

MASTER DOCKET NO. 2021-15294

IN RE: JANUARY 24TH	§	IN THE DISTRICT COURT OF
	§	
EXPLOSION LITIGATION	§	HARRIS COUNTY TEXAS
	§	
This Document Relates to All Cases	§	11th JUDICIAL DISTRICT

CASE MANAGEMENT ORDER NO. 1

On March 4, 2021, the JPML, pursuant to Rule 13 of the TRJA, granted a Joint Motion to Transfer in connection with one hundred and twenty-six (126) cases pending in various Texas district courts relating to the January 24, 2020 explosion and fire that occurred at 4522 Steffani Lane, Houston, Texas. On March 10, 2021, the JPML issued its Designation of Pretrial Court and Appointment of Pretrial Judge transferring the January 24, 2020 Explosion Litigation to this Court and assigning the Honorable Mark Davidson as the Pretrial Judge.

This Court intends to apply sound judicial management methods early, continuously, and actively, based on its knowledge of each individual case and the entire litigation, in order to set fair and firm time limits tailored to ensure the expeditious resolution of each case and the just and efficient conduct of the litigation as a whole.

Having considered these principles, the parties' proposals, and agreements and hearing arguments of all counsel, IT IS HEREBY ORDERED:

1. DEFINITIONS

As used in this Case Management Order No. 1 ("Order"), and any amended or subsequent case management orders:

- A. "Certification Process" means the process for certifying a case to be remanded for trial pursuant to Paragraph 10 of this Order.
- B. "Conditional Certification" means the Court's approval of a Conditional Certification Request pursuant to the Certification Process.
- C. "Conditional Certification Request" means a request filed with the Court seeking Conditional Certification in accordance with the Certification Process.
- D. "Court" means the Pretrial Court.
- E. "Cross-Defendant" means a Defendant against whom another Defendant asserts a crossclaim.
- F. "Cross-Plaintiff" means a Defendant who asserts a crossclaim against another Defendant.

- G. “Defendants” means all defendants in lawsuits subject to this Order, collectively, including Third-Party Defendants or new defendants served after this Order issues.
- H. “Defendants’ Counsel” means counsel for each Defendant collectively.
- I. “Defendants’ Liaison Counsel” means counsel who is designated to receive certain notices on behalf of all Defendants and Defendants’ Counsel as set forth in this Order.
- J. “Depository” means the document and discovery depository that is provided for in Paragraph 6(G) of this Order.
- K. “ESI” means electronically stored information.
- L. “Final Certification” means an order of the Court scheduling an individual case for remand and trial pursuant to the Certification Process.
- M. “January 24th Explosion” means the explosion and fire that occurred at 4522 Steffani Lane, Houston, Texas on January 24, 2020.
- N. “January 24th Explosion Litigation” means the lawsuits arising out of the January 24, 2020 Explosion.
- O. “JPML” means the Texas Judicial Panel on Multi-District Litigation.
- P. “Large Group Plaintiffs” means a group of more than 150 individual Plaintiffs in the Transferred Cases that are represented by the same law firm.
- Q. “Master Answer” means a Defendant’s answer to the Master Petition, as amended or supplemented over time.
- R. “Master Crossclaim” means a crossclaim filed by a Defendant in lawsuits subject to this Order against any other Defendant(s) in lawsuits subject to this Order, as amended or supplemented over time.
- S. “Master Crossclaim Answer” means a Cross-Defendant’s answer to a Master Crossclaim, as amended or supplemented over time.
- T. “Master Discovery” means those certain sets of agreed liability discovery that Defendants are collectively serving on each Plaintiff or that Plaintiffs are collectively serving on each Defendant and which are described more fully in Paragraph 6(D) of this Order and will be attached to a future order of this Court.
- U. “Master Petition” means the petition filed by all named Plaintiffs, collectively, against all named Defendants, collectively, as amended or supplemented over time.

- V. “Master Pleading” means a Master Petition, Master Answer, Master Crossclaim, Master Crossclaim Answer, Master Third-Party Petition, or Master Third-Party Answer.
- W. “Master Third-Party Answer” means a Third-Party Defendant’s answer to a Third-Party Claim, as amended or supplemented over time.
- X. “Master Third-Party Claim” means a third-party petition filed by a Defendant in lawsuits subject to this Order against a party that not already a party to a particular lawsuit subject to this Order.
- Y. “Liaison Counsel” means Plaintiffs’ Liaison Counsel and Defendants’ Liaison Counsel collectively.
- Z. “PFS” means those certain Plaintiff Fact Sheets that each individual plaintiff must complete and which are described in Paragraph 6(D) of this Order and will be attached to a future order of this Court.
- AA. “Plaintiffs” means all plaintiffs in lawsuits subject to this Order, collectively.
- BB. “Plaintiffs’ Counsel” means counsel for each Plaintiff, collectively.
- CC. “Plaintiffs’ Liaison Counsel” means counsel who is designated to receive certain notices on behalf of all Plaintiffs and Plaintiffs’ Counsel as set forth in this Order.
- DD. “Pretrial Court” means this court, the district court to which all Transferred Cases are transferred for coordinated pretrial proceedings under TRJA § 13.
- EE. “Related Case” means a case involving one or more common questions of fact with the January 24th Explosion Litigation.
- FF. “Steering Committee” means a group of attorneys representing a subset of the Plaintiffs and Defendants as designated in Paragraph 4(C) of this Order and who shall be responsible for coordinating activities with their respective sides, with the Executive Plaintiffs’ Steering Committee being designated as the “EPSC” and Plaintiffs’ Steering Committed being designated as the “PSC” and the Defendants’ Steering Committee being designated the “DSC”.
- GG. “Tag-Along Case” means a Related Case that was not itself the subject of the initial Motion to Transfer filed with the JPML.
- HH. “Tag-Along Notice” means a notice of transfer in the form described in TRJA § 13.5(a).
- II. “Third-Party Defendant” means a Defendant against whom another Defendant asserts a third-party claim. Once served, a Third-Party Defendant also becomes a Defendant.

- JJ. “Third-Party Plaintiff” means a Defendant who asserts a third-party claim against a Third-Party Defendant.
- KK. “Track” means the trial settings set aside to try the Track One Cases, the Track Two Cases, or any other cases designated for trial under Paragraph 9 of this Order.
- LL. “Track One Cases” means those cases identified in Paragraph 9(A)(i) of this Order.
- MM. “Track One Trial Case” means the Track One Case that will be remanded for to the Trial Court first pursuant to Paragraph 9(A)(iii) of this Order.
- NN. “Track Two Cases” means those cases to be identified pursuant to Paragraph 9(B)(i) of this Order.
- OO. “Track Two Trial Case” means the Track Two Cases that will be remanded for to the Trial Court second pursuant to Paragraph 9(B)(iii) of this Order.
- PP. “Transferred Cases” means all initially transferred cases and all Tag-Along Cases previously transferred or to be transferred in the future arising out of or in connection with the January 24th Explosion.
- QQ. “TRCP” means the Texas Rules of Civil Procedure.
- RR. “Trial Court” means the court in which each Transferred Case was originally filed.
- SS. “TRJA” means the Texas Rules of Judicial Administration.

2. APPLICABILITY AND SCOPE OF ORDER

- A. Exclusive jurisdiction: Pursuant to TRJA § 13.6(a), this Court has exclusive jurisdiction over all Transferred Cases unless an individual case is retransferred by the JPML, is finally resolved, or is remanded to the Trial Court for trial. Under TRJA § 13.6(b), this Court is authorized to decide, in place of the Trial Court, all pretrial matters in all Transferred Cases. Pursuant to TRJA § 13.5, after a notice of transfer is filed in the Trial Court, the Trial Court is not authorized to take any further action on the case except for good cause stated in the order in which such action is taken and after conferring with the Pretrial Court. However, any service of process previously issued by a Trial Court may be completed and the return may be filed in that Trial Court.
- B. Order governs Transferred Cases: Subject to the objection provisions of Section 2(D) of this Order, the terms of this Order and, unless otherwise specified, any subsequent pretrial or case management orders issued by this Court shall apply automatically to all Transferred Cases and shall be binding on all parties and their counsel unless the order explicitly states that it relates only to a specific case or group of cases. To the fullest extent permitted by law, including but not limited to TRCP 166 and 191.1, the provisions of this Order and, unless otherwise specified,

any subsequent pretrial or case management orders issued by this Court shall supersede any inconsistent provisions of the TRCP.

- C. Tag-Along Cases: A Tag-Along Case is deemed transferred to the Pretrial Court when a Tag-Along Notice is filed in both the Trial Court and this Court. Within thirty (30) days after service of a Tag-Along Notice, a party to the case or to any of the Related Cases previously transferred to this Court may move this Court to remand the case to the Trial Court on the ground that the case is not a Tag-Along Case. If the motion to remand is granted, the case shall be remanded and returned to the Trial Court and costs may be assessed by this Court in its remand order. An order of this Court remanding a case on the basis that it is not a Tag-Along Case may be appealed to the JPML by a motion for rehearing filed with the clerk of the JPML.
- D. Objections to Application of Order to Tag-Along Cases: Within thirty (30) days after service of this Order from Liaison Counsel under Paragraph 4(B)(v), if required, any parties to the Tag-Along Case may file written objections to the application of any or all terms of this Order, or any subsequently entered order, to that action. A failure to timely file such written objections shall constitute a waiver of any objections to the application of any or all terms of this Order, or any subsequently entered order, to that action. Any objection to the application of this Order shall be specific and identify the provisions of the Order that should not apply and set forth what alternative provisions the objecting party believes should apply. Within fourteen (14) days of filing such an objection, the objecting party shall set for hearing its objections to the application of this Order or any subsequently entered order. A failure to timely set a party's objections for hearing shall constitute a waiver of any objections to the application of any or all terms of this Order or any subsequently entered order to that action. After notice and an opportunity to be heard, the Court will determine if this Order, along with any subsequently entered orders, or some alternative order should apply to any specific Tag-Along Case.
- E. Amendments to Order: This Court may amend this Order on its own motion at any time, and any party, for good cause, may seek to amend this Order at any time. The Court expects it will issue subsequent case management orders addressing the Transferred Cases.

3. MASTER DOCKET, CASE FILES, AND FILINGS

- A. Transfer of files: If the Trial Court and Pretrial Court are in Harris County, Texas, the Trial Court must transfer the case file to the Pretrial Court in accordance with local rules governing the courts of Harris County, Texas. If the Trial Court and Pretrial Court are in different counties, the Trial Court clerk shall transmit the case file to the Pretrial Court clerk. The Pretrial Court clerk shall open new files for transferred case using the information provided in the notice of transfer.
- B. Filing fees and costs: Unless the JPML assesses costs otherwise, the Watson Grinding & Manufacturing Co. Liquidating Trust formed pursuant to the *Joint Plan*

of Liquidation of Watson Grinding & Manufacturing Co. and Watson Valve Services, Inc. Under Chapter 11 of the Bankruptcy Code Filed by the January 24 Claimants Committee shall pay the cost of re-filing the transferred cases in the Pretrial Court, including filing fees and other reasonable costs, if necessary.

- C. Master Docket; Caption: This Court has assigned a Master Docket Number 2021-15294 to the January 24th Explosion Litigation. Unless otherwise noted, all documents and orders submitted in the Master Docket shall apply to all Transferred Cases and are incorporated therein for all purposes. When filed papers relate to all Transferred Cases, the Master Docket Number shall be used with the following style and caption:

MASTER FILE NO. 2021-15294

IN RE: JANUARY 24TH	§	IN THE DISTRICT COURT OF
	§	
EXPLOSION LITIGATION	§	HARRIS COUNTY TEXAS
	§	
This Document Relates to All Cases	§	11th JUDICIAL DISTRICT

Until further notice, when filed papers relate to only a particular Transferred Case, those papers shall be filed in the Trial Court in which the particular Transferred Case was filed and shall use both the Master Docket Number and caption and the particular Transferred Case's original docket number and caption. For example:

MASTER FILE NO. 2021-15294

IN RE: JANUARY 24TH	§	IN THE DISTRICT COURT OF
	§	
EXPLOSION LITIGATION	§	HARRIS COUNTY TEXAS
	§	
	§	11th JUDICIAL DISTRICT

CAUSE NO. 2020-04959

RIGOBERTO MIRANDA, JR., ET AL.	§	IN THE DISTRICT COURT OF
	§	
v.	§	HARRIS COUNTY TEXAS
	§	
WATSON VALVE SERVICES, INC., ET AL.	§	281st JUDICIAL DISTRICT

- D. Case filings: Pretrial documents shall be filed in accordance with the Harris County Local Rules of the District Courts concerning the electronic filing of Court documents.

- E. Service of documents: Other than documents permitted to be uploaded to the Depository pursuant to this Order, all documents required to be served on another party in the January 24th Explosion Litigation and in all Transferred Cases shall be served exclusively through the Court's e-filing system. Service on a party via e-filing in the January 24th Explosion Litigation shall constitute effective and sufficient service on such party in the January 24th Explosion Litigation and in all Transferred Cases. Other than documents permitted to be uploaded to the Depository pursuant to this Order, all documents required to be served on another party in a particular Transferred Case shall be served exclusively through the appropriate Trial Court's e-filing system.
- F. Counsel required to file notice of appearance: All counsel of record for all parties shall file a notice of appearance in the January 24th Explosion Litigation and in all Transferred Cases in which they represent any parties. All counsel shall ensure that all of their information is properly entered, updated, and maintained in the e-filing systems to ensure that they properly receive service via e-filing in the January 24th Explosion Litigation and in all Transferred Cases in which they represent any parties. All parties are responsible for ensuring that all persons who desire to receive notice of filings or service of documents in the January 24th Explosion Litigation are registered to receive notice through the court's e-filing system.
- G. Filing discovery material: Discovery requests and responses will not be filed with the Pretrial Court or Trial Courts except when specifically ordered by the Pretrial Court or to the extent they are presented in connection with a motion.
- H. Form of submissions: All submissions to the Pretrial Court shall be in the form of motions, captioned, formatted, filed, and served as set forth in this Order. No "letter briefs" or other nonconforming communications will be accepted unless specifically ordered by the Pretrial Court.

4. SPECIAL COUNSEL DESIGNATIONS

- A. Designation of Liaison Counsel: The persons who have accepted the appointment to serve as Liaison Counsel agree to serve for the duration of the litigation or until such time as the Pretrial Court determines that a change needs be made. By agreement, and as used herein, the following individuals are Liaison Counsel:

PLAINTIFFS LIAISON COUNSEL:

Muhammad S. Aziz
Abraham, Watkins, Nichols,
Agosto, Aziz & Stogner
800 Commerce
Houston, Texas 77002
Cell: (832) 868-4198
Telephone: (713) 226-5131
Fax: (713) 225-0827

DEFENDANTS LIAISON COUNSEL:

Mary-Olga Lovett
Greenberg Traurig, LLP
1000 Louisiana Street, Suite 1700
Houston, Texas 77002
Cell: (713) 553-1882
Telephone: (713) 374-3541
Fax: (713) 754-7541
lovettm@gtlaw.com

maziz@awtxlaw.com

CC: LIAISON COUNSEL

Brittany Clark
Arnold & Itkin
6009 Memorial Drive
Houston, Texas 77007
Telephone: (713) 222-3800
Fax: (713) 222-3850
bclark@arnolditkin.com

CC: LIAISON COUNSEL

Christopher M. LaVigne
Greenberg Traurig, LLP
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Cell: (214) 334-3175
Telephone: (214) 665-3675
Fax: (214) 665-3601
lavignec@gtlaw.com

B. Duties of Liaison Counsel:

- i. Plaintiffs' Liaison Counsel shall discharge the following duties: (i) maintain and distribute to all Plaintiffs' Counsel and to Defendants' Liaison Counsel an up-to-date service list of all Plaintiffs; (ii) maintain complete files, with copies of all documents served upon them, and make those files available to all Plaintiffs on reasonable terms; (iii) perform such other duties as may be incidental to the proper coordination of administrative activities with the Pretrial Court on behalf of Plaintiffs (such as file maintenance, distribution and such other activities as the Pretrial Court directs from time to time); (iv) communicate information concerning the status of all developments in this proceeding with all Plaintiffs' Counsel; (v) call meetings of all Plaintiffs' counsel to effectuate these provisions; and (vi) perform other such duties as necessary and directed by the Pretrial Court.
- ii. Defendants' Liaison Counsel shall discharge the following duties: (i) maintain and distribute to all Defendants' Counsel and to Plaintiffs' Liaison Counsel an up-to-date service list of all Defendants; (ii) maintain complete files, with copies of all documents served upon them, and make those files available to all Defendants on reasonable terms; (iii) perform such other duties as may be incidental to the proper coordination of administrative activities with the Pretrial Court on behalf of Defendants (such as file maintenance, distribution and such other activities as the Pretrial Court directs from time to time); (iv) serve as a coordinator and facilitator among the Defendants' counsel for the formulation and presentation of the Defendants' common positions on all matters arising during pretrial proceedings; (v) call meetings of defense counsel as appropriate; and (vi) perform other such duties as necessary and directed by the Pretrial Court.
- iii. As to orders that apply to all Transferred Cases, the Clerk shall serve each order to all Liaison Counsel. As to orders that apply only to particular cases, the Clerk shall serve each order to all counsel in those cases and Liaison Counsel. Plaintiffs' Liaison Counsel shall notify all Plaintiffs of any orders that apply to all Transferred Cases, and Defendants' Liaison Counsel shall notify all Defendants of any orders that apply to all Transferred Cases.

- iv. Plaintiffs' Liaison Counsel shall, within five (5) days of the date of this Order, send by overnight delivery or electronic mail, where available, a copy of this Order to all Plaintiffs' Counsel. Defendants' Liaison Counsel shall, within five (5) days of the date of this Order, send by overnight delivery or electronic mail, where available, a copy of this Order to all Defendants' Counsel.
- v. When a Tag-Along Notice is filed, Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall promptly send by overnight delivery or electronic mail, where available, a copy of this Order to Plaintiffs' and, if know, Defendants' counsel, respectively, in such actions unless those attorneys are already counsel of record in this MDL. However, any deadlines in this Order tied to the service of this Order shall run from the date the Order is served by any party, regardless of who served it.

C. Designation of Steering Committees:

- i. The following attorneys are appointed to and have agreed to serve on the EPSC: Muhammad Aziz, Brittany Clark, Robert Kwok, and Jake Skaggs. Additionally, the following attorneys are appointed to and have agreed to serve on the PSC: Eugene Egendorf, Chance McMillan, Anna Kamins, Lee Thweatt, Byron Alfred, and Joel Simon.
- ii. The following attorneys are appointed to and have agreed to serve on the DSC: John McCoy, Christopher LaVigne, Carlos Balido, Spencer Edwards, and Brendon Doherty.

D. Duties of EPSC and DSC: The EPSC and DSC shall organize themselves and be responsible for coordinating positions on behalf of Plaintiffs and Defendants, respectively, and coordinate with Liaison Counsel how best to communicate the position of the sides to the Pretrial Court. It is the expectation of the Pretrial Court that conferences between the sides will generally occur between the EPSC and DSC and that EPSC will confer and coordinate with Plaintiffs and the DSC will confer and coordinate with Defendants. However, the attorneys designated as serving on the Steering Committees are not, for any purpose, deemed to be attorneys for any party other than those for whom they have been engaged.

5. PLEADINGS.

- A. Settling Pleadings: As required by TRJA § 13.6(c)(1), this Court has considered matters related to settling the pleadings and the provisions of this paragraph are intended to streamline discovery and preparation of the January 24th Explosion Litigation for trial. Accordingly, the Court hereby sets the following pleading schedule:
 - i. Within thirty (30) days of the date of this Order, the PSC shall file a Master Petition, which shall govern all Transferred Cases unless a particular Plaintiff affirmatively opts out of the Master Petition and files an individual

petition on or before the date when the Master Petition is required to be filed and such individual petition shall then apply only in the specific Transferred Case in which it is filed.

- ii. Within sixty (60) days of the date of this Order, the following pleadings shall be filed:
- Each Defendant shall file a Master Answer to the Master Petition, but if a particular Plaintiff affirmatively opted out of the Master Petition and filed an individual petition on or before the date when the Master Petition was required to be filed, then each Defendant named therein shall file an answer to such petition on or before the date when the Master Answer is required to be filed;
 - Any Defendant who wishes to assert cross-claims against other Defendants shall file a Master Crossclaim, which shall govern all Transferred Cases unless a particular Defendant affirmatively opts out of the Master Crossclaim and files an individual crossclaim on or before the date when the Master Crossclaim is required to be filed;
 - Any Defendant who wishes to assert third-party claims against a party that is not already a party to a particular lawsuit subject to this Order shall file a Master Third-Party Claim, which shall govern all Transferred Cases unless a particular Defendant affirmatively opts out of the Master Third-Party Claim and files an individual third-party claim on or before the date when the Master Third-Party Claim is required to be filed. A Third-Party Plaintiff shall exercise diligence in serving any Third-Party Defendants.
- iii. Within the later of ninety (90) days of the date of this Order or, as applicable, thirty (30) days of service of a Third-Party Petition, the following pleadings shall be filed:
- Any Cross-Defendant shall file a Master Crossclaim Answer to the Master Crossclaim, but if a particular Cross-Plaintiff affirmatively opted out of the Master Crossclaim and filed an individual crossclaim on or before the date when the Master Crossclaim was required to be filed, then each Cross-Defendant named therein shall file an answer to such crossclaim on or before the date when the Master Crossclaim Answer is required to be filed;
 - Any Third-Party Defendant shall file a Master Third-Party Answer to the Master Third-Party Claim, but if a particular Cross-Plaintiff affirmatively opted out of the Master Third-Party Claim and filed an individual third-party on or before the date when the Master Third-Party Claim was required to be filed, then each Third-Party Defendant named therein shall file an answer to such third-party claim on or before the date when the Master Third-Party Answer is required to be filed.

- iv. For Tag-Along Cases filed after the expiration of the deadlines set forth in this Paragraph 5, the Master Petition shall govern all such Tag-Along Cases unless a particular Plaintiff in such Tag-Along Case affirmatively opts out of the Master Petition and files an individual petition within sixty (60) days from the filing of the Tag-Along Notice. In the event that Plaintiffs do not affirmatively opt out of the Master Petition, the Master Answer, Master Crossclaim, Master Third-Party Claim, Master Crossclaim Answer, and Master Third-Party Answer shall govern all such Tag-Along cases. In the event that a particular Plaintiff affirmatively opts out of the Master Petition and files an individual petition, (a) a Defendant in the Tag-Along Case shall have seventy-five (75) days from the filing of the Tag-Along Notice to adopt the Master Answer, Master Crossclaim, or Master Third-Party Claim, or otherwise respond; and (b) a Crossclaim Defendant or Third-Party Defendant in the Tag-Along Case shall have ninety (90) days to adopt the Master Crossclaim Answer or Master Third-Party Answer, or otherwise respond.
- B. Pleading requirements: Any petition, including any Master Petition, Master Crossclaim, Master Third-Party Petition, and any individual petition where the pleader opted out of the Master Pleading process set forth in Paragraph 5(A) of this Order, shall: (i) identify the claims that are being asserted against each Defendant and the facts in support thereof with sufficient particularity to identify any alleged defect, error, act, or omission giving rise to liability; and (ii) state the alleged injuries and damages suffered by the petitioner. Any pleading that fails to plead such matters shall be subject to special exception.
- C. Right to amend: Any pleading, including any Master Pleading, may be amended or supplemented at any time, so long as such amendment or supplementation complies with the deadlines contained in the Court's scheduling orders. The deadlines contained in this Paragraph 5 are intended to settle the initial pleadings to focus discovery.
- D. Compliance encouraged: Given the need to streamline and coordinate the January 24th Explosion Litigation, the Court shall give deference to those cases adopting Master Pleadings and that plead claims and defenses with specificity when determining which cases to designate for additional case tracks and which cases to remand for trial under the Certification Process.
- E. Challenging Pleadings: Any party may challenge a pleading, including a Master Pleading, by special exception under TRCP 91 or by a motion to dismiss under TRCP 91a in accordance with the TRCP.

6. DISCOVERY

- A. Discovery control plan: Pursuant to TRCP 190.4, the January 24th Explosion Litigation is designated as a level 3 proceeding and this CMO, along with any subsequent orders of the Court, will govern discovery and the other matters required

under TRCP 190.4. Except as otherwise provided in this Order or any subsequent order of this Court, the TRCP relating to discovery will generally apply in this proceeding.

- B. Protective Order: Pursuant to TRJA § 13.6(c)(5), the Court has entered the Agreed Confidentiality and Protective Order attached hereto as Exhibit 1, which governs the disclosure and use of confidential documents, testimony, and other information.
- C. Prior discovery: Discovery responses served while this matter was pending in the United States Bankruptcy Court for the Southern District of Texas shall be deemed applicable in this action and all documents produced by a named party while this matter was pending in the United States Bankruptcy Court for the Southern District of Texas shall be deemed produced by that same party in this case and in each Transferred Case for all purposes, including TRCP 193.7.
- D. PFS and Master Discovery:
 - i. Plaintiffs: Other than in the Track One Case, each Plaintiff shall complete and serve on Defendants answers responsive to the PFS and Master Discovery within the later of ninety (90) days from: (i) the Court's approval of the PFS and Master Discovery; or (ii) the creation of the Depository and the opening of the portal to complete PFS forms. However, any Plaintiff that is not a party to this MDL at the time the Court approves the PFS and Master Discovery shall have, if longer, ninety (90) days from the filing of the Tag-Along Notice to complete and serve answers responsive to a PFS and the Master Discovery. The PFS addresses background information and damages and, therefore, each individual Plaintiff must complete a PFS. The Master Discovery addresses liability and causation theories and, therefore, Plaintiffs may collectively respond to such Master Discovery in whatever groupings that Plaintiffs' Counsel determines is appropriate; provided, however, that each individual Plaintiff must answer or adopt the answers served to such Master Discovery. Other than as necessary to preserve a claim of privilege, Plaintiffs shall not object to any questions in the PFS or the Master Discovery. The Parties are hereby directed to submit to the Court, no later than May 19, 2021, an agreed PFS and set of Master Discovery for the Court to approve by submission or a contested PFS and set of Master Discovery with any disagreements identified for the Court for ruling and approval at a hearing to be scheduled for May 21, 2021.
 - ii. Large Group Plaintiffs: Notwithstanding Paragraph 6(D)(i) of this Order, counsel for Large Group Plaintiffs may serve answers responsive to the PFS and Master Discovery in monthly installments of not less than one hundred and fifty (150) Plaintiffs. The deadline for Large Group Plaintiffs to begin this rolling production shall start on the applicable ninety (90) day deadline set forth in Paragraph 6(D)(i) and continue until completed.

- iii. Defendants: Each Defendant shall complete and serve on Plaintiffs answers responsive to the Master Discovery that is addressed to that Defendant within the later of ninety (90) days from: (i) the Court's approval of the Master Discovery; or (ii) the creation of the Depository. Other than as necessary to preserve a claim of privilege, Defendants shall not object to any questions in the Master Discovery. For any Defendant that is subsequently added, including a previously unnamed Defendant in a Tag-Along Case, Plaintiffs may serve discovery per the TRCP or negotiate a schedule for master discovery. The Parties are hereby directed to submit to the Court, no later than May 19, 2021, an agreed set of Master Discovery addressed to each Defendant for the Court to approve by submission or a contested set of Master Discovery with any disagreements identified for the Court for ruling and approval at a hearing to be scheduled for May 21, 2021.
- iv. Request for disclosures: Within ninety (90) days from the date of this Order, Defendants shall serve responses to requests for disclosure under the TRCP without further request and shall reasonably supplement such disclosure responses as required by the TRCP. Plaintiffs' disclosure obligations have been incorporated into the PFS, but the duty to supplement such PFS responses is no different than the duty to supplement responses to disclosures under the TRCP.
- v. Duty to supplement: All parties shall remain under a continuing duty to supplement the information, answers, and documents provided in and through the PFS and Master Discovery.
- vi. Additional written discovery: In addition to the PFS and Master Discovery, the parties may, but are not required to, serve additional limited, specific, targeted, non-duplicative written discovery requests to obtain information and/or documents not provided with or through the PFS or Master Discovery by agreement or with leave of Court. In responding to such discovery requests, in addition to other objections, responding parties may object on the basis that some or all of the information and/or documents sought were provided with or through the PFS or Master Discovery and may incorporate the PFS and Master Discovery in their responses by reference. The parties receiving additional limited, specific, targeted, non-duplicative written discovery requests shall have sixty (60) days to respond and/or object to said written discovery requests. In responding to additional limited, specific, targeted, non-duplicative written discovery requests, in addition to other objections, responding parties may object on the basis that some or all of the information and/or documents sought were provided with or through discovery served while this matter was pending in the United States Bankruptcy Court for the Southern District of Texas and may incorporate the prior discovery responses in their responses by reference.

The Parties are expressly encouraged not to serve duplicative discovery and to rely on the PFS and Master Discovery as to matters covered therein.

- vii. Discovery dispute resolution: In the event a party fails to serve responses to a PFS or Master Discovery, or fails to properly respond to a PFS or Master Discovery, then such disputes shall be resolved as follows:
- a. An objecting party shall raise any alleged deficiencies in a responding party's PFS or Master Discovery responses by letter that addresses with specificity which answers are allegedly deficient and the basis for the objection. Provided, however, that Defendants may not collectively raise deficiencies in more than seventy-five (75) PFS per each Large Group Plaintiffs in any given (30) day interval.
 - b. A responding party shall then have thirty (30) days from receipt of the objecting party's letter to respond to the notification by either serving non-deficient answers or otherwise explaining in writing why the responding party disagrees with the alleged deficiencies identified by the objecting party.
 - c. The parties will then have fourteen (14) days from the date that the responding party responds to the objecting party's notification to meet and confer regarding any allegedly uncured deficiencies.
 - d. To the extent disputes remain, the objecting party may then file a motion to compel pursuant to the TRCP.
 - e. To the extent the Court finds a responding party's answers are deficient, then that party shall have at least fourteen (14) days to cure the deficiencies and such additional time as the Court determines appropriate under the circumstances.

Unreasonable delays in raising a discovery deficiency or bringing a motion to compel in response to a known discovery deficiency may be held against the objecting party. The Parties are highly encouraged to meet and confer regarding all discovery disputes and to attempt to informally resolve any disagreement prior to filing a motion with the Court. The Court reserves the right to compel further production or responses, or to issue protective orders, as appropriate, and to issue any relief contemplated by TRCP 215.

- viii. Discovery between Defendants: Discovery between Defendants, including between Cross-Plaintiffs and Cross-Defendants and Third-Party Plaintiffs and Third-Party Defendants, shall be governed by the TRCP. However, any Defendant may refer to and incorporate by reference its responses to the Master Discovery in response to any such discovery.

- E. Preservation: All parties shall preserve relevant evidence. This duty extends to documents, data, and tangible things in parties' actual or constructive possession, custody, or control that is reasonably anticipated to be subject to discovery. The

terms “documents, data, and tangible things” are to be interpreted broadly, as provided by the TRCP. Information that may serve to locate or link materials, such as file inventories, file folders, indices, and metadata, is included in this definition. Counsel are ordered to exercise all reasonable efforts to identify and notify parties and non-parties, including employees of corporate or institutional parties of this obligation.

F. Documents and ESI:

- i. ESI search protocol: The Court has entered the Agreed ESI Search Protocol attached hereto as Exhibit 2, which governs parties’ obligations relating to searching and identifying ESI.
- ii. Production specifications: All document productions shall comply with the Agreed Production Specification Protocol attached hereto as Exhibit 3, which governs parties’ obligations when producing documents and ESI.
- iii. Identification of documents: Documents produced during the course of this litigation shall be identified by a unique numbering system. In the event documents are produced by persons or entities who are not parties to this action are not, when produced, identified by a unique numbering system, the party at whose request production was made shall be responsible for numbering the documents in a unique fashion.
- iv. Legibility of documents: Each producing party shall take reasonable steps to assure that the copies of the documents such party produces are legible. To the extent a producing party cannot or does not produce a legible copy, such party shall make the original document(s) available for inspection and copying upon request.

G. The Depository:

- i. Creation of Depository: The PSC and DSC are ordered to confer regarding engaging a vendor to establish and maintain a document and discovery depository that will host all documents and discovery exchanged during the January 24th Explosion Litigation. The PSC and DSC shall provide a copy of any proposed contract with the vendor hosting the Depository for approval by the Court to ensure that: (a) the Depository has appropriate security and access restrictions, including appropriate backup and emergency reconstruction procedures in place; (b) all parties to the January 24th Explosion Litigation have reasonable access to the Depository; (c) the costs of the Depository are reasonable; and (d) the vendor has accepted restrictions on its ability to restrict access to the Depository and has agreed to transfer the Depository to another vendor if ordered to do so by the Court.
- ii. Contents of Depository: The Depository shall store all materials produced by the parties and third parties in connection with the January 24th

Explosion Litigation, including responses to the PFS, Master Discovery, documents, initial disclosures, interrogatories, request for admissions, request for production, deposition transcripts and videos, deposition exhibits, and similar materials if any such materials exist. The Depository is intended to host completed discovery materials, such as responses to discovery, documents exchanged in discovery, and completed deposition materials. Therefore, discovery requests and notices of deposition should not be uploaded to the Depository.

- iii. Access: The Depository shall be made available to any counsel for any Plaintiff or Defendant on reasonable terms, subject to any confidentiality orders entered by this Court.
- iv. Maintenance of Depository: The PSC and DSC shall be responsible for making sure the Depository is reasonably maintained in accordance with the terms of the contract with the vendor. If a new vendor to host the Depository is required, then the PSC and DSC shall promptly notify the Court. All materials uploaded to the Depository shall include a record of the Plaintiff or Defendant uploading the material, the name of the actual person uploading the materials, and the date and time the materials were uploaded to the Depository.
- v. Productions to Depository: A party satisfies its obligation to serve discovery responses or to produce documents in the January 24th Explosion Litigation by: (i) placing the discovery responses, discovery material, or documents in the Depository; and (ii) serving notice on the PSC and DSC that the Depository has been updated and a description of the materials uploaded. All discovery responses, discovery materials, and produced documents shall be served exclusively on the Depository in accordance with this Paragraph 6(G) of this Order. Plaintiffs and Defendants shall begin uploading documents in their possession, custody, or control when they respond to a PFS and/or Master Discovery, as applicable, and then use good faith to complete all document productions thereafter on a rolling basis. Plaintiffs and Defendants shall confer regarding the status and timing of all productions, including any explanation for any unexpected delays in productions.
- vi. Depositions: All deposition transcripts, videos, and exhibits in the January 24th Explosion Litigation shall be uploaded to the Depository. The party noticing a deposition shall be responsible for ensuring that the deposition transcript, videos, and exhibits are uploaded to the Depository within three (3) business days of receipt.
- vii. Hosting costs: Any costs associated with the Depository shall be born 50% by the Plaintiffs and 50% by the Defendants. The PSC shall be responsible for coordinating the Plaintiffs' share of these costs, and the DSC shall be responsible for coordinating the Defendants' share of these costs. Any

disputes over costs associated with the Depository raised by or involving a particular party shall be resolved by the Court.

- viii. No work product: The Depository is not intended to include work product. Counsel for any party may download copies of any materials in the Depository for their own use on their own servers or a vendor's servers, subject to any confidentiality orders entered by this Court.

- H. Medical and financial records supporting claims: Notwithstanding anything else in this Order, at the time each Plaintiff responds to a PFS, or as soon as reasonably practical thereafter, each Plaintiff shall upload to the Depository all medical and financial records documenting all injuries and damages allegedly suffered as a result of the January 24th Explosion. It is the duty of each Plaintiff to secure and produce all records supporting that party's injuries and damages as alleged. Although Plaintiffs may supplement their production of medical and financial records as permitted by the TRCP and this Order, a failure to timely produce such records may prevent or delay the remand of a case for trial.
- I. Authorizations: In addition to the medical and financial records required to be produced by Plaintiffs under Paragraph 6(H), each Plaintiff, at the time their PFS is due, shall upload to the Depository authorizations signed by that Plaintiff for the following categories of records:
 - i. If making a claim for wrongful death, bodily injury, or mental anguish, directly or on behalf of another, the following records for the person that suffered the alleged injury:
 - a. HIPAA compliant medical records, including bills;
 - b. Health or disability insurance information, including claims information;
 - c. Medicaid, Medicare, or other government payor information, if applicable; and
 - d. Prescription drug information.
 - ii. If making a claim for lost wages, loss of earning capacity, or business losses, directly or on behalf of another, the following records for the person that suffered the alleged injury:
 - a. IRS records and tax records;
 - b. Employment records;
 - c. Workers Compensation records;
 - d. Texas Employment Commission records; and

- e. Social Security Administration records.

The PSC and DSC are hereby instructed to submit proposed, agreed forms of the authorizations to be signed and uploaded to the Depository at the time they submit the proposed PFS to the Court for approval. To the extent any record custodian requires a specific authorization form not contemplated by this Order, Plaintiff must complete the custodian-specific authorization form within fourteen (14) days unless Plaintiff objects to the form. If Plaintiff objects to the custodian-specific form, the parties shall meet and confer in an effort to resolve the objection. For Plaintiffs asserting claims for lost wage or loss of earning capacity of less than \$1,000, each Plaintiff may upload paycheck stubs for the period 2019-2020 in lieu of the authorizations set forth in Paragraph 6(H)(ii).

J. Subpoenas:

- i. New subpoenas: Consistent with any scheduling deadlines specified by the Court, the parties may serve subpoenas on non-parties (including subpoenas for the production of documents without testimony) pursuant to the TRCP. The party serving the subpoena shall be responsible for supplying to the Depository any documents produced by non-parties in response to such subpoenas with five (5) business days of receipt of any such documents.
- ii. Old subpoenas: Within the later of thirty (30) days of the date of this Order or the establishment of the Depository, any Party that served a subpoena while a Transferred Case was pending in the Trial Court, *In re: Watson Grinding & Manufacturing Co.*, No. 20-30967, filed in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, *In re: Watson Valve Services, Inc.*, No. 20-30968, filed in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, and/or any related adversary proceeding; shall supply to the Depository any documents and deposition transcripts, videos, and exhibits produced in response to such subpoenas.

K. Depositions:

- i. Generally: Except as set forth herein, all depositions and the use of such depositions shall be governed by the TRCP, and, as appropriate, the Texas Rules of Evidence, including Texas Rules of Evidence 105 and 801.
- ii. Agreed reporter/videographer: The PSC and DSC are ordered to confer regarding retaining an agreed court reporter and videographer to handle all depositions in this matter with the expectation that any volume discounts will be received by all parties and that a common provider of such services will approve the sharing and distribution of any deposition transcripts and deposition exhibits to all parties to the January 24th Explosion Litigation.

- iii. Total time for oral depositions: Given the number of parties and the scope of issues involved in this case, each side may have no more than two hundred (200) hours in oral depositions to examine and cross examine witnesses, exclusive of parties, party witnesses, and designated expert witnesses. Any party may seek leave to exceed this time limitation based on a showing of good cause, changed circumstances, or unfair surprise. Leave to exceed the deposition cap shall be liberally granted.
- iv. Primary examiner: For all depositions noticed by any of the Plaintiffs, the Court expects counsel for Plaintiffs to cooperate in selecting a primary examiner. Upon the conclusion of the examination by the primary examiner, other counsel may ask additional questions prior to the completion of the deposition.
- v. One deposition per witness: As a general rule, no witness shall be deposed more than once in this MDL. The deposition of a party or party witness shall be deemed to be noticed in all Transferred Cases, and a party or party witness shall not be deposed separately in any individual Transferred Case. If a witness has already been deposed, a subsequent deposition of that witness may not be taken by a party except by agreement of the witness or for good cause shown as determined by this Court.
- vi. Length of depositions: Counsel shall confer prior to noticing a deposition to agree upon the time required to depose a particular witness. Absent agreement of the parties or order of this Court based on a showing of good cause, Plaintiffs shall not collectively examine an individual witness for more than twelve (12) hours. Each Defendant who notices or cross-notices a deposition shall not examine an individual witness for more than six (6) hours each. Absent an agreement by all parties attending a deposition, an individual witness shall not be deposed for more than six (6) hours in a single day. Breaks during depositions do not count against these time limitations. Counsel shall cooperate so examinations by multiple attorneys do not result in a deposition exceeding the allotted time.
- vii. Blocked weeks for depositions: Beginning no earlier than sixty (60) days from the entry of this Order, the parties may begin depositions of third-party witnesses. Beginning no earlier than one hundred and twenty (120) days after the Court's issuance of an order approving the PFS and Master Discovery, the parties may begin depositions of parties and party witnesses. The parties shall reserve and block the second full calendar week of every month to conduct depositions of Plaintiffs and the last full calendar week of every month to conduct depositions of Defendants and third parties. Nothing herein prevents the Parties from taking depositions during other weeks of the month by agreement. Depositions of parties and party witnesses will be coordinated directly with the law firm representing that party or party witness.

- viii. Scheduling depositions: Absent extraordinary circumstances, counsel should consult in advance with opposing counsel and counsel for proposed deponents in an effort to schedule depositions at mutually convenient times and locations. Absent leave of Court or agreement by the parties, all parties shall provide at least twenty-one (21) days' actual notice for depositions. All counsel will receive notice at the same time in accordance with the service procedures outlined in this Order. Counsel are expected to cooperate and coordinate the scheduling of depositions. There shall be no multitasking of depositions of former or current officers or management personnel of Defendants or of expert witnesses, unless agreed to by the DSC and the EPSC. Other fact witnesses may be multi-tracked, and the parties shall meet and confer on the establishment of a reasonable schedule for the multi-tracking of those depositions. To the extent that the parties cannot agree on a proposed schedule for such multi-tracking, the parties shall file with the Court separate proposed schedules.
- ix. Cross-noticing depositions: Any deposition noticed in this proceeding may be cross-noticed by any party. Absent leave of Court or agreement by the parties, all cross-noticing parties shall provide at least fourteen (14) days' actual notice for cross-noticed depositions. All counsel will receive notice at the same time.
- x. Cancelling depositions: Once a deposition has been scheduled, it shall not be taken off the calendar, rescheduled or relocated less than three (3) calendar days in advance of the date it is scheduled, except upon agreement between the party noticing the deposition and counsel for the opposing party witness (if the witness is a party or a current or former employee or an expert designated by a party) or counsel for the witness (if the witness is not a party or a current or former employee or an expert designated by a party) or by leave of Court for good cause.
- xi. Place of deposition: Except as otherwise set forth herein, or in any other order of this Court, unless otherwise agreed by counsel of record for the party(ies) noticing or cross-noticing a deposition and counsel of record for the party making the witness available, the place for a deposition shall be the office of the counsel of record for the party making the witness available.
- xii. COVID-19 Deposition Protocol: Cognizant of the existing Covid-19 pandemic and in furtherance of the Thirty-Sixth Emergency Order Regarding the COVID-19 State of Disaster entered by the Supreme Court of Texas on January 14, 2021, and any subsequent orders amending, modifying, or superseding the Thirty-Sixth Emergency Order Regarding the COVID-19 State of Disaster, the Court has entered the Agreed Covid-19 Deposition Protocol attached hereto as Exhibit 4, which governs remote and in-person depositions in this matter until further order of the Court.

- xiii. Objections: Counsel shall comply with the TRCP in making objections. Any objection made at a deposition shall be deemed to have been made on behalf of all other parties. All objections, except those as to form and privilege, are reserved until trial or other use of the depositions.
- xiv. Dispute hotline: Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to the Pretrial Court by calling the court coordinator at (832) 927-2606. The Court will endeavor to provide guidance on the discovery issues at the deposition through this “hotline” and reserves the right make any subsequent orders as may be necessary to resolve the issue. If the Pretrial Court is not available, the deposition shall continue with full reservation of rights of the examiner for a ruling at the earliest possible time. Nothing in this Order shall deny counsel the right to suspend a deposition pursuant to the TRCP, file an appropriate motion with the Court at the conclusion of the deposition, and appear personally before the Court.
- xv. Documents used in connection with depositions:
 - a. Duces tecum: Third-party witnesses subpoenaed to produce documents shall, to the extent possible, be served with the document subpoena at least thirty (30) calendar days before the deposition. With respect to experts, arrangements should be made to permit inspection of any supplemental documents, if possible, at least fourteen (14) calendar days before the deposition of expert witnesses. Nothing contained herein is intended to extend the deadlines for disclosing experts, producing reports, or producing those documents relating to experts required to be produced by the TRCP.
 - b. Copies of exhibits: Extra copies of documents about which deposition counsel uses to examine a deponent should be provided to primary counsel for each Defendant and the deponent during the course of the deposition.
 - c. Exhibit objections: Objections to the relevance or admissibility of documents used as deposition exhibits are not waived and are reserved for later ruling by the Pretrial Court.
- xvi. Recording depositions:
 - a. All video depositions will be stenographically recorded by a court reporter with “realtime feed” transcription capabilities.

- b. Each witness, attorney and other person attending the deposition shall be identified on the record when the deposition begins.
 - c. The operator shall preserve custody of the original video medium (tape or DVD) in its original condition until further order of the Court. No part of the video or audio record of a video deposition shall be released or made available to any member of the public unless authorized by the Court.
- xvii. Use of depositions: Depositions taken pursuant to this Order may be used in any of the Transferred Cases by or against any person: (a) who is party to a Transferred Case and who was present or represented at the deposition; (b) anyone who was served with prior notice of the deposition or otherwise had reasonable notice thereof; or (c) anyone who, within thirty (30) calendar days after the transcription of the deposition (or, if later, within sixty (60) calendar days after a Tag-Along Notice was filed in their case), fails to show just cause as to why such deposition should not be useable against such party. A person who fails to timely object or fails to show just cause waives any objection to the use of a deposition in a later proceeding in this Court or the Trial Court.
- L. Mental and Physical Examinations: For any Plaintiff asserting a claim for personal injuries, including a claim for emotional distress or mental anguish, Defendants may move for a physical and/or mental examination any time after the Plaintiff responds to the PFS and Master Discovery. Defendants' motion should identify the proposed examiner and provide the examiner's qualifications to conduct the examination. Any Defendant can move for mental and physical examinations under this section at any time but no later than one hundred and twenty (120) days after the filing of a Conditional Certification Request or, if applicable, one hundred and twenty (120) days prior to the pretrial hearing for the Track One Trial Case or Track Two Trial Case. If ordered, a Plaintiff shall promptly schedule a mental and physical examination at reasonable time acceptable to all parties. An individual Plaintiff can only be subject to a single physical and/or mental examination.
- M. Plaintiffs' Witnesses:
 - i. Plaintiffs' fact witnesses: Other than in the Track One Cases and the Track Two Cases, each plaintiff shall identify all fact witnesses it reasonably believes it may call at trial no later than thirty (30) days before filing a Conditional Certification Request. Notwithstanding this deadline, each Plaintiff shall identify all fact witnesses in a timely manner. Each Plaintiff may supplement its list of fact witnesses it may call at trial upon a showing of good cause, but supplemental designations of fact witnesses within sixty (60) days of the pretrial hearing may cause a delay in the trial of the case. If a fact witness is represented by Plaintiffs' Counsel, that fact should be disclosed at the time the witness is identified. Each fact witness within the control of each Plaintiff or Plaintiffs' Counsel whom the Plaintiff may call

to testify shall be presented for deposition, upon request by any Defendant, within a reasonable time, but no later than sixty (60) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of fact witnesses should be taken before those of expert witnesses, unless the parties agree otherwise.

- ii. Plaintiffs' Expert Witnesses: Other than in the Track One Cases and the Track Two Cases, each Plaintiff shall disclose its testifying experts to Defendants in accordance with the TRCP no later than thirty (30) days before filing a Conditional Certification Request. Plaintiffs shall produce reports for all testifying experts at the time of their designation, with the exception of non-retained testifying experts. Each Plaintiff may supplement expert disclosures pursuant to the TRCP, but supplemental disclosures within sixty (60) days of the pretrial hearing may cause a delay in the trial of the case. Each testifying expert disclosed by Plaintiff shall be presented for deposition, upon request by any Defendant, within a reasonable time, but no later than ninety (90) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of Plaintiffs' testifying experts shall be taken only after the deadline for the disclosure of Defendants' testifying experts and before defense expert witnesses within the same area of expertise, unless the parties agree otherwise. To the maximum extent possible, Plaintiffs' testifying experts as to liability issues should be noticed for deposition in all Transferred Cases and only deposed a single time.

N. Defendants' Witnesses:

- i. Defendants' Fact Witnesses: Other than in the Track One Cases and the Track Two Cases, each Defendant shall identify all fact witnesses it reasonably believes it may call at trial no later than thirty (30) days after Certification. Notwithstanding this deadline, each Defendant shall identify all fact witnesses in a timely manner. Each Defendant may supplement its list of fact witnesses it may call at trial at any time until forty-five (45) days before the assigned trial date. If a fact witness is represented by Defendants' Counsel, that fact should be disclosed at the time the witness is identified. Each fact witness within the control of each Defendant or Defendant's Counsel whom the Defendant may call to testify shall be presented for deposition, upon request by any Plaintiff, within a reasonable time, but no later than thirty (30) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of fact witnesses should be taken before those of expert witnesses, unless the parties agree otherwise.
- ii. Defendants' Expert Witnesses: Other than in the Track One Cases and the Track Two Cases, each Defendant shall disclose its testifying experts to Plaintiffs in accordance with the TRCP no later than sixty (60) days after Certification. Defendants shall produce reports for all testifying experts at the time of their designation, with the exception of non-retained testifying experts. Each Defendant may supplement expert disclosures pursuant to the

TRCP until forty-five (45) days before the pretrial hearing. Each testifying expert disclosed by Defendants shall be presented for deposition, upon request by any Plaintiff, within a reasonable time, but no later than forty-five (45) days before the pre-trial hearing, unless otherwise ordered by the Court. To the maximum extent possible, Defendants' testifying experts as to liability issues should be noticed for deposition in all Transferred Cases and only deposed a single time.

- O. Privilege issues/Clawback: Except as otherwise provided in this Order, all issues regarding the assertion, protection, and treatment of the attorney-client privilege, work product doctrine, and all other privileges shall be governed and controlled by the TRCP. In order to facilitate the production of materials, to the extent materials are protected by the attorney-client privilege, work product doctrine, or other applicable privilege or protection from disclosure, the production of such materials is not intended to, and shall not, waive or diminish in any way the confidentiality of such materials or the continued protection under the attorney-client privilege, work product doctrine, or any other applicable privilege or protection from disclosure. If a producing party at any time notifies each receiving party that any materials are subject to a claim of privilege or of other protection from disclosure, or if a receiving party discovers that such materials have been inadvertently produced, each receiving party shall destroy or return to the producing party the specified materials and any copies or summaries or extracts thereof without delay, and shall not use or disclose such items for any purpose. Such return shall not preclude the receiving party from seeking to compel production of the materials for reasons other than inadvertent production and shall not constitute an admission by the receiving party that the materials were in fact privileged or protected from disclosure.
- P. Further orders regarding discovery: The PSC and DSC shall meet and confer and attempt to agree to any other discovery issues not addressed in this Order, or which may arise subsequent to this Order, which will be addressed in subsequent orders from this Court. If the PSC and DSC cannot mutually agree on any further orders, then any party may file a motion seeking additional orders from the Court to streamline and efficiently manage discovery.
- Q. Texas Civil Practice and Remedies Code § 18.001, et seq.: The deadline for any Plaintiff to serve compliant affidavits or unsworn declarations under Section 18.001 of the Texas Civil Practice and Remedies Code ("Section 18.001 Affidavits") is the earlier of: (i) the date the offering party must designate expert witnesses; or (ii) one hundred twenty (120) days before the trial of that Plaintiff's claims. The deadline for any party to controvert a Plaintiff's Section 18.001 Affidavits is the *later* of: (i) the date the party offering the counter-affidavit must designate expert witnesses; or (ii) sixty (60) days following receipt of that Plaintiff's Section 18.001 Affidavits. If continuing services are provided after a relevant deadline under this subparagraph, then a party may supplement a Section 18.001 Affidavit to address such continuing services on or before the 60th day before the date the trial

commences and a party that served a counter-affidavit may supplement the counter-affidavit on or before the 30th day before the date the trial commences.

7. **RELATEDNESS OF CASES**

- A. **Case profiles:** The PSC and DSC shall confer on a process to determine the relatedness of all cases making up the January 24th Explosion Litigation, including the nature of the liability alleged and the damages sustained. The PSC and DSC shall determine the best way to track and document this information and provide it to the Court to assist in determining how to efficiently manage the litigation.
- B. **Severance; Consolidation; Coordination:** As required by TRJA § 13.6(c)(2), this Court has considered whether severance or consolidation is desirable and has concluded that, other than as set forth in Paragraph 9 of this Order, no other severance or consolidation of claims is necessary at this time, but such decision is subject to modification by future order of this Court once the case profiles ordered in Paragraph 7(A) of this Order have been provided to the Court. However, coordination with other actions is desirable to effectuate the purposes of Rules 1 and 13 of the TRCP and, therefore, provisions relating to coordination with other actions are set forth throughout this Order.

8. **SUMMARY JUDGMENT**

At the time of Certification, a presumption exists that adequate time for discovery has passed for purposes of the filing of a Defendant's No-Evidence Motion for Summary Judgment pursuant to TRCP 166a(i). Nothing in this Order shall be construed to limit any party's right to file a motion for a traditional summary judgment pursuant to TRCP 166a. Any party may move for summary judgment or partial summary judgment on any issue without prejudice to later bringing a motion for summary judgment, a motion for partial summary judgment, or a no-evidence motion for summary judgment on any other issue. Any motion for summary judgment shall be heard and decided prior to the pretrial hearing absent exceptional circumstances.

9. **CASE TRACKS**

A. **Track One**

- i. **Track One Cases:** The following cases are included in Track One:
 - (a) The Flores Case, which includes *Flores*, Cause No. 2020-05250, in the 295th Judicial District of Harris County, Texas; *Flores*, Cause No. 2020-39415, in the 157th Judicial District Court of Harris County, Texas; and *Flores*, Cause No. 2020-40216, in the 11th Judicial District Court of Harris County, Texas;
 - (b) The Castorena Case, which includes *Ayala*, Cause No. 2020-05311, in the 157th Judicial District Court of Harris County; *Castorena*, Cause No. 2020-39838, in the 281st Judicial District Court of Harris

County, Texas; and *Ayala*, Cause No. 2020-40565, in the 333rd Judicial District Court of Harris County, Texas; and

- (c) The Cruz Case, which includes *Cruz*, Cause No. 2020-08019, in the 129th Judicial District Court of Harris County, Texas; and *Nunez*, Cause No. 2020-40011, in the 151st Judicial District Court of Harris County, Texas.

- ii. Severance and consolidation of Track One Case: The Court will sever and consolidate the claims included in the Track One Cases in a subsequent order pursuant to the procedures required by law.
- iii. To maximize the likelihood that at least one of the Track One Cases is tried in October 2022, the parties to the Track One Cases shall prepare all of the Track One Cases for trial pursuant to this Order. The Court, however, will only remand one of the Track One Cases for trial in October 2022 (the "Track One Trial Case"). In selecting the Track One Trial Case, the Court will prioritize the Track One Cases in the following order: (a) the Flores Case; (b) the Castorena Case; and (c) the Cruz Case. Once a Track One Trial Case has been remanded for trial, the other Track One Cases, if any, will be subject to remand and trial only pursuant to a subsequent order of this Court at a time to be determined and after consideration of all other cases.
- iv. Track One Schedule: The following deadlines shall apply to and govern the Track One Cases:
 - 1. PFS and Master Discovery: All Plaintiffs in the Track One Cases shall complete and serve on Defendants answers responsive to the PFS and Master Discovery within the later of thirty (30) days from: (i) the Court's approval of the PFS and Master Discovery; or (ii) the creation of the Depository and the opening of the portal to complete PFS forms.
 - 2. Plaintiffs' fact witnesses: Each Plaintiff in the Track One Cases shall identify all fact witnesses it reasonably believes it may call at trial no later than December 15, 2021. Notwithstanding this deadline, each Plaintiff in the Track One Cases shall identify all fact witnesses in a timely manner. Each Plaintiff in the Track One Cases may supplement its list of fact witnesses it may call at trial upon a showing of good cause, but supplemental designations of fact witnesses within sixty (60) days of the pretrial hearing may cause a delay in the trial of the Track One Case. If a fact witness is represented by Plaintiffs' Counsel, that fact should be disclosed at the time the witness is identified. Each fact witness within the control of each Plaintiff or Plaintiffs' Counsel whom the Plaintiff in the Track One Cases may call to testify shall be presented for deposition, upon request by any Defendant, within a reasonable

time, but no later than sixty (60) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of fact witnesses should be taken before those of expert witnesses, unless the parties agree otherwise.

3. Plaintiffs' expert witnesses: Each Plaintiff in the Track One Cases shall disclose its testifying experts to Defendants in accordance with the TRCP no later than March 14, 2022. Plaintiffs in the Track One Cases shall produce reports for all testifying experts at the time of their designations, with the exception of non-retained testifying experts. Each Plaintiff in the Track One Cases may supplement expert disclosures pursuant to the TRCP, but supplemental disclosures within sixty (60) days of the pretrial hearing may cause a delay in the trial of the Track One Cases. Each testifying expert disclosed by Plaintiff in the Track One Cases shall be presented for deposition, upon request by any Defendant in the Track One Cases, within a reasonable time, but no later than ninety (90) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of Plaintiffs' expert witnesses in the Track One Cases shall be taken after receipt of Defendants testifying expert report(s) in the Track One Cases and before defense expert witnesses within the same area of expertise in the Track One Cases, unless the parties agree otherwise. To the maximum extent possible, Plaintiffs' testifying experts as to liability in the Track One Cases should be noticed for deposition in all Transferred Cases.
4. Defendants' Fact Witnesses: Each Defendant in the Track One Cases shall identify all fact witnesses it reasonably believes it may call at trial no later than February 15, 2022. Notwithstanding this deadline, each Defendant in the Track One Cases shall identify all fact witnesses in a timely manner. Each Defendant in the Track One Cases may supplement its list of fact witnesses it may call at trial at any time until forty-five (45) days before the assigned trial date. If a fact witness is represented by Defendants' Counsel, that fact should be disclosed at the time the witness is identified. Each fact witness within the control of each Defendant or Defendant's Counsel whom the Defendant in the Track One Cases may call to testify shall be presented for deposition, upon request by any Plaintiff, within a reasonable time, but no later than thirty (30) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of fact witnesses should be taken before those of expert witnesses, unless the parties agree otherwise.
5. Defendants' Expert Witnesses: Each Defendant in the Track One Cases shall disclose its testifying experts to Plaintiffs in the Track One Cases in accordance with the TRCP no later than May 2, 2022. Defendants in the Track One Cases shall produce reports for all

testifying experts at the time of their designations, with the exception of non-retained testifying experts. Each Defendant in the Track One Cases may supplement expert disclosures pursuant to the TRCP up until forty-five (45) days of the pretrial hearing. Each testifying expert disclosed by Defendants in the Track One Cases shall be presented for deposition, upon request by any Plaintiff in the Track One Cases, within a reasonable time, but no later than forty-five (45) days before the pre-trial hearing, unless otherwise ordered by the Court. To the maximum extent possible, Defendants' testifying experts as to liability in the Track One Cases should be noticed for deposition in all Transferred Cases.

6. Pre-trial hearing: The Court will conduct a pre-trial hearing in the Track One Trial Case on September 23, 2022.
7. Except as otherwise required by statute or the TRCP, all motions in the Track One Trial Case, other than motions in limine and motions for summary judgment, must be filed no later than forty-five (45) days prior to the pretrial hearing in the Track One Trial Case. Any joinder filed by a Defendant in the Track One Trial Case must be filed no later than five (5) business days after the filing of the motion and must identify which motion it is joining by listing the name of the Defendant in the Track One Trial Case who filed the motion and the title of the motion Defendant in the Track Trial One Case seeks to join.
8. Motions to challenge the qualifications of experts, and/or the admissibility of expert testimony in the Track One Trial Case, shall be filed no later than forty (40) days prior to the pretrial hearing in the Track One Trial Case. Motions that are the subject of this provision must be heard at least seven (7) days prior to the pretrial hearing in the Track One Trial Case, with notice to opposing counsel at least ten (10) days prior to the hearing. Any joinders to any motions to challenge experts must be filed no later than two (2) business days after the filing of the motion and must specifically state which motion is being joined.
9. Before the Track One Trial Case is remanded to the Trial Court, the following will occur in this Court: (i) completion of discovery; (ii) filing, hearing, and ruling on dispositive motions; (iii) filing, hearing, and ruling on expert challenges; (iv) depositions designated and objections heard and ruled upon; (v) witnesses designated and objections heard and ruled upon, to the extent possible; (vi) exhibits designated, objections heard and ruled upon, and exhibits admitted to the extent possible; (vii) filing, hearing, and ruling on motions in limine; and (viii) approval of a proposed jury charge. A party may

not offer at trial any deposition testimony or exhibits that were not admitted by this Court.

10. The Court will coordinate with the Trial Courts of the Track One Cases, in the order of priority set forth herein, to schedule the Track One Trial Case for trial in September 2022 or as soon thereafter as is reasonably practical.

B. Track Two

- i. Track Two Cases: The Track Two Cases shall include primarily personal injury claims, although they will include all damage claims for all Plaintiffs in the Track Two Cases. The PSC and DSC shall submit to the Court a list of twenty (20) Plaintiffs with personal injury claims that will be included in the Track Two Cases within the later of one hundred and twenty (120) days from: (i) the Court's approval of the PFS and Master Discovery; or (ii) the creation of the Depository and the opening of the portal to complete PFS forms. The PSC and DSC shall each designate: (i) five (5) Plaintiffs as primary claims to include in the Track Two Cases; and (ii) five (5) Plaintiffs as secondary claims to include in the Track Two Cases. The PSC shall provide their list of designated Track Two Plaintiffs to the DSC at least fourteen (14) days before the deadline to file the list of twenty (20) Track Two Plaintiffs set forth in this Paragraph. The PSC may not designate any Plaintiff to be included in the Track Two Cases who has not timely completed a PFS.
- ii. Severance and consolidation of Track Two Case: The Court will sever and consolidate the claims included in the Track Two Cases in a subsequent order pursuant to the procedures required by law.
- iii. The Court intends to try the claims of only ten (10) plaintiffs in the Track Two Cases (the "Track Two Trial Case"). The ten (10) plaintiffs that will be included in the Track Two Trial Case shall be those Plaintiffs the PSC and DSC designated as primary claims pursuant to Paragraph 9(B)(i). However, to maximize the likelihood that ten claims are actually tried in January 2023, the parties to the Track Two Cases shall prepare all of the Track Two Cases for trial pursuant to this Order. Some or all of the 10 (ten) Plaintiffs designated by the PSC and DSC as secondary claims pursuant to Paragraph 9(B)(i) will be included in the Track Two Trial Case only if other claims designated as primary claims are settled or dismissed prior to remand and trial.
- iv. Track Two Schedule: The following deadlines shall apply to and govern the Track Two Cases:
 1. Plaintiffs' fact witnesses: Each Plaintiff in the Track Two Cases shall identify all fact witnesses it reasonably believes it may call at

trial no later than February 15, 2022. Notwithstanding this deadline, each Plaintiff in the Track Two Cases shall identify all fact witnesses in a timely manner. Each Plaintiff in the Track Two Cases may supplement its list of fact witnesses it may call at trial upon a showing of good cause, but supplemental designations of fact witnesses within sixty (60) days of the pretrial hearing may cause a delay in the trial of the Track Two Cases. If a fact witness is represented by Plaintiffs' Counsel, that fact should be disclosed at the time the witness is identified. Each fact witness within the control of each Plaintiff or Plaintiffs' Counsel whom the Plaintiff in the Track Two Cases may call to testify shall be presented for deposition, upon request by any Defendant, within a reasonable time, but no later than sixty (60) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of fact witnesses should be taken before those of expert witnesses, unless the parties agree otherwise.

2. Plaintiffs' expert witnesses: Each Plaintiff in the Track Two Cases shall disclose its testifying experts to Defendants in accordance with the TRCP no later than May 2, 2022. Plaintiffs in the Track Two Cases shall produce reports for all testifying experts at the time of their designations, with the exception of non-retained testifying experts. Each Plaintiff in the Track Two Cases may supplement expert disclosures pursuant to the TRCP, but supplemental disclosures within sixty (60) days of the pretrial hearing may cause a delay in the trial of the Track Two Cases. Each testifying expert disclosed by Plaintiff in the Track Two Cases shall be presented for deposition, upon request by any Defendant in the Track Two Cases, within a reasonable time, but no later than ninety (90) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of Plaintiffs' expert witnesses in the Track Two Cases shall be taken after receipt of Defendants testifying expert report(s) in the Track Two Cases and before defense expert witnesses within the same area of expertise in the Track Two Cases, unless the parties agree otherwise. To the maximum extent possible, Plaintiffs' testifying experts as to liability in the Track Two Cases should be noticed for deposition in all Transferred Cases. Plaintiffs' liability experts previously deposed in the Track One Cases shall not be redeposed in the Track Two Cases absent a showing of good cause or agreement of the parties.
3. Defendants' Fact Witnesses: Each Defendant in the Track Two Cases shall identify all fact witnesses it reasonably believes it may call at trial no later than April 16, 2022. Notwithstanding this deadline, each Defendant in the Track Two Cases shall identify all fact witnesses in a timely manner. Each Defendant in the Track Two Cases may supplement its list of fact witnesses it may call at trial at

any time until forty-five (45) days before the assigned trial date. If a fact witness is represented by Defendants' Counsel, that fact should be disclosed at the time the witness is identified. Each fact witness within the control of each Defendant or Defendant's Counsel whom the Defendant in the Track Two Cases may call to testify shall be presented for deposition, upon request by any Plaintiff, within a reasonable time, but no later than thirty (30) days before the pre-trial hearing, unless otherwise ordered by the Court. Depositions of fact witnesses should be taken before those of expert witnesses, unless the parties agree otherwise.

4. Defendants' Expert Witnesses: Each Defendant in the Track Two Cases shall disclose its testifying experts to Plaintiffs in the Track Two Cases in accordance with the TRCP no later than July 1, 2022. Defendants in the Track Two Cases shall produce reports for all testifying experts at the time of their designations, with the exception of non-retained testifying experts. Each Defendant in the Track Two Cases may supplement expert disclosures pursuant to the TRCP until forty-five (45) days before the pretrial hearing. Each testifying expert disclosed by Defendants in the Track Two Cases shall be presented for deposition, upon request by any Plaintiff in the Track Two Cases, within a reasonable time, but no later than forty-five (45) days before the pre-trial hearing, unless otherwise ordered by the Court. To the maximum extent possible, Defendants' testifying experts as to liability in the Track Two Cases should be noticed for deposition in all Transferred Cases. Defendants' liability experts previously deposed in the Track One Case shall not be redeposed in the Track Two Case absent a showing of good cause or agreement of the parties.
5. Pre-trial hearing: The Court will conduct a pre-trial hearing in the Track Two Trial Case on December 16, 2022.
6. Except as otherwise required by statute or the TRCP, all motions in the Track Two Trial Case, other than motions in limine and motions for summary judgment, must be filed no later than forty-five (45) days prior to the pretrial hearing in the Track Two Trial Case. Any joinder filed by a Defendant in the Track Two Trial Case must be filed no later than five (5) business days after the filing of the motion and must identify which motion it is joining by listing the name of the Defendant in the Track Two Trial Case who filed the motion and the title of the motion Defendant in the Track Trial Two Case seeks to join.
7. Motions to challenge the qualifications of experts, and/or the admissibility of expert testimony in the Track Two Trial Case, shall be filed no later than forty (40) days prior to the pretrial hearing in

the Track Two Trial Case. Motions that are the subject of this provision must be heard at least seven (7) days prior to the pretrial hearing in the Track Two Trial Case, with notice to opposing counsel at least ten (10) days prior to the hearing. Any joinders to any motions to challenge experts must be filed no later than two (2) business days after the filing of the motion and must specifically state which motion is being joined.

8. Before the Track Two Trial Case is remanded to the Trial Court, the following will occur in this Court: (i) completion of discovery; (ii) filing, hearing, and ruling on dispositive motions; (iii) filing, hearing, and ruling on expert challenges; (iv) depositions designated and objections heard and ruled upon; (v) witnesses designated and objections heard and ruled upon, to the extent possible; (vi) exhibits designated, objections heard and ruled upon, and exhibits admitted to the extent possible; (vii) filing, hearing, and ruling on motions in limine; and (viii) approval of a proposed jury charge. A party may not offer at trial any deposition testimony or exhibits that were not admitted by this Court.

- C. Additional Case Tracks: Once the case profiles ordered in Paragraph 7(A) of this Order have been provided to the Court, the PSC and DSC shall confer regarding the determination of cases to designate for additional Tracks. It is the intention of the Court to schedule for trial four additional Tracks in 2023 (*i.e.*, Tracks 3-6). Among other things, the PSC and DSC shall confer and make recommendations to the Court regarding the number of cases to include in each additional Track, a process for confirming that cases designated for additional Tracks are trial ready on an expedited basis compared to other cases, a process to ensure that other claims are available for trial in the event that all claims in a given Track get resolved, prioritizing discovery in cases designated for additional Tracks, and identifying potential dispositive legal issues in cases designated for additional Tracks that would be appropriate for interlocutory appeal. The remand, applicable deadlines, and trial of any cases designated for additional Tracks shall be the subject of a future order of this Court. Unless otherwise extended, the Court intends to conduct a hearing at 11:00 a.m. on October 15, 2021, to select Plaintiffs for Tracks 3-6 and to issued additional case management orders governing those Tracks. Prior to the that time, the EPSC and DSC shall confer with one another and attempt to reach an agreement as to which types of claims are to be tried in each additional Track, the specific Plaintiffs to be included in each additional Track or a process for selecting the plaintiffs, proposed pretrial schedules, and proposed pretrial hearing and trial dates. If an agreement cannot be reached, the EPSC and DSC shall submit competing proposals and case management orders no later than two days before the hearing so the Court can make a final determination at the hearing on October 15, 2021.
- D. Preferential Settings: The Court intends to remand five (5) cases for trial in 2023, those cases designated Tracks 2-6. These Track settings are intended to be

preferential settings to make sure the parties are consistently trying or preparing to try cases. If all primary and secondary settings in any given Track settle before trial, then the DSC and EPSC shall promptly confer and make recommendations to the Court as to how best fill the available Track. The DSC and EPSC are expressly required to consider filling an available Track using: (i) any reserve cases from earlier Tracks that might already be ready for trial; (ii) the possibility of expediting preparations in the next Track for an earlier setting and filling in the now open Track with additional cases; (iii) expediting the preparation of certain cases in the Certification Process to be tried in the now available Track. The DSC and EPSC shall promptly confer and make a recommendation to the Court as to how best fill the Track to accomplish the goal of trying five (5) cases in 2023. Depending on the progress of the Tracks and the litigation, the Court reserves the right to order a sixth trial in 2023 (*i.e.*, Track 7), if time permits. When filling a Track pursuant to this provision, the DSC and EPSC shall make recommendations to the Court regarding the type of claims to be tried, the specific Plaintiffs to be included the Track or a process for selecting the plaintiffs, proposed pretrial schedules, and proposed pretrial hearing and trial dates. Depending on the pretrial preparation status of the cases selected and the availability of the respective Trial Courts, the Court reserves the right to adjust the trial and pretrial settings of any given Track to ensure sufficient time to complete pretrial preparations, conduct a pretrial conference, and make sure the Court can complete all matters outlined herein prior to remand and trial.

10. CERTIFICATION PROCESS

- A. Conditional Certification Request: Any Plaintiff that is not in a Track One Case, a Track Two Case, or any other Track as may be established by the Court, may file and serve a Conditional Certification Request upon completion of the following events:
- i. Plaintiff has provided complete responses to a PFS and Master Discovery as required by Paragraph 6(D)(i) of this Order, including supplementing any responses to such PFS and Master Discovery as necessary no later than thirty (30) days before filing a Conditional Certification Request;
 - ii. The Court has resolved any discovery disputes under the discovery dispute resolution process set forth in Paragraph 6(D)(vii) of this Order and Plaintiff has complied with any applicable discovery orders issued by the Court;
 - iii. Plaintiff has produced all medical and financial records as required by Paragraph 6(H) of this Order at least one hundred and twenty (120) days before filing a Conditional Certification Request;
 - iv. Plaintiff has produced all authorizations as required by Paragraph 6(I) of this Order at least one hundred and eighty (180) days before filing a Conditional Certification Request;

- v. Plaintiff has completed any mental or physical examination ordered by the Court, if any, under Paragraph 6(L) of this Order at least ninety (90) days before filing a Conditional Certification Request;
- vi. Plaintiff has disclosed all fact witnesses as required by Paragraph 6(M)(i) of this Order;
- vii. Plaintiff has disclosed all testifying experts as required by Paragraph 6(M)(ii) of this Order; and
- viii. At least three hundred and sixty-five (365) days has passed since the execution of this Order so that Defendants are provided adequate time to conduct root cause discovery as to the cause of the January 24th Explosion.

B. Objection and hearing to Conditional Certification:

- i. Within ten (10) days of receipt of a Conditional Certification Request, any Defendant that does not believe that the requirements have been met shall file and serve objections that set forth any specific deficiencies it believes to exist. Any joinders to any objection must be filed no later than two (2) business days after the filing of the objections and must specifically identify the objections being joined.
- ii. Plaintiff shall arrange for a hearing with this Court on a date no sooner than fifteen (15) days after filing of the Conditional Certification Request, at which hearing any timely filed objections and timely filed joinders therein will be considered.
- iii. If there are no objections to Conditional Certification, or the objections to Conditional Certification are overruled, the Court will conditionally certify a case as ready to proceed towards remand and trial following Final Certification.

C. Conditional Certification: Upon Conditional Certification, the following events shall occur:

- i. The case shall be scheduled for a pretrial hearing at a reasonable time as determined by the Court, but in no event shall a case that has been conditionally certified be scheduled for a pretrial hearing at a time that: (i) is less than two hundred seventy (270) days after Conditional Certification; or (ii) would interfere with the Defendants' preparation of the Track One Trial Case, the Track Two Trial Case, or trial in any other Track as may be established by the Court.
- ii. Defendants are required to designate responsible third parties, if any, in accordance with the provisions of Chapter 33 of the Texas Civil Practice and Remedies Code.

- iii. Except as otherwise required by statute or the TRCP, all motions, other than motions in limine and motions for summary judgment, must be filed no later than forty-five (45) days prior to the pretrial hearing. Any joinder filed by a Defendant must be filed no later than five (5) business days after the filing of the motion and must identify which motion it is joining by listing the name of the Defendant who filed the motion and the title of the motion Defendant seeks to join.
- iv. Motions to challenge the qualifications of experts, and/or the admissibility of expert testimony, shall be filed no later than forty (40) days prior to the pretrial hearing. Motions that are the subject of this provision must be heard at least seven (7) days prior to the pretrial hearing, with notice to opposing counsel at least ten (10) days prior to the hearing. Any joinders to any motions to challenge experts must be filed no later than two (2) business days after the filing of the motion and must specifically state which motion is being joined.
- v. The Court will conduct all pretrial hearings.

- D. Final Certification: Upon completion of all of the requirements of Conditional Certification outlined in Paragraph 10(C), the Court will issue an order remanding a Transferred Case for trial in the Trial Court. A Transferred Case shall not be set for Final Certification until after all Track One Cases, Track Two Cases, and any other cases set on Tracks for trial are remanded and tried. Following the pretrial hearing, this Court, in conjunction with the Trial Court, will obtain possible trial dates that are designed to promote the convenience of the parties and witnesses and the just and efficient disposition of all related proceedings. No Transferred Case will be approved for Final Certification and remanded for trial: (i) during any period of time when another Transferred Case is scheduled for trial after Final Certification; or (ii) within six (6) weeks of the completion of the trial of any Transferred Case. The Trial Court must cooperate reasonably with this Court, and this Court must defer appropriately to the Trial Court's docket. The Trial Court must not continue or postpone a trial setting without the concurrence of this Court. The parties shall receive at least forty-five (45) days' notice of an initial trial setting. A written order setting the trial date shall be issued by this Court.

Before a Transferred Case is approved for Final Certification, the following will occur in this Court: (i) completion of discovery; (ii) filing, hearing, and ruling on dispositive motions; (iii) filing, hearing, and ruling on expert challenges; (iv) depositions designated and objections heard and ruled upon; (v) witnesses designated and objections heard and ruled upon, to the extent possible; (vi) exhibits designated, objections heard and ruled upon, and exhibits admitted to the extent possible; (vii) filing, hearing, and ruling on motions in limine; and (viii) approval of a proposed jury charge. A party may not offer at trial any deposition testimony or exhibits that were not admitted by this Court.

- E. Defendants' Request for Conditional Certification: Any Defendant may seek Conditional Certification of any case beginning on January 1, 2024. If a Defendant seeks Conditional Certification, it shall include in its request a proposed pretrial schedule to accomplish all items included in Paragraphs 10(A), 10(C), and 10(D).

11. REGULAR HEARINGS/STATUS CONFERENCES

- A. Status conferences: To facilitate the orderly progression and development of this case, the Court will enter a separate order providing a schedule of regular hearings and/or status conferences to occur the first Thursday of every month, or as otherwise designated by the Court.
- B. Scheduling hearings: Counsel must contact the clerk to schedule a hearing on motions. Notice of hearings must be provided to all counsel as provided in this Order at the time the hearing is scheduled with the clerk. Except on leave of this Pretrial Court, hearings must be noticed no later than Friday in order to be heard on the following Thursday.
- C. Submission docket: Routine matters for which no oral hearing is necessary should be set for written submission on Monday mornings.
- D. Conference on hearing dates required: The Parties shall confer with one another regarding the scheduling of hearings on any Motion so as to ensure that any Motions primarily impacting a specific party are heard at a time when all parties so impacted are reasonably available. If a Motion is scheduled for the first Thursday of any month during the regularly scheduled status conference, it is presumed that all counsel will be reasonably available absent unusual circumstances brought to the attention of the Court in advance of the hearing and the unavailable counsel provides other, reasonable times when they are available.

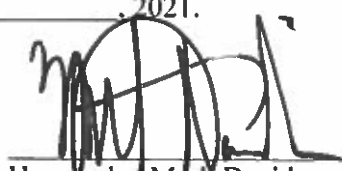
12. MISCELLANEOUS

- A. Joint interest communications: The communication of information among and between Plaintiffs' Counsel and among and between Defendants' Counsel shall not be deemed to be a waiver of the attorney-client privilege or the protection afforded by the attorney work product privilege, and cooperative efforts among the parties shall not be used in any manner to contend that there has been a waiver of the attorney-client or attorney work product privilege.
- B. Amendments: Nothing in this Order is intended to limit any party's opportunity to seek amendment of this Order or other relief should this Order prove to be unworkable for any reason or fail manage effectively case preparation.
- C. Duty to confer: Counsel must attempt to resolve motions before any matter is submitted to this Court and must certify to that attempt. Attempts to meet and confer must be substantive and involve good faith efforts to confer on disputed matters

and reach an agreement. There is no obligation to meet and confer on dispositive motions.

- D. Experts: The Court has entered a protective order protecting from discovery certain expert communications and drafts of expert reports. This Order is intended to apply the protections set forth in TRCP 195.5(c)-(d), under the 2021 provisions of the TRCP, to all Transferred Cases. This protective order is attached as Exhibit 5.
- E. Court reporter: Any party that desires to have a transcript of any hearing shall arrange for the appearance of a court reporter at least three (3) days prior to such hearing by contacting Laurie Shearer at (281) 889-1451 or llshearer@yahoo.com.

Signed on this 7th day of May, 2021.


Hon. Judge Mark Davidson