

Exhibit “A”

VERIFIED COMPLAINT

Plaintiffs, Celeste Flynn, individually and as personal representative of the Estate of Nathan E. Flynn; T.F., a minor by her parent, Celeste Flynn; C.F., a minor by his parent, Celeste Flynn; B.F., a minor by his parent, Celeste Flynn (plaintiffs Celeste Flynn, T.F., C.F., and B.F. are collectively referred to hereinafter as the “Flynn Plaintiffs”), as and for their Complaint against Defendant Omega Flex, Inc. state as follows:

PARTIES

1. Plaintiff, Celeste Flynn, individually and as Personal Representative of the Estate of Nathan E. Flynn, is a resident of the State of Maryland with an address of 3251 Rocks Chrome Hill Road, Jarrettsville, Maryland 21084.

2. Plaintiff, Celeste Flynn, is the spouse of the decedent, Firefighter Nathan E. Flynn.

3. Plaintiff, Celeste Flynn, is the duly appointed Personal Representative of the Estate of Nathan E. Flynn by the Register of Wills for Harford County, Maryland.

4. Plaintiff, T.F., is a minor represented by her mother, Celeste Flynn, with an address of 3251 Rocks Chrome Hill Road, Jarrettsville, Maryland 21084.

5. Plaintiff, T.F., is the surviving daughter of the decedent, Firefighter Nathan E. Flynn.

6. Plaintiff, C.F., is a minor represented by his mother, Celeste Flynn, with an address of 3251 Rocks Chrome Hill Road, Jarrettsville, Maryland 21084.

7. Plaintiff, C.F., is the surviving son of the decedent, Firefighter Nathan E. Flynn.

8. Plaintiff, B.F., is a minor represented by his mother, Celeste Flynn, with an address of 3251 Rocks Chrome Hill Road, Jarrettsville, Maryland 21084.

9. Plaintiff, B.F., is the surviving son of the decedent, Firefighter Nathan E. Flynn.

10. Defendant, Omega Flex, Inc. (“Omega Flex”), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its registered offices and principal place of business located at 451 Creamery Way, Exton, Pennsylvania 19341.

11. At all relevant times, Omega Flex was engaged in the business of manufacturing and distributing, *inter alia*, corrugated stainless steel tubing (“CSST”) used to transport natural gas and propane in commercial businesses and residential homes under the brand name TracPipe.

JURISDICTION AND VENUE

12. At all relevant times, Omega Flex was involved in the design, manufacture, marketing, distribution and sale of its TracPipe CSST for residential and commercial use by consumers throughout the area, including the City and County of Philadelphia, Pennsylvania.

13. At all relevant times, Omega Flex was engaged in regular and systematic business in both the City and County of Philadelphia, Pennsylvania.

14. Based on Omega Flex’s 2019 United States Securities and Exchange Commission Form 10-K filing (the “SEC Filing”), Omega Flex distributed its TracPipe CSST product in Philadelphia utilizing wholesale distributors to include its most significant customer, Ferguson Enterprises, Incorporated, which accounted for approximately 22% to 24% of Omega Flex’s accounts receivable during the period of 2017 to 2019. Ferguson Enterprises maintains one of its regional distribution facilities at 1821 Washington Avenue, Philadelphia, Pennsylvania.

15. Based on the SEC Filing, Omega Flex sells its products primarily through independent outside sales organizations, including independent sales representatives, distributors, wholesalers and original equipment manufacturers. In addition to Ferguson Enterprises, Omega Flex sells its CSST product through several distributors located in the City and County of Philadelphia, including but not limited to: APR Supply Company, 462 North 4th Street, Philadelphia, Pennsylvania and Johnstone Supply, 200 Spring Garden Street, Philadelphia, Pennsylvania.

16. Based on information and belief, Omega Flex CSST products are widely sold to Philadelphia consumers over the internet through distributors and directly to consumers, utilizing both Amazon and E-Bay as sales platforms.

17. Jurisdiction and venue are proper in the Commonwealth of Pennsylvania and in Philadelphia County in accordance with Pa.R.C.P. 2179(a)(2), as the defendant regularly and continuously conducts business in the City and County of Philadelphia.

FACTUAL ALLEGATIONS

TracPipe's Sordid History

18. CSST was introduced in the United States in the 1990's, with the intent to replace black iron pipe, a product which then held approximately 95% of the gas pipe market.

19. Omega Flex began selling its CSST product under the brand name TracPipe in 1997.

20. Omega Flex's TracPipe product consists of a corrugated steel tube and an outer yellow-jacket made of a polyethylene plastic.

21. The purpose of the yellow-jacket of TracPipe is to make the pipe easier to install.

22. Omega Flex's Director of Codes and Standards, Robert Torbin, has admitted that black iron pipe is not a dangerous product.

23. Mr. Torbin has never seen black iron pipe fail due to exposure to the effects of lightning.

24. Information about the lightning hazard and gas piping was known and available to Omega Flex in 1997 when it first introduced its TracPipe product in the United States.

25. As early as 1835, the gas industry recognized that lightning presents a danger to gas lines.

26. The risk to gas lines from lightning has been the subject of scientific treatises since the 1880s.

27. In the 1940s, studies by J.H. Hagenguth, confirmed that the thickness of a metal is critical in withstanding the energy from a lightning strike.

28. Omega Flex did not perform any type of historic studies, environmental studies, failure mode effects analyses or root cause analysis to understand how weather or other environmental factors may affect the safety of CSST.

29. Omega Flex did not give any consideration to the risk of lightning before placing its TracPipe CSST product on the market in early 1997.

30. The National Lightning Safety Institute has stated that one in 200 homes located in the United States will be struck by lightning in any given year.

31. The energy content of a lightning strike is measured in coulombs, with a coulomb being defined as the charge of electricity conveyed in one second by a current of one ampere.

32. The average energy in a lightning strike in the United States is between 5 and 25 coulombs of energy.

33. The thin wall of Omega Flex's TracPipe CSST product is approximately 10 mils thick, which is the same thickness as four sheets of loose-leaf paper.

34. Omega Flex's TracPipe product will fail and allow gas to escape its confines when confronted with .12 coulombs of energy.

35. Immediately after placing its product into the marketplace in 1998, Omega Flex became aware that there were lightning-induced fires involving its product.

36. By 1999, Omega Flex began efforts to redesign TracPipe CSST to protect against lightning-induced failures as Omega Flex was aware that it needed to develop a product that was more robust.

37. As a result of these efforts, Omega Flex sought to patent several new allegedly "lightning-resistant" technologies for CSST.

38. In 2004, Omega Flex placed a new lightning-resistant CSST on the market under the trade name "Counterstrike."

39. Despite having developed Counterstrike as a safer alternative to the lightning-susceptible TracPipe, Omega Flex continued to sell TracPipe until September 2011 because it did not want to lose market share.

40. In its patent application for the new Counterstrike “lightning-resistant” CSST, Omega Flex noted:

Another drawback to existing [TracPipe] tubing is that the tubing is often contained within a jacket. Typically, the jacket is made from an insulative material. In the event the piping is introduced to an electrical charge (e.g. from direct or indirect lightning), charge accumulates on the jacket and can burn through the jacket to the tubing resulting in a breach of the tubing.

41. As early as 2003, Omega Flex was aware that the outer yellow jacket exacerbated the effects that lightning had on its product, making it more likely that lightning would be concentrated to a specific part of the jacket, making it more likely that the energy from the lightning event would burn through the jacket and perforate the interior metal piping.

42. TracPipe CSST’s particular susceptibility to lightning induced failures was acknowledged by Robert Torbin, Omega Flex’s Director of Codes & Standards, who stated under oath, “CSST-related fires caused by lightning are not theoretical.”

43. Torbin testified that “In the case of an indirect strike, when lightning strikes a nearby tree or the ground, the electrical charge travels through the ground to the building. If the underground metal systems are in the area, the lightning will travel through these systems into the building. The build-up of electrical charge creates a voltage imbalance between the metal gas piping and any nearby electrically conductive systems such as copper water pipes, electrical wiring, coax cables or structural steel. If great enough, this imbalance will lead to the arcing of electricity to or from the metal gas piping to one of these nearby conductive systems. Because CSST is so thin, this arcing can cause perforation of the metal tubing and the release of fuel gas. In the presence of the electrical arc, this fuel gas can be ignited. Because the fuel gas is under

pressure and is continuously delivered to the home, it may create a standing flame that in the presence of combustible materials can lead to fire.”

44. In 2012, the city of Lubbock, Texas banned all CSST, including Omega Flex’s lightning-resistant CSST, after a CSST-lightning induced fire led to the death of Brendan Teal.

45. During Lubbock City Council hearings in 2016, while attempting to convince the Lubbock City Council that its new lightning resistant product was safe, Omega Flex’s own retained expert testified before Lubbock’s City Council that the original Trac-Pipe product is “dangerous” and “awful.”

46. Specifically, on May 12, 2016, Omega Flex’s retained expert testified as follows:

“And the yellow CSST pipe like that has been shown to fail at .1 coulombs. That is nothing. That—that is awful. That is so dangerous. That is a dangerous product. There is no question about that.”

47. Despite Omega Flex’s experts acknowledging that its’ TracPipe product was “awful” and “dangerous”, Omega Flex never issued any warnings to its customers about its extremely limited coulomb withstand capacity or its unique design characteristics for the yellow jacket TracPipe that further exacerbated the effects of lightning on the product.

48. In the early 2000’s when Omega Flex became fully aware of the dangers associated with its product and lightning, Omega Flex resisted efforts to revise the product standard to account for lightning-related testing and other safety-related changes for the ANSI LC-1 standard.

49. Instead, during the mid-2000’s Omega Flex suggested that adding an electrical bonding requirement would make its product safe from lightning, even though it knew that bonding would not protect its product from all lightning strikes, nor would bonding increase the coulomb-withstand of its TracPipe product or overcome the effects that the yellow jacket would have in terms of exacerbating the effects of lightning.

50. During the 2000’s, Omega Flex was aware that the only way to make its product safe from lightning was to require that lightning protection systems be installed in homes that contained its product.

51. Omega Flex refused to mandate lightning protection systems on all homes containing its product because it knew that the added cost would deter people from using its product.

52. In 2011 other CSST companies created a new standard, known as LC-1027, which requires CSST to be able withstand 36 coulombs.

53. Omega Flex resisted the adoption of LC-1027 even though the National Association of State Fire Marshals advocated for its adoption for all CSST in the United States.

54. Rather than advocate for the adoption of the lightning-protection standards set forth in ANSI LC-1027, Omega Flex advocated for an optional change in the ANSI LC-1 standard, which would not apply to yellow jacketed products. Even then, Omega Flex advocated for the lightning resistance standard in LC-1, so CSST products could be considered lightning-resistant if they could withstand 4.5 coulombs of energy.

55. Omega Flex's own advertisements confirm that Omega Flex was fully aware of the dangers associated with its TracPipe product. In a pair of advertisements for its lightning-resistant products, Omega Flex acknowledged that there were up to 75 yellow CSST lightning induced fires per year.

56. In Omega Flex's own advertisements for its lightning-resistant products, Omega Flex noted that "If you are not using Counterstrike then you're not using the safest gas piping product."

57. Even though Omega Flex was aware that its product was not as safe as other CSST products and there were up to 75 yellow CSST lightning-induced fires per year, Omega Flex continued to sell an inferior and dangerous product because it did not want to lose market share.

The Fire

58. At all relevant times, Anwar N. Siddiqui, was the owner of a home located at 7005 Woodscape Drive, Clarksville, Maryland 21029 (the "Subject Residence").

59. The Subject Residence featured a propane gas distribution system which used CSST to transport the propane gas to appliances located on the first floor.

60. The CSST installed in the Subject Residence was manufactured by Omega Flex under the brand name TracPipe.

61. The CSST in the Subject Residence was installed in 2006.

62. Before July 23, 2018, Defendant Omega Flex had actual knowledge of the propensity of its CSST product to perforate when exposed to transient energy from lightning and cause residential, gas-fueled fires.

63. Before July 23, 2018, Defendant Omega Flex never informed members of the firefighting community of the known hazards of its CSST product and its propensity to ignite fires in residential homes, even though there were reports as early as 2004 that lightning-induced CSST fires could unexpectedly compromise floors in homes if the gas lines were routed under those floors.

64. On or about July 23, 2018, a thunderstorm moved into the area of the Subject Residence, accompanied by rain and lightning.

65. During the July 23, 2018 thunderstorm, lightning hit a tree located adjacent to the Subject Residence.

66. Electricity from the lightning strike energized the CSST in the Subject Residence which then arced to nearby conductive materials in search of ground.

67. As the arc occurred, it perforated the CSST gas line, allowing propane gas to escape from the CSST and become ignited by the heat of the arc.

68. The ignition of the flammable gas caused a fire at the Subject Residence (“the Fire”).

69. The decedent, Nathan E. Flynn, was at all relevant times a firefighter in the Howard County Fire Department, and responded to the Fire in the early morning hours of July 23, 2018.

70. While battling the Fire, the floor beneath Firefighter Flynn collapsed and he fell through the floor and became trapped in a basement level crawlspace, where there was an active fire and extreme heat conditions.

71. Due to the heavy fire conditions, Firefighter Flynn remained trapped and alone in the basement for approximately twenty-two (22) minutes before an intervention team was able to locate and remove him from the Subject Residence.

72. Firefighter Flynn suffered severe injuries and conscious pain and suffering as a result of the Fire and his exposure to direct flames, intense heat and smoke.

73. After being removed from the Subject Residence, Firefighter Flynn was taken to the hospital in critical condition, where he died shortly thereafter as a result of his injuries from the Fire.

COUNT I – Strict Liability

74. Plaintiff incorporates the preceding paragraphs of this Complaint as though fully set forth herein.

75. At all relevant times, Omega Flex owed the decedent, Firefighter Flynn, a duty to use reasonable care in the development, production and marketing of the TracPipe CSST product that was used in the Subject Residence.

76. Firefighter Flynn's injuries and death were caused by Omega Flex's sale or supply of a defective product which was unreasonably dangerous for its intended and foreseeable use, and which was unreasonably dangerous to the ultimate users, operators and consumers, including Firefighter Flynn, for which the defendant is strictly liable pursuant to the provisions of Section 402A of the Restatement (2d) of Torts.

77. Omega Flex, sold, designed and manufactured, assembled, distributed and/or otherwise placed in the stream of commerce the subject CSST gas piping in a defective condition and failed to warn of defects that were known to Omega Flex which rendered the gas piping unreasonably dangerous.

78. The defective and dangerous condition of the TracPipe CSST was unknowable and unacceptable to the average or ordinary consumer, and was a condition upon normal use that was dangerous beyond the contemplation of a reasonable consumer.

79. The risks presented by the defective and dangerous design of the TracPipe CSST outweighed the utility of its design, such that a reasonable person would conclude that the probability and seriousness of harm arising from the product's design outweighed the burden or cost of taking precautions.

80. The defective and dangerous design of the TracPipe CSST resulted in a product that was unsafe for its intended and foreseeable use.

81. The CSST gas piping was defective because it was susceptible to failure when exposed to known and foreseeable conditions in a residential property and, in particular, to voltages and currents induced by foreseeable, routine storms which produce direct and indirect lightning strikes.

82. The CSST gas piping was not abused or altered in any way from the condition in which it was manufactured and supplied by the defendant and was defective and unreasonably dangerous at the time it left the control of the defendant.

83. The CSST gas piping was defective due to inadequate wall thickness, unsafe protective insulating coverings, inadequate warnings and inadequate instructions about the need for bonding and grounding which may prevent damage to the CSST associated with nearby lightning strikes and electrical arcing.

84. The CSST gas piping was defective in design in that the dangers and risks presented by the CSST exceeded the benefits and utility associated with its design, and safer alternative designs, including copper gas tubing and black iron pipe, were known and available to Omega Flex.

85. The CSST gas piping was defective in design in that it was in a condition not contemplated or expected by its consumers and unusually dangerous for use in the Subject Premises.

86. When the TracPipe was installed at the Subject Residence in 2006, Omega Flex had actual notice of residential fires attributed to its TracPipe CSST failures for at least the previous eight (8) years, but failed to provide any warning to consumers using the TracPipe product or emergency response personnel who may have been required to respond to a residential fire caused by the foreseeable failure of the TracPipe product.

87. Omega Flex ceased marketing and selling its TracPipe CSST product in 2011, but failed to issue any warning to consumers or third parties who could have been affected by the dangerous propensities of TracPipe that remained in residential applications.

88. Omega Flex estimates that there are up to seventy-five (75) residential fuel gas lightning fires attributed to TracPipe CSST annually in the United States.

89. In 2014, Omega Flex marketed and advertised its CounterStrike product as being 400 times more resistant to lightning than TracPipe CSST, but never warned consumers or third parties, such as firefighters, of the dangerous propensity of TracPipe CSST to cause catastrophic residential fires.

90. Omega Flex had a duty to warn third parties, such as firefighters and emergency response personnel, of the dangers associated with its TracPipe CSST product which remained in

residential homes despite the existence of an alternate product that was 400 times more resistant to transient energy from lightning than TracPipe CSST.

91. Omega Flex had actual knowledge of the defect associated with TracPipe CSST in that it was unsuitable for use in residential homes and posed a risk to the occupants of the home as well as emergency response personnel that may be required to enter the home in the event of a residential fire.

92. Omega Flex, in bad faith, consciously and deliberately disregarded the foreseeable risk that its product would fail during routine lightning storms and pose an extreme risk of injury to residential occupants as well as firefighters who are dispatched to extinguish the gas-fueled fires.

93. As a direct and proximate result of the aforesaid negligent, careless and/or reckless acts and/or omissions for which Omega Flex consciously and deliberately disregarded the known risks and actual danger of its product, the Flynn Plaintiffs' decedent, Firefighter Flynn, suffered serious injuries that resulted in death.

94. The Flynn Plaintiffs seek compensatory and punitive damages against Omega Flex for consciously and deliberately disregarding the known risks of its defective product, which presented a foreseeable threat to the safety of the decedent, Firefighter Flynn.

WHEREFORE, the Flynn Plaintiffs demand judgment in their favor and against Omega Flex for compensatory and punitive damages in excess of the jurisdictional limit for arbitration, together with interest and the costs of this action.

COUNT II—Negligence/Carelessness/Recklessness

95. Plaintiffs incorporate the preceding paragraphs of this Complaint as though fully set forth herein.

96. At all relevant times, Omega Flex owed the decedent, Firefighter Flynn, a duty to provide a product that was free from defective and dangerous conditions and safe for its reasonable foreseeable and/or intended use.

97. Omega Flex breached its aforesaid duty to Firefighter Flynn in one or more of the following ways:

- a. Failing to properly develop the TracPipe CSST product with an adequate exterior skin and coatings so that the product was able to tolerate normal and expected conditions in the environment where it is installed;
- b. Failing to design its TracPipe CSST product with a wall thickness that is capable of withstanding anticipated and foreseeable weather conditions;
- c. Failing to properly inspect and test the design and construction of its product before distributing the product to the public;
- d. Carelessly and negligently advertising its product as a suitable replacement for black iron pipe when it was incapable of withstanding normal and expected conditions in the environment where it was installed;
- e. Failing to warn Firefighter Flynn and/or the firefighting community of the substantial risk of fire or similar peril presented by the normal use of its product;
- f. Failing to provide a product that was capable of withstanding damage to its integrity resulting from expected and typical electrical storms and lightning common to the area;
- g. Failing and/or omitting to do those things necessary to avoid an unreasonable risk of harm to Firefighter Flynn;
- h. Failing to comply with all other applicable codes, regulations, guidelines, policies, procedures and/or industry customs and/or practices; and
- i. Failing to issue a post-sale warning of the known deficiencies and dangers associated with its TracPipe CSST product, despite actual knowledge of at least seventy-five (75) residential fires occurring each year directly attributed to the CSST product.

98. As a direct and proximate result of the aforesaid negligent, careless and/or reckless acts and/or omissions, and conscience disregard of the foreseeable harm caused by its CSST

product, the Flynn Plaintiffs' decedent, Firefighter Flynn, suffered serious injuries that resulted in death.

99. The Flynn Plaintiffs seek compensatory and punitive damages against Omega Flex for consciously and deliberately disregarding the known risks of its defective product, which presented a foreseeable threat to the safety of the decedent, Firefighter Flynn.

WHEREFORE, the Flynn Plaintiffs demand judgment in their favor and against Omega Flex for compensatory and punitive damages in excess of the jurisdictional limit for arbitration, together with interest and the costs of this action.

COUNT III—Wrongful Death

100. Plaintiffs incorporate the preceding paragraphs of this Complaint as though fully set forth herein.

101. As a result of Omega Flex's negligence and breaches of the duties owed to Plaintiffs' decedent, Firefighter Flynn, died on July 23, 2018.

102. Plaintiffs' decedent, Firefighter Flynn, did not bring any action during his lifetime nor has any other action for the death of Plaintiffs' decedent been commenced by Plaintiffs herein.

103. Plaintiffs bring this action pursuant to 42 Pa.C.S. §8301, also known as the Wrongful Death Act, and asserts all claims for damages against Omega Flex that are recoverable under the Wrongful Death Act including, but not limited to, the value of the companionship, services, guidance, society, comfort, tutelage, solace, protection and assistance that decedent would have provided to his wife and children, had he lived.

104. As a direct and proximate result of the negligence and carelessness of Omega Flex, the Flynn Plaintiffs have been and will be deprived of the financial and non-economic contributions which they would have received from decedent, Firefighter Flynn, had he lived, and

have suffered profound emotional and psychological loss from the death of their husband and father, for which Plaintiffs make a claim against the Defendants under the Pennsylvania Wrongful Death Act.

105. As a direct and proximate result of the negligence, carelessness, recklessness and other liability producing conduct of Omega Flex, the Flynn Plaintiffs incurred significant funeral expenses for which they also seeks reimbursement from the Omega Flex.

106. The Flynn Plaintiffs are the only persons who may recover wrongful death damages as a result of the death of their husband and father.

WHEREFORE, the Flynn Plaintiffs demand judgment in their favor and against Omega Flex for compensatory and punitive damages in excess of the jurisdictional limit for arbitration, together with interest and the costs of this action.

COUNT IV—Survival

107. Plaintiffs incorporate the preceding paragraphs of this Complaint as though fully set forth herein.

108. Plaintiff Celeste Flynn, as Personal Representative of the Estate of Nathan E. Flynn also brings this action against Omega Flex pursuant to 42 Pa. C.S. § 8302, which is known as the Survival Act, and claim all damages recoverable under the Survival Act.

109. As a result of the death of Firefighter Flynn, his Estate has been deprived of the economic value of the decedent's life during the period of his life expectancy, and Plaintiff Celeste Flynn, as Personal Representative of the Estate of Nathan E. Flynn, claims damages for the economic losses suffered by the decedent's Estate as a result of Omega Flex's negligence, carelessness, gross negligence and other liability producing conduct.

110. As a further direct and proximate result of the negligence, carelessness, recklessness and other liability producing conduct of the Omega Flex, Firefighter Flynn experienced conscious pain and suffering, shock, anguish and a loss of life's pleasures up to and including the time of his death, and Celeste Flynn, as Personal Representative of the Estate of Nathan E. Flynn, makes a claim herein for such damages as would compensate the Estate of Nathan E. Flynn for these damages as well.

WHEREFORE, plaintiff Celeste Flynn, as Personal Representative of the Estate of Nathan E. Flynn, demands judgment in her favor and against Omega Flex for compensatory and punitive damages in excess of the jurisdictional limit for arbitration, together with interest and the costs of this action.

COZEN O'CONNOR

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CELESTE FLYNN, Individually and as Personal Representative of the Estate of NATHAN E. FLYNN; PLAINTIFF T.F., a minor by her parent, Celeste Flynn; PLAINTIFF C.F., a minor by his parent, Celeste Flynn; and PLAINTIFF B.F., a minor by his parent, Celeste Flynn;

Plaintiffs,

v.

OMEGA FLEX, INC.

Defendant.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Omega Flex, Inc. (“Omega Flex”), expressly reserving all rights otherwise to respond to this lawsuit, hereby removes the above-captioned case, which was filed in the Pennsylvania Court of Common Pleas, Philadelphia County, Case No. 200600912 (“State Court Action”), to the United States District Court for the Eastern District of Pennsylvania. This case is being removed to this Court because, based on the allegations asserted in the Complaint, there is complete diversity of citizenship between the parties and more than \$75,000 is in controversy. As grounds for removal, Omega Flex respectfully states as follows:

BACKGROUND

1. On June 19, 2020, Plaintiffs initiated this wrongful death and survival action against Omega Flex, alleging that on July 23, 2018, Firefighter Nathan Flynn (“Decedent”) responded to the home of Anwar Siddiqi in his capacity as a firefighter with the Howard County, Maryland Fire

Department and that Decedent ultimately died as a result of injuries he sustained during the fire. (See Exhibit A, Plaintiffs' Compl. in the State Court Action, at ¶¶ 58, 69-73).

2. Plaintiffs further allege that Omega Flex's corrugated stainless steel tubing ("CSST"), which was installed in the Siddiqui home, caused the fire to which Decedent responded such that Omega Flex is liable for his death. (*Id.* at ¶¶ 64-68).

3. As required by 28 U.S.C. § 1446(a), Omega Flex has attached to this Notice, as Exhibit A hereto, "a copy of all process, pleadings, and orders served¹ upon" it, which comprise the complete state court file.

4. As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because Omega Flex has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

BASIS FOR REMOVAL

5. Title 28 U.S.C. § 1441(a) controls the circumstances in which a party may remove a state civil action to a United States District Court, and provides that:

any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

6. Removal to this Court is proper because the United States District Court of the Eastern District of Pennsylvania, is the district embracing the place (Philadelphia, Pennsylvania) where the action was filed. *See* 28 U.S.C. § 1441(a).

¹ As set forth, *infra*, Omega Flex has not been served with the Complaint in the State Court Action.

7. Pursuant to 28 U.S.C. § 1332(a), the United States District Courts maintain original jurisdiction of all civil actions between citizens of different states where the matter in controversy exceeds the sum of \$75,000.00.

A. Diversity of Citizenship is Satisfied.

8. Complete diversity exists between the parties to this action.

9. According to the Complaint, Plaintiffs are residents of Jarrettsville, Maryland. (*See* Exhibit A, Compl., at ¶¶ 1, 4, 6, 8).

10. For diversity purposes, a corporation is deemed to be a citizen of its State of incorporation and the State in which it has a principal place of business. 28 U.S.C. § 1332(c)(1).

11. Omega Flex is incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Exton, Pennsylvania (*See* Exhibit A, Compl., at ¶ 10).

12. Therefore, there is complete diversity of citizenship between the parties.

13. “A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly ***joined and served*** as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2) (emphasis added).

14. However, the Third Circuit has held that the “plain meaning [of the forum defendant rule] precludes removal on the basis of in-state citizenship ***only*** when the defendant has been properly joined and served.” *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147, 152 (3d Cir. 2018) (emphasis added), *reh'g denied* (Sept. 17, 2018).

15. Therefore, a defendant may use “pre-service machinations to remove a case that it otherwise could not” by effectuating removal prior to being served. *Id.* at 154.

16. Here, Omega Flex has not been “properly joined and served” with Plaintiffs’ Complaint in the State Court Action, such that removal is proper.

B. The Amount in Controversy Requirement is Satisfied.

17. The amount in controversy requirement of 28 U.S.C. § 1332 also is satisfied.

18. Under 28 U.S.C. § 1332(a), in a case where federal jurisdiction is based upon diversity of citizenship, the amount in controversy must exceed \$75,000.00, exclusive of costs and interests.

19. Where, such as here, the complaint does not specify the amount of damages sought, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 83 (2014).

20. Although Plaintiffs do not quantify their exact damages, they seek compensation in excess of \$50,000, as directly stated in their Complaint. Additionally, the Complaint alleges that Omega Flex’s conduct caused the death of Decedent, such that Plaintiffs purportedly are entitled to recover from Omega Flex “the financial and non-economic contributions which they would have received from decedent, Firefighter Flynn, had he lived” as well as the “economic value of the decedent’s life during the period of his life expectancy.” (Exhibit A, Compl, ¶¶ 104, 109).

21. Therefore, it is obvious from a common-sense reading of the Complaint that Plaintiffs are alleging damages in excess of \$75,000.00. Accordingly, the amount in controversy is satisfied, rendering this matter properly removable pursuant to 28 U.S.C. § 1332 and 1441(b).

22. As the amount in controversy in this case is in excess of \$75,000.00, and as Plaintiffs and Omega Flex are citizens of different states, this Court may exercise jurisdiction over this lawsuit pursuant to 28 U.S.C. §1332.

FILING OF REMOVAL PAPERS

23. Upon filing this Notice of Removal, Omega Flex will file a Notice of Filing Notice of Removal (attaching a copy of this Notice of Removal) with the Clerk of the Pennsylvania Court of Common Pleas, Philadelphia County, pursuant to 28 U.S.C. § 1446(d). A copy of said Notice to the Clerk will be electronically filed.

24. Likewise, on this date, Omega Flex will serve a Notice to Plaintiffs' counsel via electronic mail, stating that a Notice of Removal to the United States District Court for the Eastern District of Pennsylvania was filed, and serving a copy of this Notice of Removal upon Plaintiffs' counsel. A copy of said Notice to Plaintiffs' counsel will be electronically filed.

25. Under the provisions of 28 U.S.C. § 1441 and all applicable statutes, all of which Omega Flex has complied with, this case is removed to the United States District Court for the Eastern District of Pennsylvania.

WHEREFORE, Defendant Omega Flex, Inc. removes this case to the United States District Court for the Eastern District of Pennsylvania, respectfully requests that no further proceedings be had in the Pennsylvania Court of Common Pleas, Philadelphia County, and requests such other and further relief as the Court deems just and proper.

Respectfully submitted,

CAMPBELL CONROY & O'NEIL, P.C.

By: /s/ Erin W. Grewe
William J. Conroy, Esquire
Lynne O. Ingram, Esquire
Erin W. Grewe, Esquire
Attorneys for Defendant, Omega Flex, Inc.

Date: June 24, 2020

CERTIFICATE OF SERVICE

I, Erin W. Grewe, Esquire, counsel for Defendant Omega Flex, Inc., hereby certify that on June 24, 2020, I electronically filed the foregoing *Notice of Removal* with the Clerk of Court using the Court's electronic filing system (ECF), which will send notification of such filing to all counsel of record. The foregoing document is also available for viewing and/or downloading from ECF. Said document was also sent via electronic mail to the following counsel of record:

Mark E. Utke, Esquire
Anthony J. Morrone, Esquire
Martin P. Duffey, Esquire
Cozen O'Connor
1650 Market Street, 28th Floor
Philadelphia, PA 19103
Attorneys for Plaintiffs

CAMPBELL CONROY & O'NEIL, P.C.

By: /s/ Erin W. Grewe
Erin W. Grewe, Esquire
Attorney for Defendant, Omega Flex, Inc.

Date: June 24, 2020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

Erin W. Grewe

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: _____

Address of Defendant: _____

Place of Accident, Incident or Transaction: _____

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____ *Erin W. Grewe* _____
 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
 (Please specify): _____

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): _____
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases
 (Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, _____, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- Relief other than monetary damages is sought.

DATE: _____ *Erin W. Grewe* _____
 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

CELESTE FLYNN, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
OMEGA FLEX, INC.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>6/24/2020</u>	<u><i>Erin W. Grewe</i></u>	<u>Omega Flex, Inc.</u>
Date	Attorney-at-law	Attorney for
<u>610-964-6391</u>	<u>610-964-1981</u>	<u>egrewe@campbell-trial-lawyers.com</u>
Telephone	FAX Number	E-Mail Address