors and subcontractors, including but not limited to STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H.

86. The Defendant, CIRCLE K STORES, INC. approved the employees, agents and/or apparent agents who would be providing these services to invitees including but not limited to SHERYLL GRACE DELFIN CABALLES, deceased, and paid these employees, agents and/or apparent agents to perform said services. The statutory and common law duties assumed by and/or imposed upon the Defendant, CIRCLE K STORES, INC. included providing services set forth in Florida Statute §526.141 which are non-delegable and as a matter of law imposed direct liability upon the Defendant, CIRCLE K STORES, INC. for the negligent performance of such duties.

87. Specifically, under Florida Statute §526.141, the Defendant, CIRCLE K STORES, INC.'s attendants' primary function shall be the proper administration, supervision, observation, and

control of the dispensing of flammable and combustible liquids such as motor fuels while such liquids are actually being dispensed. It shall be the responsibility of the attendant to control sources of ignition and immediately to handle accidental spills and fire extinguishers. The attendant on duty shall be mentally and physically capable of performing these functions and assuming the responsibility prescribed in this subsection. The duties of the attendant are specified by subsection of Section 526.141, F.S., and NFPA 30A, Section 9-4, which adopts Florida Administrative Code 69A-3.012.

88. Furthermore, the code for motor fuel dispensing facilities and repair garages NFPA 30A, Section 9-4 requires that the gasoline attendants control sources of ignition and immediately activate emergency controls and notify the fire department of any fire or other emergency and handle accidental spills and fire extinguishers if needed. The violations of Florida Statute §526.141, FAC 69A-3.012, and NFPA 30A, Section 9.4-9.5 are evidence of negligence and because of that negligence, SHERYLL GRACE DELFIN CABALLES, deceased, was brutally and fatally burned.

89. As a direct and proximate result of the Defendant, CIRCLE K STORES, INC.'s negligence and failure to follow the law and rules, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

90. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

91. WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, CIRCLE K STORES, INC., for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

ALLEGATIONS COMMON TO DEFENDANTS SHELL USA, INC., SHELL OIL PRODUCTS COMPANY LLC, AND MOTIVA ENTERPRISES LLC

92. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

93. Defendants, SHELL USA, INC. f/k/a/ SHELL OIL COMPANY (hereinafter referred to as “SHELL USA” or collectively as “SHELL”), SHELL OIL PRODUCTS COMPANY LLC (hereinafter referred to as “SHELL OIL” or collectively as “SHELL”), and MOTIVA ENTERPRISES LLC (hereinafter referred to as “MOTIVA” or collectively as “SHELL”), were in the business of supplying gasoline, gasoline dispensers, and other gasoline dispensing equipment, in and around Pinellas County, Florida, including to Defendant CIRCLE K located at the subject premises.

94. Defendants, SHELL, also maintained ownership and control of the subject CIRCLE K and its operations.

**COUNT V - CLAIM FOR NEGLIGENCE AGAINST THE DEFENDANT,
SHELL USA**

95. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94) as if fully stated herein and further allege:

96. The Defendant, SHELL USA, had a duty to supply properly functioning gasoline dispensers/nozzles and/or gasoline to the Defendant, SHELL USA, and breached its duty of care in that:

- i. The Defendant, SHELL USA, failed to sell or maintain the gas dispensers/nozzles and/or gasoline in a safe condition;
- ii. The Defendant, SHELL USA, knew or should have known that the above-described conditions on and about the property posed a foreseeable danger to persons using the gasoline dispensers such as business invitees like SHERYLL GRACE DELFIN CABALLES, deceased, but failed to warn

consumers such as SHERYLL GRACE DELFIN CABALLES, deceased, of the hazardous conditions:

- iii. The Defendant, SHELL USA, continued to supply gasoline to a station that they knew or should have known had inadequately trained staff to sell and market these inherently dangerous products;
- iv. The Defendant, SHELL USA, continued to supply gasoline to a station that they knew or should have known failed to utilize properly functioning dispensers/nozzles;
- v. The Defendant, SHELL USA, continued to supply gasoline to a station that they knew or should have known failed to properly maintain its dispensers/nozzles;
- vi. Failed to shut down the gas dispensers in spite of complaints to the store about gasoline on the pavement;
- vii. Failed to shut down the gas dispensers in spite of inadequate inspections of the gasoline dispensers and safety equipment;
- viii. Failed to close the gas dispenser before, SHERYLL GRACE DELFIN CABALLES, deceased, came onto the subject premises;
- ix. Failed to notify business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased, that the gas dispenser was not properly maintained, and posed a hazard, as it would not shut off when damaged.
- x. Failed to post proper notice to business invitees such as the Plaintiff, SHERYLL GRACE DELFIN CABALLES, deceased, of the known hazardous condition and gas dispenser/nozzle malfunction;
- xi. Failed to properly utilize emergency equipment, including but not limited to fire extinguishers and emergency controls to prevent severe injury to and death of GRACE DELFIN CABALLES, deceased;
- xii. Failed to have and/or failed to follow proper policies and procedures to address hazardous conditions, such as the one that existed on the day of the incident;
- xiii. Failed to notify the fire department of the known fire hazard so that appropriate safety measures and plans could be implemented; and
- xiv. Permitted the malfunctioning dispenser/nozzles to operate for purposes of economic gain despite the potential severe safety risk to business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased.

97. As a direct and proximate result of the Defendant SHELL USA's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

98. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL USA, INC., for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT VI - NEGLIGENT HIRING, TRAINING, RETENTION, SUPERVISION, AND/OR ENTRUSTMENT AGAINST SHELL USA

99. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

100. Defendant, SHELL USA, had a duty and responsibility to conduct background investigations of its employees, agents, and/or apparent agents to determine their suitability. Defendant, SHELL USA, failed to perform such investigations or performed them negligently.

101. An appropriate investigation by the Defendant, SHELL USA, would have revealed the unsuitability of these employees, agents and/or apparent agents for the duties to be performed and/or for employment in general.

102. It was unreasonable for the Defendant, SHELL USA, to hire these employees, agents and/or apparent agents, in light of the information that Defendant, SHELL USA, knew or should have known.

103. SHELL USA had a duty to investigate and take corrective action to resolve problems with its employees, agents, and/or apparent agents.

104. Once the Defendant, SHELL USA, received actual or constructive notice of problems with its employees, agents, and/or apparent agents, it was unreasonable for the Defendant, SHELL USA, not to investigate or take corrective action such as discharge or reassignment.

105. Defendant, SHLL USA, failed to sufficiently train its employees, agents, and/or apparent agents to immediately notify the Defendant, SHELL USA's, management or supervisors of problems it knew or should have known existed regarding gas pumps which did not safely *and* effectively function, including but not limited to Gas Dispenser #7/8. As a result, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a brutal, horrific death.

106. Furthermore, Defendant, SHELL USA, failed to train and/or supervise its employees, agents, and/or apparent agents to hit the emergency button to stop gas from pumping which, if timely pushed, would have limited Plaintiff's injuries and prevented her death.

107. Furthermore, Defendant, SHELL USA, failed to train and/or supervise Its employees, agents, and/or apparent agents to shut down Gas Dispenser #7/8 or forbid customers from using it when they knew or should have known that it was not working properly and was creating serious safety hazards.

108. Instead, the Defendant, SHELL USA, entrusted these incompetent employees, agents, and/or apparent agents to run the store and premises in whatever fashion they so chose.

109. Defendant, CIRCLE K, knew or should have known that its employees, agents, and/or apparent agents, failed to possess the required training, skill, and/or judgment to properly and safely maintain a gas station and gas pumps which distributed a dangerous product of gasoline.

b. Defendant, SHELL USA, did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Pinellas County,

Florida, or any similar community;

- i. Failure to supervise and/or train its employees, agents, and/or apparent agents to the extent necessary to protect business invitees such as, SHERYLL GRACE DELFIN CABALLES, deceased;
- ii. Failure to perform a background investigation of its employees, agents, and/or apparent agents prior to hiring and/or retaining them;
- iii. Failed to investigate or take corrective action to prevent problematic employees from endangering business invitees, such as SHERYLL GRACE DELFIN CABALLES, deceased; and
- iv. Negligently entrusted and/or retained its employees, agents, and/or apparent agents which would foreseeably permit them to expose business invitees such as the Plaintiff, SHERYLL GRACE DELFIN CABALLES to dangerous conditions.

110. As a direct and proximate result of the acts and omissions of the Defendant, SHELL USA, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

111. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL USA, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT VII - CLAIM FOR NON-DELEGABLE DUTY AGAINST THE DEFENDANT, SHELL USA

112. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

113. The Defendant, SHELL USA had a non-delegable duty to SHERYLL GRACE DELFIN CABALLES, deceased, to provide non-negligent services to her pursuant to Florida Statutes, Government Regulations, Florida Administrative Code including but not limited to Florida Statute §526.141, FAC 69A-3.012, and NFPA 30A. Section 9A-9.5.

114. The Defendant, SHELL USA undertook a duty to all invitees including but not limited to the, SHERYLL GRACE DELFIN CABALLES, deceased, to sell gasoline in a safe environment.

115. The Defendant, SHELL USA approved the employees, agents and/or apparent agents who would be providing these services to invitees including but not limited to SHERYLL GRACE DELFIN CABALLES, deceased, and paid these employees, agents and/or apparent agents to perform said services. The statutory and common law duties assumed by and/or imposed upon the Defendant, SHELL USA included providing services set forth in Florida Statute §526.141 which are non-delegable and as a matter of law imposed direct liability upon the Defendant, SHELL USA for the negligent performance of such duties.

116. Specifically, under Florida Statute §526.141, the Defendant, SHELL USA's attendants' primary function shall be the proper administration, supervision, observation, and control of the dispensing of flammable and combustible liquids such as motor fuels while such liquids are actually being dispensed. It shall be the responsibility of the attendant to control sources of ignition and immediately to handle accidental spills and fire extinguishers. The attendant on duty shall be mentally and physically capable of performing these functions and assuming the responsibility prescribed in this subsection. The duties of the attendant are specified by subsection of Section 526.141, F.S., and NFPA 30A, Section 9-4, which adopts Florida Administrative Code 69A-3.012.

117. Furthermore, the code for motor fuel dispensing facilities and repair garages NFPA 30A, Section 9-4 requires that the gasoline attendants control sources of ignition and immediately activate emergency controls and notify the fire department of any fire or other emergency and handle

accidental spills and fire extinguishers if needed. The violations of Florida Statute §526.141, FAC 69A-3.012, and NFPA 30A, Section 9.4-9.5 are evidence of negligence and because of that negligence, SHERYLL GRACE DELFIN CABALLES, deceased, was brutally and fatally burned.

118. As a direct and proximate result of the Defendant, SHELL USA's negligence and failure to follow the law and rules, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

119. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL US, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT VIII CLAIM FOR AGENCY AGAINST THE DEFENDANT, SHELL USA

120. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

121. Upon information and belief, the Defendants, CIRCLE K and SHELL USA entered into a "Wholesale Marketer Agreement" which gave the Defendant, SHELL USA, the ability to control the Defendant, CIRCLE K. This agreement gave the Defendant, SHELL USA the ability to control the Defendant, CIRCLE K's day to day operations.

122. As further example of the Defendant, SHELL USA's right to control the Defendant, CIRCLE K, The Defendant, SHELL USA, granted the Defendant, CIRCLE K, permission to use trademarks, trade dresses, service marks and color schemes related to the Defendant, SHELL USA

brand as long as the Defendant, CIRCLE K complied with the agreement. The Defendant, CIRCLE K, was not permitted to use or display the Defendant, SHELL USA identifications at any retail outlet without prior written authorization.

123. Furthermore, the Defendant, CIRCLE K was required to follow all rules, regulations, standards, and guidelines that the Defendant, SHELL USA, and established in this regard.

124. There was also a right to control the Defendant, CIRCLE K with regards to the mandatory training programs imposed by the Defendant, SHELL USA.

125. The Defendant, SHELL USA, required that the Defendant, CIRCLE K attend seller approved training courses deemed appropriate by the Defendant, SHELL USA. The Defendant, SHELL USA, even paid the costs for such instructors, training manuals and the facility.

126. To further demonstrate the right of control Defendant, CIRCLE K was required to maintain quality standards with regards to products. Products were required to be clearly identified, labeled and resold. The Defendant, CIRCLE K was required to comply with minimum standards in brand identification as set forth by the Defendant, SHELL USA.

127. The Defendants, SHELL USA required the Defendant, CIRCLE K, employees to wear certain uniforms and logos of a type and style approved by the Defendant, SHELL USA. Furthermore, the Defendant, CIRCLE K, was required to keep areas in a neat and orderly appearance and free from dangers.

128. The Defendant, SHELL USA, had the right to enter the Defendant, CIRCLE K's premises at all times to inspect it and to make sure that the Defendant, CIRCLE K was complying with the agreement.

129. This agreement also required the Defendant, CIRCLE K to maintain liability insurance thereby naming the Defendants SHELL USA and its affiliates as additional insureds.

130. The Defendant, CIRCLE K was also required to maintain a sufficient amount of all

grades of the Defendant, SHELL USA branded gasoline and diesel fuel.

131. The Defendant, SHELL USA, also dictated that the Defendant, CIRCLE K was not permitted to sell, deliver or otherwise supply products to any unauthorized retail outlets.

132. The Defendant, CIRCLE K was required to comply with the Defendant, SHELL USA,'s, software and hardware standards and rules pertaining to transaction cards, credit cards, debit cards, etc.

133. The Defendant, CIRCLE K was required to comply with all laws relating to motor fuel and fuel additives which the Defendant, SHELL USA, would amend from time to time.

134. These are just some examples of the Defendant, SHELL USA's ability to control the Defendant, CIRCLE K. For these reasons, the Defendant, CIRCLE K was the agent of the Defendant, SHELL USA, as the Defendant, SHELL USA had the right to control the Defendant, CIRCLE K and as such is responsible for any negligence on the part of the Defendant, CIRCLE K and its employees and agents.

135. The Defendant, SHELL USA, acknowledged that the Defendant, CIRCLE K would act for it. The Defendant, CIRCLE K accepted an undertaking of those duties and the Defendant, SHELL USA, controlled and/or had the right to control the Defendant, CIRCLE K.

136. The Defendant, CIRCLE K's employees were the agents of the Defendant, SHELL USA.

137. As a direct and proximate result of the Defendant, SHELL USA,'s negligence and failure to follow the law and rules, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

138. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL USA, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT IX - CLAIM FOR NEGLIGENCE AGAINST THE DEFENDANT,
SHELL OIL

139. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94) as if fully stated herein and further allege:

140. The Defendant, SHELL OIL, had a duty to supply properly functioning gasoline dispensers/nozzles and/or gasoline to the Defendant, SHELL OIL, and breached its duty of care in that:

- i. The Defendant, SHELL OIL, failed to sell or maintain the gas dispensers/nozzles and/or gasoline in a safe condition;
- ii. The Defendant, SHELL OIL, knew or should have known that the above-described conditions on and about the property posed a foreseeable danger to persons using the gasoline dispensers such as business invitees like SHERYLL GRACE DELFIN CABALLES, deceased, but failed to warn consumers such as SHERYLL GRACE DELFIN CABALLES, deceased, of the hazardous conditions;
- iii. The Defendant, SHELL OIL, continued to supply gasoline to a station that they knew or should have known had inadequately trained staff to sell and market these inherently dangerous products;
- iv. The Defendant, SHELL OIL, continued to supply gasoline to a station that they knew or should have known failed to utilize properly functioning dispensers/nozzles;
- v. The Defendant, SHELL OIL, continued to supply gasoline to a station that they knew or should have known failed to properly maintain its dispensers/nozzles;
- vi. Failed to shut down the gas dispensers in spite of complaints to the store about gasoline on the pavement;

- vii. Failed to shut down the gas dispensers in spite of inadequate inspections of the gasoline dispensers and safety equipment;
- viii. Failed to close the gas dispenser before, SHERYLL GRACE DELFIN CABALLES, deceased, came onto the subject premises;
- ix. Failed to notify business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased, that the gas dispenser was not properly maintained, and posed a hazard, as it would not shut off when damaged.
- x. Failed to post proper notice to business invitees such as the Plaintiff, SHERYLL GRACE DELFIN CABALLES, deceased, of the known hazardous condition and gas dispenser/nozzle malfunction;
- xi. Failed to properly utilize emergency equipment, including but not limited to fire extinguishers and emergency controls to prevent severe injury to and death of GRACE DELFIN CABALLES, deceased;
- xii. Failed to have and/or failed to follow proper policies and procedures to address hazardous conditions, such as the one that existed on the day of the incident;
- xiii. Failed to notify the fire department of the known fire hazard so that appropriate safety measures and plans could be implemented; and
- xiv. Permitted the malfunctioning dispenser/nozzles to operate for purposes of economic gain despite the potential severe safety risk to business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased.

141. As a direct and proximate result of the Defendant SHELL OIL's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

142. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL OIL, INC., for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further

demands trial by jury.

COUNT X- NEGLIGENT HIRING, TRAINING, RETENTION, SUPERVISION, AND/OR ENTRUSTMENT AGAINST SHELL OIL

143. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

144. Defendant, SHELL OIL, had a duty and responsibility to conduct background investigations of its employees, agents, and/or apparent agents to determine their suitability. Defendant, SHELL OIL, failed to perform such investigations or performed them negligently.

145. An appropriate investigation by the Defendant, SHELL OIL, would have revealed the unsuitability of these employees, agents and/or apparent agents for the duties to be performed and/or for employment in general.

146. It was unreasonable for the Defendant, SHELL OIL, to hire these employees, agents and/or apparent agents, in light of the information that Defendant, SHELL OIL, knew or should have known.

147. SHELL OIL had a duty to investigate and take corrective action to resolve problems with its employees, agents, and/or apparent agents.

148. Once the Defendant, SHELL OIL, received actual or constructive notice of problems with its employees, agents, and/or apparent agents, it was unreasonable for the Defendant, SHELL OIL, not to investigate or take corrective action such as discharge or reassignment.

149. Defendant, SHELL OIL, failed to sufficiently train its employees, agents, and/or apparent agents to immediately notify the Defendant, SHELL OIL, management or supervisors of problems it knew or should have known existed regarding gas pumps which did not safely *and* effectively function, including but not limited to Gas Dispenser #7/8. As a result, SHERYLL

GRACE DELFIN CABALLES, deceased, suffered a brutal, horrific death.

150. Furthermore, Defendant, SHELL OIL, failed to train and/or supervise its employees, agents, and/or apparent agents to hit the emergency button to stop gas from pumping which, if timely pushed, would have limited Plaintiff's injuries and prevented her death.

151. Furthermore, Defendant, SHELL OIL, failed to train and/or supervise Its employees, agents, and/or apparent agents to shut down Gas Dispenser #7/8 or forbid customers from using it when they knew or should have known that it was not working properly and was creating serious safety hazards.

152. Instead, the Defendant, SHELL OIL, entrusted these incompetent employees, agents, and/or apparent agents to run the store and premises in whatever fashion they so chose.

153. Defendant, CIRCLE K STORES. INC., knew or should have known that its employees, agents, and/or apparent agents, failed to possess the required training, skill, and/or judgment to properly and safely maintain a gas station and gas pumps which distributed a dangerous product of gasoline.

154. Defendant, SHELL OIL, did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Pinellas County, Florida, or any similar community;

- i. Failure to supervise and/or train its employees, agents, and/or apparent agents to the extent necessary to protect business invitees such as, SHERYLL GRACE DELFIN CABALLES, deceased;
- ii. Failure to perform a background investigation of its employees, agents, and/or apparent agents prior to hiring and/or retaining them;
- iii. Failed to investigate or take corrective action to prevent problematic employees from endangering business invitees, such as SHERYLL GRACE DELFIN CABALLES, deceased; and
- iv. Negligently entrusted and/or retained its employees, agents, and/or apparent agents which would foreseeably permit them to expose business invitees such

as the Plaintiff, SHERYLL GRACE DELFIN CABALLES to dangerous conditions.

155. As a direct and proximate result of the acts and omissions of the Defendant, SHELL OIL, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

156. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL OIL, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XI - CLAIM FOR NON-DELEGABLE DUTY AGAINST THE DEFENDANT, SHELL OIL

157. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

158. The Defendant, SHELL OIL had a non-delegable duty to SHERYLL GRACE DELFIN CABALLES, deceased, to provide non-negligent services to her pursuant to Florida Statutes, Government Regulations, Florida Administrative Code including but not limited to Florida Statute §526.141, FAC 69A-3.012, and NFPA 30A. Section 9A-9.5.

159. The Defendant, SHELL OIL undertook a duty to all invitees including but not limited to the, SHERYLL GRACE DELFIN CABALLES, deceased, to sell gasoline in a safe environment.

160. The Defendant, SHELL OIL approved the employees, agents and/or apparent agents who would be providing these services to invitees including but not limited to SHERYLL GRACE

DELFIN CABALLES, deceased, and paid these employees, agents and/or apparent agents to perform said services. The statutory and common law duties assumed by and/or imposed upon the Defendant, SHELL OIL included providing services set forth in Florida Statute §526.141 which are non-delegable and as a matter of law imposed direct liability upon the Defendant, SHELL OIL for the negligent performance of such duties.

161. Specifically, under Florida Statute §526.141, the Defendant, SHELL OIL's attendants' primary function shall be the proper administration, supervision, observation, and control of the dispensing of flammable and combustible liquids such as motor fuels while such liquids are actually being dispensed. It shall be the responsibility of the attendant to control sources of ignition and immediately to handle accidental spills and fire extinguishers. The attendant on duty shall be mentally and physically capable of performing these functions and assuming the responsibility prescribed in this subsection. The duties of the attendant are specified by subsection of Section 526.141, F.S., and NFPA 30A, Section 9-4, which adopts Florida Administrative Code 69A-3.012.

162. Furthermore, the code for motor fuel dispensing facilities and repair garages NFPA 30A, Section 9-4 requires that the gasoline attendants control sources of ignition and immediately activate emergency controls and notify the fire department of any fire or other emergency and handle accidental spills and fire extinguishers if needed. The violations of Florida Statute §526.141, FAC 69A-3.012, and NFPA 30A, Section 9.4-9.5 are evidence of negligence and because of that negligence, SHERYLL GRACE DELFIN CABALLES, deceased, was brutally and fatally burned.

163. As a direct and proximate result of the Defendant, SHELL OIL's negligence and failure to follow the law and rules, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

164. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL US, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XII- CLAIM FOR AGENCY AGAINST THE DEFENDANT, SHELL OIL

165. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

166. Upon information and belief, the Defendants, CIRCLE K and SHELL OIL entered into a "Wholesale Marketer Agreement" which gave the Defendant, SHELL OIL, the ability to control the Defendant, CIRCLE K. This agreement gave the Defendant, SHELL OIL the ability to control the Defendant, CIRCLE K's day to day operations.

167. As further example of the Defendant, SHELL OIL's right to control the Defendant, CIRCLE K, The Defendant, SHELL OIL, granted the Defendant, CIRCLE K, permission to use trademarks, trade dresses, service marks and color schemes related to the Defendant, SHELL OIL brand as long as the Defendant, CIRCLE K complied with the agreement. The Defendant, CIRCLE K, was not permitted to use or display the Defendant, SHELL OIL identifications at any retail outlet without prior written authorization.

168. Furthermore, the Defendant, CIRCLE K was required to follow all rules, regulations, standards, and guidelines that the Defendant, SHELL OIL, and established in this regard.

169. There was also a right to control the Defendant, CIRCLE K with regards to the

mandatory training programs imposed by the Defendant, SHELL OIL.

170. The Defendant, SHELL OIL, required that the Defendant, CIRCLE K attend seller approved training courses deemed appropriate by the Defendant, SHELL OIL. The Defendant, SHELL OIL, even paid the costs for such instructors, training manuals and the facility.

171. To further demonstrate the right of control Defendant, CIRCLE K was required to maintain quality standards with regards to products. Products were required to be clearly identified, labeled and resold. The Defendant, CIRCLE K was required to comply with minimum standards in brand identification as set forth by the Defendant, SHELL OIL.

172. The Defendants, SHEEL required the Defendant, CIRCLE K, employees to wear certain uniforms and logos of a type and style approved by the Defendant, SHELL OIL. Furthermore, the Defendant, CIRCLE K, was required to keep areas in a neat and orderly appearance and free from dangers.

173. The Defendant, SHELL OIL, had the right to enter the Defendant, CIRCLE K's premises at all times to inspect it and to make sure that the Defendant, CIRCLE K was complying with the agreement.

174. This agreement also required the Defendant, CIRCLE K to maintain liability insurance thereby naming the Defendants SHELL OIL and its affiliates as additional insureds.

175. The Defendant, CIRCLE K was also required to maintain a sufficient amount of all grades of the Defendant, SHELL OIL branded gasoline and diesel fuel.

176. The Defendant, SHELL OIL, also dictated that the Defendant, CIRCLE K was not permitted to sell, deliver or otherwise supply products to any unauthorized retail outlets.

177. The Defendant, CIRCLE K was required to comply with the Defendant, SHELL OIL, 's, software and hardware standards and rules pertaining to transaction cards, credit cards, debit cards, etc.

178. The Defendant, CIRCLE K was required to comply with all laws relating to motor fuel and fuel additives which the Defendant, SHELL OIL, would amend from time to time.

179. These are just some examples of the Defendant, SHELL OIL's ability to control the Defendant, CIRCLE K. For these reasons, the Defendant, CIRCLE K was the agent of the Defendant, SHELL OIL, as the Defendant, SHELL OIL had the right to control the Defendant, CIRCLE K and as such is responsible for any negligence on the part of the Defendant, CIRCLE K and its employees and agents.

180. The Defendant, SHELL OIL, acknowledged that the Defendant, CIRCLE K would act for it. The Defendant, CIRCLE K accepted an undertaking of those duties and the Defendant, SHELL OIL, controlled and/or had the right to control the Defendant, CIRCLE K.

181. The Defendant, CIRCLE K's employees were the agents of the Defendant, SHELL OIL.

182. As a direct and proximate result of the Defendant, SHELL OIL,'s negligence and failure to follow the law and rules, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

183. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL OIL, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XIII-CLAIM FOR NEGLIGENCE AGAINST THE DEFENDANT,
MOTIVA

184. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94) as if fully stated herein and further allege:

185. The Defendant, MOTIVA, had a duty to supply properly functioning gasoline dispensers/nozzles and/or gasoline to the Defendant, MOTIVA, and breached its duty of care in that:

- i. The Defendant, MOTIVA, failed to sell or maintain the gas dispensers/nozzles and/or gasoline in a safe condition;
- ii. The Defendant, MOTIVA, knew or should have known that the above-described conditions on and about the property posed a foreseeable danger to persons using the gasoline dispensers such as business invitees like SHERYLL GRACE DELFIN CABALLES, deceased, but failed to warn consumers such as SHERYLL GRACE DELFIN CABALLES, deceased, of the hazardous conditions;
- iii. The Defendant, MOTIVA, continued to supply gasoline to a station that they knew or should have known had inadequately trained staff to sell and market these inherently dangerous products;
- iv. The Defendant, MOTIVA, continued to supply gasoline to a station that they knew or should have known failed to utilize properly functioning dispensers/nozzles;
- v. The Defendant, MOTIVA, continued to supply gasoline to a station that they knew or should have known failed to properly maintain its dispensers/nozzles;
- vi. Failed to shut down the gas dispensers in spite of complaints to the store about gasoline on the pavement;
- vii. Failed to shut down the gas dispensers in spite of inadequate inspections of the gasoline dispensers and safety equipment;
- viii. Failed to close the gas dispenser before, SHERYLL GRACE DELFIN CABALLES, deceased, came onto the subject premises;
- ix. Failed to notify business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased, that the gas dispenser was not properly maintained, and posed a hazard, as it would not shut off when damaged.

- x. Failed to post proper notice to business invitees such as the Plaintiff, SHERYLL GRACE DELFIN CABALLES, deceased, of the known hazardous condition and gas dispenser/nozzle malfunction;
- xi. Failed to properly utilize emergency equipment, including but not limited to fire extinguishers and emergency controls to prevent severe injury to and death of GRACE DELFIN CABALLES, deceased;
- xii. Failed to have and/or failed to follow proper policies and procedures to address hazardous conditions, such as the one that existed on the day of the incident;
- xiii. Failed to notify the fire department of the known fire hazard so that appropriate safety measures and plans could be implemented; and
- xiv. Permitted the malfunctioning dispenser/nozzles to operate for purposes of economic gain despite the potential severe safety risk to business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased.

186. As a direct and proximate result of the Defendant MOTIVA's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

187. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, MOTIVA, INC., for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XIV- NEGLIGENT HIRING, TRAINING, RETENTION, SUPERVISION, AND/OR ENTRUSTMENT AGAINST MOTIVA

188. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

189. Defendant, MOTIVA, had a duty and responsibility to conduct background

investigations of its employees, agents, and/or apparent agents to determine their suitability. Defendant, MOTIVA, failed to perform such investigations or performed them negligently.

190. An appropriate investigation by the Defendant, MOTIVA, would have revealed the unsuitability of these employees, agents and/or apparent agents for the duties to be performed and/or for employment in general.

191. It was unreasonable for the Defendant, MOTIVA, to hire these employees, agents and/or apparent agents, in light of the information that Defendant, MOTIVA, knew or should have known.

192. MOTIVA had a duty to investigate and take corrective action to resolve problems with its employees, agents, and/or apparent agents.

193. Once the Defendant, MOTIVA, received actual or constructive notice of problems with its employees, agents, and/or apparent agents, it was unreasonable for the Defendant, MOTIVA, not to investigate or take corrective action such as discharge or reassignment.

194. Defendant, MOTIVA, failed to sufficiently train its employees, agents, and/or apparent agents to immediately notify the Defendant, MOTIVA's, management or supervisors of problems it knew or should have known existed regarding gas pumps which did not safely *and* effectively function, including but not limited to Gas Dispenser #7/8. As a result, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a brutal, horrific death.

195. Furthermore, Defendant, MOTIVA, failed to train and/or supervise its employees, agents, and/or apparent agents to hit the emergency button to stop gas from pumping which, if timely pushed, would have limited Plaintiff's injuries and prevented her death.

196. Furthermore, Defendant, MOTIVA, failed to train and/or supervise Its employees, agents, and/or apparent agents to shut down Gas Dispenser #7/8 or forbid customers from using it when they knew or should have known that it was not working properly and was creating serious

safety hazards.

197. Instead, the Defendant, MOTIVA, entrusted these incompetent employees, agents, and/or apparent agents to run the store and premises in whatever fashion they so chose.

198. Defendant, CIRCLE K, knew or should have known that its employees, agents, and/or apparent agents, failed to possess the required training, skill, and/or judgment to properly and safely maintain a gas station and gas pumps which distributed a dangerous product of gasoline.

199. Defendant, MOTIVA, did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Pinellas County, Florida, or any similar community;

- i. Failure to supervise and/or train its employees, agents, and/or apparent agents to the extent necessary to protect business invitees such as, SHERYLL GRACE DELFIN CABALLES, deceased;
- ii. Failure to perform a background investigation of its employees, agents, and/or apparent agents prior to hiring and/or retaining them;
- iii. Failed to investigate or take corrective action to prevent problematic employees from endangering business invitees, such as SHERYLL GRACE DELFIN CABALLES, deceased; and
- iv. Negligently entrusted and/or retained its employees, agents, and/or apparent agents which would foreseeably permit them to expose business invitees such as the Plaintiff, SHERYLL GRACE DELFIN CABALLES to dangerous conditions.

200. As a direct and proximate result of the acts and omissions of the Defendant, MOTIVA, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

201. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, MOTIVA,

for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XV - CLAIM FOR NON-DELEGABLE DUTY AGAINST THE DEFENDANT, MOTIVA

202. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

203. The Defendant, MOTIVA had a non-delegable duty to SHERYLL GRACE DELFIN CABALLES, deceased, to provide non-negligent services to her pursuant to Florida Statutes, Government Regulations, Florida Administrative Code including but not limited to Florida Statute §526.141, FAC 69A-3.012, and NFPA 30A. Section 9A-9.5.

204. The Defendant, MOTIVA undertook a duty to all invitees including but not limited to the, SHERYLL GRACE DELFIN CABALLES, deceased, to sell gasoline in a safe environment.

205. The Defendant, MOTIVA approved the employees, agents and/or apparent agents who would be providing these services to invitees including but not limited to SHERYLL GRACE DELFIN CABALLES, deceased, and paid these employees, agents and/or apparent agents to perform said services. The statutory and common law duties assumed by and/or imposed upon the Defendant, MOTIVA included providing services set forth in Florida Statute §526.141 which are non-delegable and as a matter of law imposed direct liability upon the Defendant, MOTIVA for the negligent performance of such duties.

206. Specifically, under Florida Statute §526.141, the Defendant, MOTIVA's attendants' primary function shall be the proper administration, supervision, observation, and control of the dispensing of flammable and combustible liquids such as motor fuels while such liquids are actually

being dispensed. It shall be the responsibility of the attendant to control sources of ignition and immediately to handle accidental spills and fire extinguishers. The attendant on duty shall be mentally and physically capable of performing these functions and assuming the responsibility prescribed in this subsection. The duties of the attendant are specified by subsection of Section 526.141, F.S., and NFPA 30A, Section 9-4, which adopts Florida Administrative Code 69A-3.012.

207. Furthermore, the code for motor fuel dispensing facilities and repair garages NFPA 30A, Section 9-4 requires that the gasoline attendants control sources of ignition and immediately activate emergency controls and notify the fire department of any fire or other emergency and handle accidental spills and fire extinguishers if needed. The violations of Florida Statute §526.141, FAC 69A-3.012, and NFPA 30A, Section 9.4-9.5 are evidence of negligence and because of that negligence, SHERYLL GRACE DELFIN CABALLES, deceased, was brutally and fatally burned.

208. As a direct and proximate result of the Defendant, MOTIVA's negligence and failure to follow the law and rules, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

209. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

210. WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, SHELL US, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XVI- CLAIM FOR AGENCY AGAINST THE DEFENDANT. MOTIVA

211. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully

stated herein and further allege:

212. Upon information and belief, the Defendants, CIRCLE K and MOTIVA entered into a "Wholesale Marketer Agreement" which gave the Defendant, MOTIVA, the ability to control the Defendant, CIRCLE K. This agreement gave the Defendant, MOTIVA the ability to control the Defendant, CIRCLE K's day to day operations.

213. As further example of the Defendant, MOTIVA's right to control the Defendant, CIRCLE K, The Defendant, MOTIVA, granted the Defendant, CIRCLE K, permission to use trademarks, trade dresses, service marks and color schemes related to the Defendant, MOTIVA brand as long as the Defendant, CIRCLE K complied with the agreement. The Defendant, CIRCLE K, was not permitted to use or display the Defendant, MOTIVA identifications at any retail outlet without prior written authorization.

214. Furthermore, the Defendant, CIRCLE K was required to follow all rules, regulations, standards, and guidelines that the Defendant, MOTIVA, and established in this regard.

215. There was also a right to control the Defendant, CIRCLE K with regards to the mandatory training programs imposed by the Defendant, MOTIVA.

216. The Defendant, MOTIVA, required that the Defendant, CIRCLE K attend seller approved training courses deemed appropriate by the Defendant, MOTIVA. The Defendant, MOTIVA, even paid the costs for such instructors, training manuals and the facility.

217. To further demonstrate the right of control Defendant, CIRCLE K was required to maintain quality standards with regards to products. Products were required to be clearly identified, labeled and resold. The Defendant, CIRCLE K was required to comply with minimum standards in brand identification as set forth by the Defendant, MOTIVA.

218. The Defendants, MOTIVA required the Defendant, CIRCLE K, employees to wear certain uniforms and logos of a type and style approved by the Defendant, MOTIVA. Furthermore,

the Defendant, CIRCLE K, was required to keep areas in a neat and orderly appearance and free from dangers.

219. The Defendant, MOTIVA, had the right to enter the Defendant, CIRCLE K's premises at all times to inspect it and to make sure that the Defendant, CIRCLE K was complying with the agreement.

220. This agreement also required the Defendant, CIRCLE K to maintain liability insurance thereby naming the Defendants MOTIVA and its affiliates as additional insureds.

221. The Defendant, CIRCLE K was also required to maintain a sufficient amount of all grades of the Defendant, MOTIVA branded gasoline and diesel fuel.

222. The Defendant, MOTIVA, also dictated that the Defendant, CIRCLE K was not permitted to sell, deliver or otherwise supply products to any unauthorized retail outlets.

223. The Defendant, CIRCLE K was required to comply with the Defendant, MOTIVA,'s, software and hardware standards and rules pertaining to transaction cards, credit cards, debit cards, etc.

224. The Defendant, CIRCLE K was required to comply with all laws relating to motor fuel and fuel additives which the Defendant, MOTIVA, would amend from time to time.

225. These are just some examples of the Defendant, MOTIVA's ability to control the Defendant, CIRCLE K. For these reasons, the Defendant, CIRCLE K was the agent of the Defendant, MOTIVA, as the Defendant, MOTIVA had the right to control the Defendant, CIRCLE K and as such is responsible for any negligence on the part of the Defendant, CIRCLE K and its employees and agents.

226. The Defendant, MOTIVA, acknowledged that the Defendant, CIRCLE K would act for it. The Defendant, CIRCLE K accepted an undertaking of those duties and the Defendant, MOTIVA, controlled and/or had the right to control the Defendant, CIRCLE K.

227. The Defendant, CIRCLE K's employees were the agents of the Defendant, MOTIVA.

228. As a direct and proximate result of the Defendant, MOTIVA,'s negligence and failure to follow the law and rules, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

229. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, MOTIVA, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XVII- CLAIM OF PASSIVE NEGLIGENCE / VICARIOUS LIABILITY
AGAINST DEFENDANT EAST LAKE

230. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

231. EAST LAKE hired and contracted with contractors and subcontractors including but not limited to STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H, to fulfill and perform EAST LAKE's non-delegable duties at the subject premises involving ultra-hazardous and inherently dangerous activities. EAST LAKE is vicariously liable for the negligent acts and omissions of EAST LAKE's contractors and subcontractors, including but not limited to STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H.

232. As a direct and proximate cause of the negligence of STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

233. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, EAST LAKE, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XVIII – CLAIM OF PASSIVE NEGLIGENCE / VICARIOUS LIABILITY
AGAINST DEFENDANT, CIRCLE K**

234. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and ninety-two (92) through ninety-four (94), as if fully stated herein and further allege:

235. CIRCLE K hired and contracted with contractors and subcontractors including but not limited to STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H, to fulfill and perform CIRCLE K's non-delegable duties at the subject premises involving ultra-hazardous and inherently dangerous activities. CIRCLE K is vicariously liable for the negligent acts and omissions of CIRCLE K's contractors and subcontractors, including but not limited to STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H.

236. As a direct and proximate cause of the negligence of STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

237. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, CIRCLE K, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XIX – CLAIM FOR NEGLIGENCE AGAINST STILLWATER

238. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), as if fully stated herein and further allege:

239. At all times material hereto, STILLWATER was engaged in the business of providing design, engineering, and consulting services relative to the construction, design, installation, maintenance, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities.

240. At all times material hereto, STILLWATER owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other reasonably foreseeable persons who could be exposed to the malfunctioning gas dispensing equipment at the subject premises, to exercise reasonable care in performing construction, installation, design, maintenance, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities.

241. At all times material hereto, STILLWATER owed a duty to provide adequate warnings and instructions to SHERYLL GRACE DELFIN CABALLES, deceased, and other reasonably foreseeable persons who could be exposed to the malfunctioning gas dispensing equipment at the subject premises, about the dangers of the hazard.

242. At all times material hereto, STILLWATER knew or should have known that it was reasonably intended and reasonably foreseeable that business invitees, such as SHERYLL GRACE DELFIN CABALLES, deceased, would use the gas pump and gas dispensing equipment at the subject premises, and that if the equipment was not properly designed, constructed, installed, inspected, serviced, repaired, or maintained, SHERYLL GRACE DELFIN CABALLES, deceased, would be exposed to a hazardous condition.

243. At all times material hereto, STILLWATER knew or should have known that improperly designed, constructed, installed, inspected, serviced, repaired, or maintained gas dispensing equipment was likely to result in a substantial risk of serious injury or death of SHERYLL GRACE DELFIN CABALLES, deceased.

244. At all times material hereto, STILLWATER breached the aforementioned duties in one or more, but not limited to, the following respects:

- a. Failing to properly design the gas dispensing equipment and systems at the subject premises;
- b. Failing to use reasonable engineering standards in its design and consultation for the subject premises;
- c. Failing to use prevailing engineering standards in its design and consultation for the subject premises;
- d. Failing to comply with all state and federal engineering rules, laws, ordinances, codes, and regulations, including but not limited to Florida Statutes and Florida Building Codes, in its design of the subject premises;
- e. Performing engineering functions without the necessary licensing and certifications;

- f. Negligently designing the subject premises, including but not limited to the gas dispensing equipment and systems, which resulted in a zone of risk to business invitees;
- g. Negligent performing construction and/or installation of gas dispensing equipment at the subject premises;
- h. Negligently performing maintenance and/or repair of the gas dispensing equipment at the subject premises.
- i. Negligently performing inspections of the gas dispensing equipment at the subject premises;
- j. Failing to provide proper warnings and instructions associated with the improperly designed, constructed, installed, or malfunctioning gas dispensing equipment;
- k. Failing to exercise reasonable care under all of the relevant surrounding circumstances;

245. As a direct and proximate cause of the negligence of STILLWATER, PENN, EPS, NATIONAL, GILBARCO, OPW, GUARDIAN, VALLEY, and D&H, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

246. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, STILLWATER, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XX – CLAIM FOR NEGLIGENCE AGAINST DEFENDANT PENN

247. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-three (53) as if fully stated herein and further allege:

248. At all times material hereto, PENN was a contractor engaged in construction, installation, maintenance, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities.

249. At all time material hereto, PENN was contracted by CIRCLE K to construct, install, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities at the subject premises.

250. At all times material hereto, PENN owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other reasonably foreseeable persons who could be exposed to the malfunctioning gas dispensing equipment at the subject premises, to exercise reasonable care in performing construction, installation, maintenance, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities.

251. At all times material hereto, PENN owed a duty to provide adequate warnings and instructions to SHERYLL GRACE DELFIN CABALLES, deceased, and other reasonably foreseeable persons who could be exposed to the malfunctioning gas dispensing equipment at the subject premises, about the dangers of the hazard.

252. At all times material hereto, PENN knew or should have known that it was reasonably intended and reasonably foreseeable that business invitees, such as SHERYLL GRACE DELFIN CABALLES, deceased, would use the gas pump and gas dispensing equipment at the subject premises, and that if the equipment was not properly designed, constructed, installed, inspected, serviced, repaired, or maintained, SHERYLL GRACE DELFIN CABALLES, deceased, would be exposed to a hazardous condition.

253. At all times material hereto, PENN knew or should have known that improperly designed, constructed, installed, inspected, serviced, repaired, or maintained gas dispensing equipment was likely to result in a substantial risk of serious injury or death of SHERYLL GRACE DELFIN CABALLES, deceased.

254. At all times material hereto, PENN breached the aforementioned duties in one or more, but not limited to, the following respects:

- a. Failing to properly design the gas dispensing equipment at the subject premises;
- b. Negligent performing construction and/or installation of gas dispensing equipment at the subject premises;
- c. Negligently performing maintenance and/or repair of the gas dispensing equipment at the subject premises.
- d. Negligently performing inspections of the gas dispensing equipment at the subject premises;
- e. Failing to provide proper warnings and instructions associated with the improperly designed, constructed, installed, or malfunctioning gas dispensing equipment;
- f. Failing to exercise reasonable care under all of the relevant surrounding circumstances;

255. As a direct and proximate cause of the negligence of PENN, GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

256. As a direct and proximate result of the Defendant's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, PENN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment

interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XXII– CLAIM FOR NEGLIGENCE AGAINST DEFENDANT EPS

257. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

258. At all times material hereto, EPS was engaged in the business of providing design, engineering, and consulting services relative to the construction, installation, maintenance, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities.

259. At all times material hereto, EPS owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other reasonably foreseeable persons who could be exposed to the malfunctioning gas dispensing equipment at the subject premises, to exercise reasonable care in performing construction, installation, maintenance, inspection, service and repair of gasoline dispensers, equipment, tanks, and storage facilities.

260. At all times material hereto, EPS owed a duty to provide adequate warnings and instructions to SHERYLL GRACE DELFIN CABALLES, deceased, and other reasonably foreseeable persons who could be exposed to the malfunctioning gas dispensing equipment at the subject premises, about the dangers of the hazard.

261. At all times material hereto, EPS knew or should have known that it was reasonably intended and reasonably foreseeable that business invitees, such as SHERYLL GRACE DELFIN CABALLES, deceased, would use the gas pump and gas dispensing equipment at the subject premises, and that if the equipment was not properly designed, constructed, installed, inspected, serviced, repaired, or maintained, SHERYLL GRACE DELFIN CABALLES, deceased, would be exposed to a hazardous condition.

262. At all times material hereto, EPS knew or should have known that improperly designed, constructed, installed, inspected, serviced, repaired, or maintained gas dispensing equipment was likely to result in a substantial risk of serious injury or death of SHERYLL GRACE DELFIN CABALLES, deceased.

263. At all times material hereto, EPS breached the aforementioned duties in one or more, but not limited to, the following respects:

- a. Failing to properly design the gas dispensing equipment at the subject premises;
- b. Negligent performing construction and/or installation of gas dispensing equipment at the subject premises;
- c. Negligently performing maintenance and/or repair of the gas dispensing equipment at the subject premises.
- d. Negligently performing inspections of the gas dispensing equipment at the subject premises;
- e. Failing to provide proper warnings and instructions associated with the improperly designed, constructed, installed, or malfunctioning gas dispensing equipment;
- f. Failing to exercise reasonable care under all of the relevant surrounding circumstances;

264. As a direct and proximate cause of the negligence of EPS, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

265. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, EPS, for the damages set forth above and all other damages allowable by law, plus costs, post judgment

interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

ALLEGATIONS COMMON TO NATIONAL, GILBARCO, OPW, AND GUARDIAN

266. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

267. The Defendants, NATIONAL, GILBARCO, OPW, and GUARDIAN, at all times material hereto, were engaged in the business of designing, manufacturing, and distributing gasoline dispensing equipment, including subject gasoline, outside of the State of Florida, but with the intent through marketing and sales that they be sold and utilized within the State of Florida, and more specifically in Pinellas County.

268. The Defendants, NATIONAL, GILBARCO, OPW, and GUARDIAN, sold and distributed the subject gasoline dispensing equipment within the State of Florida.

269. The Defendants, NATIONAL, GILBARCO, and OPW, at all times material hereto, authorized certain gasoline dispensing equipment dealers, including but not limited to GUARDIAN, within the State of Florida to sell and distribute such equipment, including gasoline dispensing equipment at the subject premises, designed and manufactured by the Defendants, NATIONAL, GILBARCO, and OPW.

270. At all times material hereto, the Defendants, NATIONAL, GILBARCO, and OPW, adopted a design process and manufacturing process for gasoline dispensing equipment and component parts which was not common, usual, customary, prudent, or in accordance with established industry standards relating to the manufacture of similar gasoline dispensing equipment of a similar intended and/or foreseeable function.

271. At all times material hereto, the gasoline dispensing equipment was designed and manufactured without consideration for whether gasoline dispensing equipment and its components

would fail during a foreseeable accident and while being used under intended and/or foreseeable conditions, and/or in an intended or foreseeable manner.

272. At all times material hereto, the Defendants, NATIONAL, GILBARCO, OPW, and GUARDIAN, failed to perform testing adequate enough to determine the circumstances under which gasoline dispensing equipment and its components would fail and/or become dangerous or hazardous to foreseeable users, including SHERYLL GRACE DELFIN CABALLES, deceased.

273. The Defendants, NATIONAL, GILBARCO, OPW, and GUARDIAN, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased and other persons similarly situated to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing and replacing gasoline dispensing equipment, and in the testing and inspecting any component parts made by another, so that gasoline dispensing equipment and its components could be safely used in a manner and for a purpose in which it was made.

274. The Defendants, NATIONAL, GILBARCO, OPW, and GUARDIAN, breached such duties by designing, testing, assembling, manufacturing, maintaining, replacing, and inspecting gasoline dispensing equipment and its components in such a negligent manner that gasoline dispensing equipment and its components were likely to cause injury to foreseeable users, such as the NATIONAL, GILBARCO, OPW, and GUARDIAN, even while being used in an intended or reasonably foreseeable manner.

275. The gasoline dispensing equipment and its components was in a substantially defective condition at the time of the above-mentioned incident as it was when it left Defendant NATIONAL, GILBARCO, OPW, and GUARDIAN's possession or control.

**COUNT XXIII - STRICT LIABILITY AGAINST DEFENDANT NATIONAL -
MANUFACTURING DEFECT(S)**

276. Plaintiffs reallege and incorporate by reference the allegations contained in the

paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

277. At the time gasoline dispensing equipment was manufactured and placed into the stream of commerce by the Defendant, NATIONAL, it contained manufacturing defects which were unreasonably dangerous to persons such as the SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because GASOLINE DISPENSING EQUIPMENT's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

278. As a result of the manufacturing defects, gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing gasoline dispensing equipment in an intended and/or reasonably foreseeable manner.

279. As a direct and proximate cause of the manufacturing defects in NATIONAL's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

280. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, NATIONAL, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXIV - STRICT LIABILITY AGAINST DEFENDANT NATIONAL -
DESIGN DEFECT(S)**

281. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

282. At the time the gasoline dispensing equipment was designed and placed into the stream of commerce by the Defendant, NATIONAL, it contained design defects which were unreasonably dangerous to persons such as SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because the gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

283. As a result of the design defects, the gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing the gasoline dispensing equipment in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the design of gasoline dispensing equipment outweighed the benefits of its design.

284. As a direct and proximate cause of the design defects in NATIONAL's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

285. As a direct and proximate result of the design defects in NATIONAL's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, NATIONAL, for the damages set forth above and all other damages allowable by law, plus

costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXV - STRICT LIABILITY AGAINST DEFENDANT NATIONAL -
DEFECTIVE WARNING(S)**

286. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

287. At the time gasoline dispensing equipment was designed, manufactured, and placed into the stream of commerce by the Defendant, NATIONAL, it lacked and/or contained defective warnings which rendered gasoline dispensing equipment unreasonably dangerous to persons such as SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because gasoline dispensing equipment's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

288. At all times material hereto, gasoline dispensing equipment was maintained and inspected and the warnings read and comprehended as often and as completely as a reasonably prudent person would have done under the same or similar circumstances, and at no time material hereto was gasoline dispensing equipment subjected to any unintended and/or unforeseeable conditions.

289. At all times material hereto, the use of gasoline dispensing equipment in a manner that was intended and/or reasonably foreseeable by the Defendant, NATIONAL, involved substantial danger that would not be readily recognized by an ordinary user of gasoline dispensing equipment.

290. At all times material hereto, this danger(s) was known or knowable by the Defendant, NATIONAL, in light of the generally recognized and prevailing best scientific knowledge available

at the time of the design, manufacture, and distribution of gasoline dispensing equipment.

291. At all times material hereto, the Defendant, NATIONAL, had a duty to provide adequate warnings to intended and reasonably foreseeable users such as SHERYLL GRACE DELFIN CABALLES, deceased, on how to use, maintain, and recognize and appreciate the dangers inherent within gasoline dispensing equipment.

292. At all times material hereto, the Defendant, NATIONAL, failed to give adequate warnings of the dangers associated with gasoline dispensing equipment.

293. As a result of the lack of and/or defective warning(s), the gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing gasoline dispensing equipment in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the lack of and/or defective warning(s) on or with gasoline dispensing equipment outweighed the benefits of the warning(s), design, and the use of gasoline dispensing equipment.

294. As a direct and proximate cause of the lack of and/or defective warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

295. As a direct and proximate cause of the lack of and/or defective warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, NATIONAL, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XXVI - NEGLIGENCE AGAINST DEFENDANT NATIONAL – MANUFACTURE

296. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred

seventy-five (275) as if fully stated herein and further allege:

297. The Defendant, NATIONAL, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other persons similarly situated, to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing, and replacing, the gasoline dispensing equipment, and in the testing and inspection of any component parts made by another, so that the gasoline dispensing equipment could safely be used in a manner and for the purpose for which it was made.

298. The Defendant, NATIONAL, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment in such a negligent manner that gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

299. As a direct and proximate cause of NATIONAL's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

300. As a direct and proximate cause of NATIONAL's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, NATIONAL, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XXVII - NEGLIGENCE AGAINST DEFENDANT NATIONAL - DESIGN

301. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

302. The Defendant, NATIONAL, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other persons similarly situated, to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment, and in the testing and inspection of any component parts made by another, so that the gasoline dispensing equipment could safely be used in a manner and for the purpose for which it was made.

303. The Defendant, NATIONAL, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment in such a negligent manner that the gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

304. As a direct and proximate cause of NATIONAL's negligent design, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

305. As a direct and proximate cause of NATIONAL's negligent design, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, NATIONAL, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XXVIII - NEGLIGENCE AGAINST DEFENDANT NATIONAL - WARNING(S)

306. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

307. At all times material hereto, the use of the gasoline dispensing equipment in a manner

that was intended and/or reasonably foreseeable by the Defendant, NATIONAL, involved substantial danger that would not be readily recognized by an ordinary user of gasoline dispensing equipment because gasoline dispensing equipment's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

308. At all times material hereto, this danger(s) was known or knowable by the Defendant, NATIONAL, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of gasoline dispensing equipment.

309. At all times material hereto, the Defendant, NATIONAL, had a duty to provide adequate warning(s) to intended and foreseeable users such as SHERYLL GRACE DELFIN CABALLES, deceased, on how to use, maintain, and recognize and appreciate the dangers inherent within gasoline dispensing equipment.

310. At all times material hereto, the Defendant, NATIONAL, failed to give adequate warning(s) of the danger associated with the gasoline dispensing equipment.

311. As a direct and proximate cause of NATIONAL's lack of and/or negligent warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, NATIONAL, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXIX - STRICT LIABILITY AGAINST DEFENDANT GILBARCO -
MANUFACTURING DEFECT(S)**

312. Plaintiffs reallege and incorporate by reference the allegations contained in the

paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

313. At the time gasoline dispensing equipment was manufactured and placed into the stream of commerce by the Defendant, GILBARCO, it contained manufacturing defects which were unreasonably dangerous to persons such as the SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because GASOLINE DISPENSING EQUIPMENT's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

314. As a result of the manufacturing defects, gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing gasoline dispensing equipment in an intended and/or reasonably foreseeable manner.

315. As a direct and proximate cause of the manufacturing defects in GILBARCO's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

316. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GILBARCO, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXX - STRICT LIABILITY AGAINST DEFENDANT GILBARCO -
DESIGN DEFECT(S)**

317. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

318. At the time the gasoline dispensing equipment was designed and placed into the stream of commerce by the Defendant, GILBARCO, it contained design defects which were unreasonably dangerous to persons such as SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because the gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

319. As a result of the design defects, the gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing the gasoline dispensing equipment in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the design of gasoline dispensing equipment outweighed the benefits of its design.

320. As a direct and proximate cause of the design defects in GILBARCO's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

321. As a direct and proximate result of the design defects in GILBARCO's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GILBARCO, for the damages set forth above and all other damages allowable by law, plus

costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXXI - STRICT LIABILITY AGAINST DEFENDANT GILBARCO -
DEFECTIVE WARNING(S)**

322. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

323. At the time gasoline dispensing equipment was designed, manufactured, and placed into the stream of commerce by the Defendant, GILBARCO, it lacked and/or contained defective warnings which rendered gasoline dispensing equipment unreasonably dangerous to persons such as SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because gasoline dispensing equipment's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

324. At all times material hereto, gasoline dispensing equipment was maintained and inspected and the warnings read and comprehended as often and as completely as a reasonably prudent person would have done under the same or similar circumstances, and at no time material hereto was gasoline dispensing equipment subjected to any unintended and/or unforeseeable conditions.

325. At all times material hereto, the use of gasoline dispensing equipment in a manner that was intended and/or reasonably foreseeable by the Defendant, GILBARCO, involved substantial danger that would not be readily recognized by an ordinary user of gasoline dispensing equipment.

326. At all times material hereto, this danger(s) was known or knowable by the Defendant, GILBARCO, in light of the generally recognized and prevailing best scientific knowledge available

at the time of the design, manufacture, and distribution of gasoline dispensing equipment.

327. At all times material hereto, the Defendant, GILBARCO, had a duty to provide adequate warnings to intended and reasonably foreseeable users such as SHERYLL GRACE DELFIN CABALLES, deceased, on how to use, maintain, and recognize and appreciate the dangers inherent within gasoline dispensing equipment.

328. At all times material hereto, the Defendant, GILBARCO, failed to give adequate warnings of the dangers associated with gasoline dispensing equipment.

329. As a result of the lack of and/or defective warning(s), the gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing gasoline dispensing equipment in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the lack of and/or defective warning(s) on or with gasoline dispensing equipment outweighed the benefits of the warning(s), design, and the use of gasoline dispensing equipment.

330. As a direct and proximate cause of the lack of and/or defective warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

331. As a direct and proximate cause of the lack of and/or defective warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GILBARCO, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXXII - NEGLIGENCE AGAINST DEFENDANT GILBARCO –
MANUFACTURE**

332. Plaintiffs reallege and incorporate by reference the allegations contained in the

paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

333. The Defendant, GILBARCO, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other persons similarly situated, to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing, and replacing, the gasoline dispensing equipment, and in the testing and inspection of any component parts made by another, so that the gasoline dispensing equipment could safely be used in a manner and for the purpose for which it was made.

334. The Defendant, GILBARCO, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment in such a negligent manner that gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

335. As a direct and proximate cause of GILBARCO's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

336. As a direct and proximate cause of GILBARCO's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GILBARCO, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XXXIII - NEGLIGENCE AGAINST DEFENDANT GILBARCO - DESIGN

337. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred

seventy-five (275) as if fully stated herein and further allege:

338. The Defendant, GILBARCO, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other persons similarly situated, to use reasonable care in designing, testing, assembling, the testing and inspection of any component parts made by another, so that the gasoline dispensing equipment could safely be used in a manner and for the purpose for which it was made.

339. The Defendant, GILBARCO, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment in such a negligent manner that the gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

340. As a direct and proximate cause of GILBARCO's negligent design, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

341. As a direct and proximate cause of GILBARCO's negligent design, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GILBARCO, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XXXIV- NEGLIGENCE AGAINST DEFENDANT GILBARCO- WARNING(S)

342. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

343. At all times material hereto, the use of the gasoline dispensing equipment in a manner

that was intended and/or reasonably foreseeable by the Defendant, GILBARCO, involved substantial danger that would not be readily recognized by an ordinary user of gasoline dispensing equipment because gasoline dispensing equipment's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

344. At all times material hereto, this danger(s) was known or knowable by the Defendant, GILBARCO, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of gasoline dispensing equipment.

345. At all times material hereto, the Defendant, GILBARCO, had a duty to provide adequate warning(s) to intended and foreseeable users such as SHERYLL GRACE DELFIN CABALLES, deceased, on how to use, maintain, and recognize and appreciate the dangers inherent within gasoline dispensing equipment.

346. At all times material hereto, the Defendant, GILBARCO, failed to give adequate warning(s) of the danger associated with the gasoline dispensing equipment.

347. As a direct and proximate cause of GILBARCO's lack of and/or negligent warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GILBARCO, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXXV - STRICT LIABILITY AGAINST DEFENDANT OPW -
MANUFACTURING DEFECT(S)**

348. Plaintiffs reallege and incorporate by reference the allegations contained in the

paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

349. At the time gasoline dispensing equipment was manufactured and placed into the stream of commerce by the Defendant, OPW, it contained manufacturing defects which were unreasonably dangerous to persons such as the SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because GASOLINE DISPENSING EQUIPMENT's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

350. As a result of the manufacturing defects, gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing gasoline dispensing equipment in an intended and/or reasonably foreseeable manner.

351. As a direct and proximate cause of the manufacturing defects in OPW's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

352. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, OPW, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXXVI - STRICT LIABILITY AGAINST DEFENDANT OPW -
DESIGN DEFECT(S)**

353. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

354. At the time the gasoline dispensing equipment was designed and placed into the stream of commerce by the Defendant, OPW, it contained design defects which were unreasonably dangerous to persons such as SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because the gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

355. As a result of the design defects, the gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing the gasoline dispensing equipment in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the design of gasoline dispensing equipment outweighed the benefits of its design.

356. As a direct and proximate cause of the design defects in OPW's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

357. As a direct and proximate result of the design defects in OPW's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, OPW, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XXXVII- STRICT LIABILITY AGAINST DEFENDANT OPW -
DEFECTIVE WARNING(S)**

358. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

359. At the time gasoline dispensing equipment was designed, manufactured, and placed into the stream of commerce by the Defendant, OPW, it lacked and/or contained defective warnings which rendered gasoline dispensing equipment unreasonably dangerous to persons such as SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because gasoline dispensing equipment's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

360. At all times material hereto, gasoline dispensing equipment was maintained and inspected and the warnings read and comprehended as often and as completely as a reasonably prudent person would have done under the same or similar circumstances, and at no time material hereto was gasoline dispensing equipment subjected to any unintended and/or unforeseeable conditions.

361. At all times material hereto, the use of gasoline dispensing equipment in a manner that was intended and/or reasonably foreseeable by the Defendant, OPW, involved substantial danger that would not be readily recognized by an ordinary user of gasoline dispensing equipment.

362. At all times material hereto, this danger(s) was known or knowable by the Defendant, OPW, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of gasoline dispensing equipment.

363. At all times material hereto, the Defendant, OPW, had a duty to provide adequate warnings to intended and reasonably foreseeable users such as SHERYLL GRACE DELFIN CABALLES, deceased, on how to use, maintain, and recognize and appreciate the dangers inherent

within gasoline dispensing equipment.

364. At all times material hereto, the Defendant, OPW, failed to give adequate warnings of the dangers associated with gasoline dispensing equipment.

365. As a result of the lack of and/or defective warning(s), the gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing gasoline dispensing equipment in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the lack of and/or defective warning(s) on or with gasoline dispensing equipment outweighed the benefits of the warning(s), design, and the use of gasoline dispensing equipment.

366. As a direct and proximate cause of the lack of and/or defective warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

367. As a direct and proximate cause of the lack of and/or defective warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, OPW, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XXXVIII - NEGLIGENCE AGAINST DEFENDANT OPW – MANUFACTURE

368. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

369. The Defendant, OPW, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other persons similarly situated, to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing, and replacing, the gasoline

dispensing equipment, and in the testing and inspection of any component parts made by another, so that the gasoline dispensing equipment could safely be used in a manner and for the purpose for which it was made.

370. The Defendant, OPW, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment in such a negligent manner that gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

371. As a direct and proximate cause of OPW's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

372. As a direct and proximate cause of OPW's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, OPW, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XXXIX - NEGLIGENCE AGAINST DEFENDANT OPW - DESIGN

373. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

374. The Defendant, OPW, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other persons similarly situated, to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment, and in the testing and inspection of any component parts made by another, so that the

gasoline dispensing equipment could safely be used in a manner and for the purpose for which it was made.

375. The Defendant, OPW, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment in such a negligent manner that the gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

376. As a direct and proximate cause of OPW's negligent design, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

377. As a direct and proximate cause of OPW's negligent design, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, OPW, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XL - NEGLIGENCE AGAINST DEFENDANT OPW- WARNING(S)

378. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

379. At all times material hereto, the use of the gasoline dispensing equipment in a manner that was intended and/or reasonably foreseeable by the Defendant, OPW, involved substantial danger that would not be readily recognized by an ordinary user of gasoline dispensing equipment because gasoline dispensing equipment's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an

intended and/or reasonably foreseeable manner.

380. At all times material hereto, this danger(s) was known or knowable by the Defendant, OPW, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of gasoline dispensing equipment.

381. At all times material hereto, the Defendant, OPW, had a duty to provide adequate warning(s) to intended and foreseeable users such as SHERYLL GRACE DELFIN CABALLES, deceased, on how to use, maintain, and recognize and appreciate the dangers inherent within gasoline dispensing equipment.

382. At all times material hereto, the Defendant, OPW, failed to give adequate warning(s) of the danger associated with the gasoline dispensing equipment.

383. As a direct and proximate cause of OPW's lack of and/or negligent warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, OPW, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XLI - STRICT LIABILITY AGAINST DEFENDANT GUARDIAN
MANUFACTURING DEFECT(S)**

384. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

385. At the time gasoline dispensing equipment was manufactured and placed into the stream of commerce by the Defendant, GUARDIAN, it contained manufacturing defects which were

unreasonably dangerous to persons such as the SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because GASOLINE DISPENSING EQUIPMENT's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

386. As a result of the manufacturing defects, gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing gasoline dispensing equipment in an intended and/or reasonably foreseeable manner.

387. As a direct and proximate cause of the manufacturing defects in GUARDIAN's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

388. As a direct and proximate result of the Defendants' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XLII- STRICT LIABILITY AGAINST DEFENDANT GUARDIAN -
DESIGN DEFECT(S)**

389. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

390. At the time the gasoline dispensing equipment was designed and placed into the

stream of commerce by the Defendant, GUARDIAN, it contained design defects which were unreasonably dangerous to persons such as SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because the gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

391. As a result of the design defects, the gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing the gasoline dispensing equipment in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the design of gasoline dispensing equipment outweighed the benefits of its design.

392. As a direct and proximate cause of the design defects in GUARDIAN's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

393. As a direct and proximate result of the design defects in GUARDIAN's gasoline dispensing equipment, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XLIII - STRICT LIABILITY AGAINST DEFENDANT GUARDIAN -
DEFECTIVE WARNING(S)**

394. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred

seventy-five (275) as if fully stated herein and further allege:

395. At the time gasoline dispensing equipment was designed, manufactured, and placed into the stream of commerce by the Defendant, GUARDIAN, it lacked and/or contained defective warnings which rendered gasoline dispensing equipment unreasonably dangerous to persons such as SHERYLL GRACE DELFIN CABALLES, deceased, who was an intended and/or reasonably foreseeable user, because gasoline dispensing equipment's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

396. At all times material hereto, gasoline dispensing equipment was maintained and inspected and the warnings read and comprehended as often and as completely as a reasonably prudent person would have done under the same or similar circumstances, and at no time material hereto was gasoline dispensing equipment subjected to any unintended and/or unforeseeable conditions.

397. At all times material hereto, the use of gasoline dispensing equipment in a manner that was intended and/or reasonably foreseeable by the Defendant, GUARDIAN, involved substantial danger that would not be readily recognized by an ordinary user of gasoline dispensing equipment.

398. At all times material hereto, this danger(s) was known or knowable by the Defendant, GUARDIAN, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of gasoline dispensing equipment.

399. At all times material hereto, the Defendant, GUARDIAN, had a duty to provide adequate warnings to intended and reasonably foreseeable users such as SHERYLL GRACE DELFIN CABALLES, deceased, on how to use, maintain, and recognize and appreciate the dangers inherent within gasoline dispensing equipment.

400. At all times material hereto, the Defendant, GUARDIAN, failed to give adequate warnings of the dangers associated with gasoline dispensing equipment.

401. As a result of the lack of and/or defective warning(s), the gasoline dispensing equipment failed to perform as safely as an ordinary consumer would expect when utilizing gasoline dispensing equipment in an intended and/or reasonably foreseeable manner, and/or the risk of danger inherent in the lack of and/or defective warning(s) on or with gasoline dispensing equipment outweighed the benefits of the warning(s), design, and the use of gasoline dispensing equipment.

402. As a direct and proximate cause of the lack of and/or defective warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

403. As a direct and proximate cause of the lack of and/or defective warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT XLIV - NEGLIGENCE AGAINST DEFENDANT GUARDIAN –
MANUFACTURE**

404. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

405. The Defendant, GUARDIAN, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other persons similarly situated, to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing, and replacing, the gasoline

dispensing equipment, and in the testing and inspection of any component parts made by another, so that the gasoline dispensing equipment could safely be used in a manner and for the purpose for which it was made.

406. The Defendant, GUARDIAN, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment in such a negligent manner that gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

407. As a direct and proximate cause of GUARDIAN's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

408. As a direct and proximate cause of GUARDIAN's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XLV - NEGLIGENCE AGAINST DEFENDANT GUARDIAN - DESIGN

409. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

410. The Defendant, GUARDIAN, owed a duty to SHERYLL GRACE DELFIN CABALLES, deceased, and other persons similarly situated, to use reasonable care in designing, testing, assembling, manufacturing, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment, and in the testing and inspection of any component parts made by another, so

that the gasoline dispensing equipment could safely be used in a manner and for the purpose for which it was made.

411. The Defendant, GUARDIAN, breached such duties by designing, testing, manufacturing, assembling, inspecting, maintaining, repairing, and replacing the gasoline dispensing equipment in such a negligent manner that the gasoline dispensing would likely fail during a foreseeable accident, even while being used in an intended and/or reasonably foreseeable manner.

412. As a direct and proximate cause of GUARDIAN's negligent design, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

413. As a direct and proximate cause of GUARDIAN's negligent design, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XLVI - NEGLIGENCE AGAINST DEFENDANT GUARDIAN- WARNING(S)

414. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

415. At all times material hereto, the use of the gasoline dispensing equipment in a manner that was intended and/or reasonably foreseeable by the Defendant, GUARDIAN, involved substantial danger that would not be readily recognized by an ordinary user of gasoline dispensing equipment because gasoline dispensing equipment's front impact airbag(s) system, and occupant containment and protection system would likely fail during a foreseeable accident, even while being

used in an intended and/or reasonably foreseeable manner.

416. At all times material hereto, this danger(s) was known or knowable by the Defendant, GUARDIAN, in light of the generally recognized and prevailing best scientific knowledge available at the time of the design, manufacture, and distribution of gasoline dispensing equipment.

417. At all times material hereto, the Defendant, GUARDIAN, had a duty to provide adequate warning(s) to intended and foreseeable users such as SHERYLL GRACE DELFIN CABALLES, deceased, on how to use, maintain, and recognize and appreciate the dangers inherent within gasoline dispensing equipment.

418. At all times material hereto, the Defendant, GUARDIAN, failed to give adequate warning(s) of the danger associated with the gasoline dispensing equipment.

419. As a direct and proximate cause of GUARDIAN's lack of and/or negligent warning(s), SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XLVII- NEGLIGENCE AGAINST DEFENDANT VALLEY

420. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

421. At all times material hereto, Defendant, VALLEY, was hired by Defendant(s) EAST LAKE and/or CIRCLE K, and/or SHELL, to conduct inspections, repair, and maintenance of the subject gasoline dispensing equipment, to ensure it was working and functioning properly, for the safety of the general public and business invitees at the subject premises, including SHERYLL

GRACE DELFIN CABALLES, deceased.

422. At all times material hereto, Defendant, VALLEY, owed a duty to the general public and business invitees at the subject premises, including SHERYLL GRACE DELFIN CABALLES, deceased, to conduct its inspections, repair, and maintenance of the subject gasoline dispensing equipment in a reasonable manner.

423. Defendant, VALLEY, breached its duty to SHERYLL GRACE DELFIN CABALLES, deceased, by the following acts and omissions:

- a. Failing to conduct proper and reasonable inspection of the gasoline dispensing equipment and components;
- b. Failing to conduct proper and reasonable repair of the gasoline dispensing equipment and components;
- c. Failing to conduct proper and reasonable maintenance of the subject gasoline dispensing equipment;
- d. Conducting inspection, repair, and maintenance of the subject gasoline dispensing equipment in a negligent manner;
- e. Failing to notify the appropriate person(s) of malfunctions and/or dangerous conditions of the subject gasoline dispensing equipment it either knew or should have known existed during or prior to the subject incident;
- f. Failing to rectify malfunctions and/or dangerous conditions of the subject gasoline dispensing equipment which it either knew or should have known existed during or prior to the subject incident.
- g. At all times material hereto, failing to use and exercise reasonable care in performing its duties.

424. As a direct and proximate cause of GUARDIAN's negligence, SHERYLL GRACE

DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

425. As a direct and proximate cause of GUARDIAN's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XLVIII- NEGLIGENCE AGAINST DEFENDANT GUARDIAN

426. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) ninety-two and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

427. At all times material hereto, Defendant, GUARDIAN, was hired by Defendant(s) EAST LAKE and/or CIRCLE K, and/or SHELL, to conduct installation, inspections, repair, and maintenance of the subject gasoline dispensing equipment, to ensure it was working and functioning properly, for the safety of the general public and business invitees at the subject premises, including SHERYLL GRACE DELFIN CABALLES, deceased.

428. At all times material hereto, Defendant, GUARDIAN, owed a duty to the general public and business invitees at the subject premises, including SHERYLL GRACE DELFIN CABALLES, deceased, to conduct its inspections, repair, and maintenance of the subject gasoline dispensing equipment in a reasonable manner.

429. Defendant, GUARDIAN, breached its duty to SHERYLL GRACE DELFIN CABALLES, deceased, by the following acts and omissions:

- a. Failing to conduct proper and reasonable installation of the gasoline dispensing

- equipment and components;
- b. Failing to conduct proper and reasonable inspection of the gasoline dispensing equipment and components;
 - c. Failing to conduct proper and reasonable repair of the gasoline dispensing equipment and components;
 - d. Failing to conduct proper and reasonable maintenance of the subject gasoline dispensing equipment;
 - e. Conducting inspection, repair, and maintenance of the subject gasoline dispensing equipment in a negligent manner;
 - f. Failing to notify the appropriate person(s) of malfunctions and/or dangerous conditions of the subject gasoline dispensing equipment it either knew or should have known existed during or prior to the subject incident;
 - g. Failing to rectify malfunctions and/or dangerous conditions of the subject gasoline dispensing equipment which it either knew or should have known existed during or prior to the subject incident.
 - h. At all times material hereto, failing to use and exercise reasonable care in performing its duties.

430. As a direct and proximate cause of GUARDIAN's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

431. As a direct and proximate cause of GUARDIAN's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus

costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT XLIX – CLAIM FOR NEGLIGENT SPOILIATION AGAINST GUARDIAN

432. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

433. GUARDIAN, through its employees and agents who were acting within the scope of their employment and agency relationships with GUARDIAN, took possession of the OPW designed and manufactured shear valve (the “subject shear valve”) which was part of the Gas Dispenser #7/8.

434. Upon information and belief, the subject shear valve contained a defect which prevented it from performing its purpose—to prevent the continued flow of gasoline when a gas dispenser is damaged.

435. At all times material hereto, from the moment of the subject incident, PLAINTIFFS had valid potential and pending negligence and product claims against GUARDIAN, OPW, and other Defendants named herein, because the subject shear valve failed to prevent the continued flow of gasoline after Gas Dispenser #7/8 was damaged.

436. The timeline of events related to GUARDIAN’s spoliation was as follows:

- a. On December 22, 2021, the day of the incident, GUARDIAN was first notified of the subject incident.
- b. On December 22, 2021, GUARDIAN went to the scene of the incident.
- c. On December 22, 2021, GUARDIAN took possession of the subject Gas Dispenser and components, including the subject shear valve.
- d. On December 22, 2021, GUARDIAN was aware that an individual had been burned to death as a result of the Gas Dispenser and its components.

- e. On March 11, 2021, GUARDIAN received a certified letter of representation from the undersigned counsel informing them that undersigned represented the PLAINTIFFS in relation to the December 22, 2021, incident which involved the Gas Dispenser and components that were installed by GUARDIAN.
- f. On April 8, 2022, counsel for GUARDIAN had a telephone conference with undersigned related to the subject incident and pending litigation, wherein GUARDIAN's counsel informed undersigned that GUARDIAN was in possession of the subject Gas Dispenser and components.
- g. On April 13, 2022, undersigned emailed counsel for GUARDIAN requesting a list of items that GUARDIAN had taken from the subject accident scene.
- h. On May 27, 2022, counsel for CIRCLE K advised via email that GUARDIAN had taken possession of the shear valve on the night of the incident.
- i. On May 27, 2022, counsel for GUARDIAN stated that the subject shear valve had been discarded by a GUARDIAN employee.
- j. At no time prior had GUARDIAN informed anyone, including undersigned, of its intent to destroy the subject shear valve.

437. GUARDIAN, acting through its employees and agents who were within the scope of employment, had a legal and/or contractual duty to preserve the subject shear valve, as it knew the gas dispenser and components had been involved in the brutal, horrific death of SHERYLL GRACE DELFIN CABALLES, deceased.

438. GUARDIAN, acting through its employees and agents, negligently and/or intentionally destroyed the subject shear valve.

439. GUARDIAN'S negligent and/or intentional destruction of the subject shear valve has caused a significant impairment to PLAINTIFFS relative to their ability to prove their claims for

product liability against Defendants GUARDIAN and OPW, as the subject shear valve was key evidence for such a claim.

440. A casual relationship exists between GUARDIAN's destruction of the evidence and the ability to prove a product liability claim against Defendants GUARDIAN and OPW.

441. As a direct and proximate result of GUARDIAN's spoliation and destruction of the subject shear valve, PLAINTIFFS have suffered damages including but not limited to the loss of probably expectancy of recovery as to their defective products claims against GUARDIAN and OPW.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, GUARDIAN, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT L – CLAIM FOR NEGLIGENT SPOILIATION AGAINST CIRCLE K

442. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54), ninety-two (92) through ninety-four (94), and two hundred sixty-six (266) through two hundred seventy-five (275) as if fully stated herein and further allege:

443. CIRCLE K, through its employees and agents who were acting within the scope of their employment and agency relationships with CIRCLE K, allowed GUARDIAN to access the subject premises where SHERYLL GRACE DELFIN CABALLES, deceased, had just died a painful, horrific, and gruesome death, as a result of Defendants' negligence, and allowed GUARDIAN to take possession of the subject gasoline dispenser and OPW designed and manufactured shear valve (the "subject shear valve") which was part of the Gas Dispenser #7/8.

444. Upon information and belief, the subject shear valve contained a defect which

prevented it from performing its purpose—to prevent the continued flow of gasoline when a gas dispenser is damaged.

445. At all times material hereto, from the moment of the subject incident, PLAINTIFFS had valid potential and pending negligence and product claims against GUARDIAN, OPW, and other Defendants named herein, because the subject shear valve failed to prevent the continued flow of gasoline after Gas Dispenser #7/8 was damaged.

446. The timeline of events related to CIRCLE K's spoliation was as follows:

- a. On December 22, 2021, from the moment of the incident, which occurred on CIRCLE K's property, in the presence of CIRCLE K's employees or agents, CIRCLE K was on notice of the incident.
- b. On December 22, 2021, the day of the incident, GUARDIAN was first notified of the subject incident.
- c. On December 22, 2021, GUARDIAN went to the scene of the incident.
- d. On December 22, 2021, when GUARDIAN arrived at the scene, CIRCLE K, through its employees or agents, allowed GUARDIAN to access the subject premises and the specific location of the incident.
- e. On December 22, 2021, CIRCLE K, through its employees or agents, allowed GUARDIAN to take possession of the subject Gas Dispenser and components, including the subject shear valve.
- f. On December 22, 2021, CIRCLE K was aware that an individual had been burned to death on CIRCLE K's property, as a result of the subject Gas Dispenser and its components.
- g. On January 11, 2022, undersigned had a telephone conference with CIRCLE K's representative regarding the pending litigation.

- h. On January 14, 2022, undersigned had a telephone conference with CIRCLE K's counsel regarding the pending the litigation.
- i. On March 11, 2022, GUARDIAN received a certified letter of representation from the undersigned counsel informing them that undersigned represented the PLAINTIFFS in relation to the December 22, 2021, incident which involved the Gas Dispenser and components that were installed by GUARDIAN.
- j. On April 8, 2022, counsel for GUARDIAN had a telephone conference with undersigned related to the subject incident and pending litigation, wherein GUARDIAN's counsel informed undersigned that GUARDIAN was in possession of the subject Gas Dispenser and components.
- k. On April 13, 2022, undersigned emailed counsel for GUARDIAN requesting a list of items that GUARDIAN had taken from the subject accident scene.
- l. On May 27, 2022, counsel for CIRCLE K advised via email that GUARDIAN had taken possession of the shear valve on the night of the incident.
- m. On May 27, 2022, counsel for GUARDIAN stated that the subject shear valve had been discarded by a GUARDIAN employee.
- n. At no time prior had CIRCLE K or GUARDIAN informed anyone, including undersigned, of its intent to destroy the subject shear valve.

447. CIRCLE K, acting through its employees and agents who were within the scope of employment, had a legal and/or contractual duty to preserve the subject shear valve, as it knew the gas dispenser and components had been involved in the brutal, horrific death of SHERYLL GRACE DELFIN CABALLES, deceased.

448. CIRCLE K, acting through its employees and agents, negligently and/or intentionally allowed GUARDIAN to take possession of and destroy the subject shear valve.

449. CIRCLE K's negligent and/or intentional destruction of the subject shear valve has caused a significant impairment to PLAINTIFFS relative to their ability to prove their claims for product liability against Defendants GUARDIAN and OPW, as the subject shear valve was key evidence for such a claim.

450. A casual relationship exists between CIRCLE K's destruction of the evidence and the ability to prove a product liability claim against Defendants GUARDIAN and OPW.

451. As a direct and proximate result of CIRCLE K's spoliation and destruction of the subject shear valve, PLAINTIFFS have suffered damages including but not limited to the loss of probably expectancy of recovery as to their defective products claims against GUARDIAN and OPW.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, CIRCLE K, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT LI- NEGLIGENCE AGAINST DEFENDANT D&H

452. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

453. At all times material hereto, Defendant, D&H, was hired by Defendant(s) EAST LAKE and/or CIRCLE K, and/or SHELL, to conduct inspections, repair, and maintenance of the subject gasoline dispensing equipment, to ensure it was working and functioning properly, for the safety of the general public and business invitees at the subject premises, including SHERYLL GRACE DELFIN CABALLES, deceased.

454. At all times material hereto, Defendant, D&H, owed a duty to the general public and business invitees at the subject premises, including SHERYLL GRACE DELFIN CABALLES,

deceased, to conduct its inspections, repair, and maintenance of the subject gasoline dispensing equipment in a reasonable manner.

455. Defendant, D&H, breached its duty to SHERYLL GRACE DELFIN CABALLES, deceased, by the following acts and omissions:

- a. Failing to conduct proper and reasonable inspection of the gasoline dispensing equipment and components;
- b. Failing to conduct proper and reasonable repair of the gasoline dispensing equipment and components;
- c. Failing to conduct proper and reasonable maintenance of the subject gasoline dispensing equipment;
- d. Conducting inspection, repair, and maintenance of the subject gasoline dispensing equipment in a negligent manner;
- e. Failing to notify the appropriate person(s) of malfunctions and/or dangerous conditions of the subject gasoline dispensing equipment it either knew or should have known existed during or prior to the subject incident;
- f. Failing to rectify malfunctions and/or dangerous conditions of the subject gasoline dispensing equipment which it either knew or should have known existed during or prior to the subject incident.
- g. At all times material hereto, failing to use and exercise reasonable care in performing its duties.

456. As a direct and proximate cause of D&H's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

457. As a direct and proximate cause of D&H's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth

above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, D&H, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT LII - NEGLIGENCE AGAINST DEFENDANT PAULA ANTUNES

458. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

459. The Defendant, PAULA ANTUNES, as a manager of the subject premises, had a duty to assure that gasoline dispensers/nozzles were safely functioning on behalf of the Defendants, EAST LAKE, CIRCLE K STORES, INC. and SHELL, and to properly train other employees, and breached her duty of care in that:

- a. The Defendant, PAULA ANTUNES, knew or should have known that the above-described conditions on and about the subject property posed a foreseeable danger to persons using the gasoline dispensers/nozzles such as business invitees like SHERYLL GRACE DELFIN CABALLES, deceased;
- b. The Defendant, PAULA ANTUNES, failed to warn business invitees, including but not limited to SHERYLL GRACE DELFIN CABALLES, deceased, of the hazardous conditions;
- c. The Defendant, PAULA ANTUNES, knowingly and negligently allowed gasoline to remain on the ground where business invitees pumped gas, thereby creating and maintaining an unsafe condition;
- d. The Defendant, PAULA ANTUNES, failed to close the gas dispenser/nozzles at issue which was not properly functioning;
- e. Failure to train other employees, including but not limited to, Defendant MERILA, on proper safety and emergency policies and procedures;
- f. Failed to shut down Gas Dispenser #7/8 in spite of complaints about gasoline on the pavement:

- g. Failed to shut down Gas Dispenser #7/8 in spite of visible damage to the gas dispenser;
- h. Failed to notify business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased, of leaks prior to the incident;
- i. Failed to shut down the gas dispenser in spite of seeing Plaintiff, SHERYLL GRACE DELFIN CABALLES, deceased, on fire;
- j. Failed to activate emergency shut off devices to prevent gas from continuing to flow from Gas Dispenser #7/8;
- k. Failed to properly and reasonably utilize available fire extinguishers, despite seeing SHERYLL GRACE DELFIN CABALLES, deceased, on fire;
- l. Failed to post proper notice to business invitees such as SHERYLL GRACE DELFIN CABALLES, of the known hazardous condition and gas dispenser malfunction;
- m. Failed to adequately or safely clean up the chronic fuel spills and/or retain an environmental expert to perform this critical task;
- n. Failed to notify the fire department of the known fire hazard so that appropriate safety measures and plans could be implemented: and
- o. Failed to follow emergency policies and procedures to prevent injury and death of SHERYLL GRACE DELFIN CABALLES, deceased.

460. As a direct and proximate cause of PAULA ANTUNES' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

461. As a direct and proximate cause of PAULA ANTUNES' negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, PAULA ANTUNES, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

COUNT LIII - NEGLIGENCE AGAINST DEFENDANT BRANDY MCCANN-MERILA

462. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

463. The Defendant, BRANDY MCCANN-MERILA (hereinafter “MERILA”), as an attendant of the subject premises, had a duty to assure that gasoline dispensers/nozzles were safely functioning on behalf of the Defendants, EAST LAKE, CIRCLE K STORES, INC. and SHELL, and breached her duty of care in that:

- p. The Defendant, MERILA, knew or should have known that the above-described conditions on and about the subject property posed a foreseeable danger to persons using the gasoline dispensers/nozzles such as business invitees like SHERYLL GRACE DELFIN CABALLES, deceased;
- q. The Defendant, MERILA, failed to warn business invitees, including but not limited to SHERYLL GRACE DELFIN CABALLES, deceased, of the hazardous conditions;
- r. The Defendant, MERILA, knowingly and negligently allowed gasoline to remain on the ground where business invitees pumped gas, thereby creating and maintaining an unsafe condition;
- s. The Defendant, MERILA, failed to close the gas dispenser/nozzles at issue which was not properly functioning;
- t. Failed to shut down Gas Dispenser #7/8 in spite of complaints about gasoline on the pavement;
- u. Failed to shut down Gas Dispenser #7/8 in spite of visible damage to the gas dispenser;
- v. Failed to notify business invitees, including SHERYLL GRACE DELFIN CABALLES, deceased, of leaks prior to the incident;
- w. Failed to shut down the gas dispenser in spite of seeing Plaintiff, SHERYLL GRACE DELFIN CABALLES, deceased, on fire;
- x. Failed to activate emergency shut off devices to prevent gas from continuing to flow from Gas Dispenser #7/8;

- y. Failed to properly and reasonably utilize available fire extinguishers, despite seeing SHERYLL GRACE DELFIN CABALLES, deceased, on fire;
- z. Failed to post proper notice to business invitees such as SHERYLL GRACE DELFIN CABALLES, deceased, of the known hazardous condition and gas dispenser malfunction;
- aa. Failed to adequately or safely clean up the chronic fuel spills and/or retain an environmental expert to perform this critical task;
- bb. Failed to notify the fire department of the known fire hazard so that appropriate safety measures and plans could be implemented: and
- cc. Failed to follow emergency policies and procedures to prevent injury and death of SHERYLL GRACE DELFIN CABALLES, deceased.

464. As a direct and proximate cause of MERILA's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

465. As a direct and proximate cause of MERILA's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, MERILA, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

**COUNT LIV- NEGLIGENCE CLAIM AGAINST DEFENDANT LISA
HERBOLSHEIMER BLACK**

466. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs one (1) through fifty-four (54) as if fully stated herein and further allege:

467. On or about On or about December 22, 2021, Defendant LISA HERBOLSHEIMER BLACK (hereinafter "BLACK"), owned and operated a 2006 Nissan, VIN: JN1AZ36A86M457168 License No.: EUPH30 on the subject premises located at 3470 East Lake Road, Palm Harbor, Florida

34685.

468. Defendant BLACK owed a duty to all other drivers on the roadway, including SHERYLL GRACE DELFIN CABALLES, deceased, to operate and maintain her vehicle in a reasonably safe manner.

469. Defendant BLACK breached that duty by failing to operate and/or maintain her vehicle in a reasonably safe manner, and/or failing to obey all traffic laws.

470. BLACK operated her vehicle in an unsafe manner, contacted Gas Dispenser #7/8, which pushed the gas dispenser on top of SHERYLL GRACE DELFIN CABALLES, deceased, pinning SHERYLL GRACE DELFIN CABALLES, deceased, between her 2018 Honda Pilot, which was parked next to the pump for refueling, and the Gas Dispenser #7/8, and the ground.

471. As a direct and proximate cause of BLACK's negligent operation of her vehicle, SHERYLL GRACE DELFIN CABALLES, deceased, suffered a gruesome, painful, and horrific death.

472. As a direct and proximate cause of BLACK's negligence, SHERYLL GRACE DELFIN CABALLES, deceased, suffered fatal injuries and the PLAINTIFFS suffered damages as set forth above, which are continuing and permanent in nature.

WHEREFORE, the PLAINTIFFS demand judgment against the Defendant, LISA HERBOLSHEIMER BLACK, for the damages set forth above and all other damages allowable by law, plus costs, post judgment interest, attorney's fees, and other such relief this court deems proper, and further demands trial by jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been electronically served via the Florida Courts eFiling Portal: August 18th, 2022.

/s/Ben J. Whitman

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