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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

BETHANY MODISETTE, individually, and as Personal Representative and/or Successor-in-Interest of the ESTATE OF MORIAH MODISETTE, a deceased minor; JAMES MODISETTE, individually; and ISABELLA MODISETTE, a minor, by and through her parents, BETHANY MODISETTE and JAMES MODISETTE and/or her anticipated Guardian ad Litem, BETHANY MODISETTE;

Plaintiffs,

vs.

APPLE, INC., a California corporation, and DOES 1 THROUGH 20, inclusive,

Defendants

Case No.: 16CV304364

COMPLAINT FOR PERSONAL INJURY, WRONGFUL DEATH, AND A SURVIVAL ACTION:

1. **GENERAL NEGLIGENCE**
2. **GROSS NEGLIGENCE**
3. **NEGLIGENT AND STRICT PRODUCTS LIABILITY**
4. **NEGLIGENT AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
5. **LOSS OF CONSORTIUM**

DEMAND FOR TRIAL BY JURY

GENERAL ALLEGATIONS

1. COME NOW Plaintiffs BETHANY MODISETTE, JAMES MODISETTE, and ISABELLA MODISETTE, a minor, by and through her parents pursuant to Code of Civil Procedure section 376, and her anticipated Guardian at Litem BETHANY MODISETTE pursuant to Code of Civil Procedure sections 372 and 373, who bring this action on behalf of themselves for personal injuries sustained by each and all of them; and

2. COMES NOW BETHANY MODISETTE and JAMES MODISETTE, who bring this action for the wrongful death of MORIAH MODISETTE, a deceased minor, pursuant to Code of Civil Procedure section 377.60, et seq.; and

3. COMES NOW BETHANY MODISETTE, as Personal Representative of and/or Successor-in-Interest to the ESTATE OF MORIAH MODISETTE, a deceased minor, who brings this survival action pursuant to Code of Civil Procedure section 377.30, et seq., and who complain and allege as follows:

4. This action arises out of events which occurred on Christmas Eve 2014 when a driver, distracted while using the "FaceTime" application on an Apple iPhone 6 Plus during operation of his motor vehicle, collided at highway speed with Plaintiffs' stationary motor vehicle and caused severe physical and emotional injuries to BETHANY MODISETTE, JAMES MODISETTE and ISABELLA MODISETTE, as well as injuries to, and the subsequent death of, minor MORIAH MODISETTE (hereafter, the "incident"). Plaintiffs bring this action for damages against Defendant APPLE, INC., and DOES 1 through 20, inclusive, for Defendant's wrongful failure to install and implement the safer, alternative design for which it sought a patent in December 2008 (later issued by the United States Patent Office in April 2014), to "lock out" the ability of drivers to utilize the "FaceTime" application on the Apple iPhone while driving a motor vehicle, which resulted in the injuries sustained by Plaintiffs.

5. Plaintiffs allege APPLE, INC.'s failure to design, manufacture, and sell the Apple iPhone 6 Plus with the patented, safer, alternative design technology already

available to it that would automatically lock-out or block users from utilizing APPLE, INC.'s "FaceTime" application while driving a motor vehicle at highway speed, and failure to warn users that the product was likely to be dangerous when used or misused in a reasonably foreseeable manner and/or instruct on the safe usage of this and similar applications, rendered the Apple iPhone 6 defective when it left defendant APPLE, INC.'s possession, and were a substantial factor in causing plaintiffs' injuries and decedent's death.

6. The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of Defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs at this time, who therefore sue said defendants by such fictitious names. When the true names and capacities of said Defendants have been ascertained, Plaintiffs will amend this complaint accordingly. Plaintiffs are informed and believe, and thereon allege, that each Defendant designated as a DOE is responsible, negligently or in some other actionable manner, for the events and happenings referred to herein, and thereby proximately caused injuries and damages to the Plaintiffs.

7. At all times herein mentioned, each of the Defendants was the agent, servant, employee and/or joint venture of its co-Defendants, and each of them, and at all times each Defendant was acting in the full course and scope of said agency, service, employment and/or joint venture. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendant **APPLE, INC.,** and DOES 1-20, inclusive, were individuals, corporations, partnerships and/or unincorporated associations organized and existing under and by virtue of the laws of the State of California, or the laws of some other state or foreign jurisdiction, and that said Defendants, and each of them, were and are authorized to do, and are doing, business in the State of California, or the laws of some sister state or foreign jurisdiction, and that said Defendants, and each of them, were and are authorized to do, and are doing, business in the State of California, and that said Defendants have regularly conducted business in the State of California and the County of

Santa Clara.

PARTIES, JURISDICTION, AND VENUE

8. Plaintiff BETHANY MODISETTE is an individual who is a resident of the State of Texas and, at all relevant times, was and is the lawful spouse of plaintiff JAMES MODISETTE, and biological mother of minor plaintiff ISABELLA MODISETTE, and the deceased minor MORIAH MODISETTE.

9. Plaintiff JAMES MODISETTE is an individual who is a resident of the State of Texas and, at all relevant times, was and is the lawful spouse of plaintiff BETHANY MODISETTE and biological father of minor plaintiff ISABELLA MODISETTE, and the deceased minor MORIAH MODISETTE.

10. Plaintiff ISABELLA MODISETTE, a minor, is an individual who is a resident of the State of Texas, the biological child of plaintiffs BETHANY MODISETTE and JAMES MODISETTE, and the biological sibling of the deceased minor MORIAH MODISETTE.

11. Decedent MORIAH MODISETTE was, at the time of her death, the biological minor child of plaintiffs BETHANY MODISETTE and JAMES MODISETTE, and the biological sibling of plaintiff ISABELLA MODISETTE

12. Defendant APPLE, INC., was and is, at all relevant times, a corporation domiciled in the State of California, with its principal place of business in the County of Santa Clara, State of California. Defendant APPLE, INC., was and is, at all relevant times, doing business in the State of California and the County of Santa Clara, and its alleged tortious conduct occurred in the State of California and the County of Santa Clara. Therefore, venue is proper pursuant to Code of Civil Procedure sections 395 and 395.5, and this Court may appropriately exercise jurisdiction over this matter pursuant to Code of Civil Procedure section 410.10.

FACTUAL ALLEGATIONS PERTINENT TO ALL CAUSES OF ACTION

The Incident

13. This action arises out of a motor vehicle collision that occurred in Denton County, Texas on December 24, 2014. Immediately before the collision, MORIAH MODISETTE, then a five-year-old girl, was seated in her booster seat in the left rear passenger seat of the family car, a Toyota Camry; JAMES MODISETTE was seated in the driver's seat; BETHANY MODISETTE was seated in the front passenger seat; and minor child ISABELLA MODISETTE was seated in the right rear passenger seat. All occupants of the Modisette family car were properly restrained by seatbelts. The Modisette family was traveling southbound on Interstate 35W when police activity in the southbound lanes caused traffic to slow or stop. The Modisette family car was slowed or stopped immediately prior to the following events due to the backed up traffic that could be visualized ahead.

14. Immediately before the collision, and contemporaneously occurring at the time of the collision, Garrett Wilhelm was also traveling southbound on Interstate 35W in a Toyota 4Runner. Immediately before the collision, and contemporaneously occurring at the time of the collision, Wilhelm was utilizing Defendant APPLE, INC.'s "FaceTime" application on his iPhone 6 Plus, a device designed, manufactured, and sold by Defendant APPLE, INC. "FaceTime" is an application that was originally announced by Defendant APPLE, INC. in June 2010 as part of its new iOS in conjunction with the launch of iPhone4. "FaceTime" has been factory-installed by APPLE, INC. as part of the telephone application on all generations of the Apple iPhone since the iPhone4 (as well as on other "mobile" Apple products, such as the iPad and iPod). "FaceTime" was therefore pre-bundled by APPLE, INC. as part of the suite of factory installed, non-optional applications on the iPhone 6 Plus at issue in this action. "FaceTime" allows an Apple iPhone user to initiate and/or receive, and thereafter to engage in, real-time audio-video communications with another person. All "FaceTime" functions require cognitive, manual, audio, and

visual efforts to operate, any and all of which distract the attention of a driver away from the task of safely operating his or her motor vehicle.

15. As a result of the distraction caused by the use of Defendant APPLE, INC.'s "FaceTime" on Defendant APPLE, INC.'s iPhone 6 Plus while operating his vehicle, Wilhelm's attention was diverted away from the traffic conditions on the road. As a result of that distraction, his Toyota 4Runner, while traveling at full highway speed (65 mph), struck the Modisette family car from behind, causing it to be propelled forward, rotate, and come to a final rest at an angle facing the wrong direction in the right lane of traffic. Then, post-impact, Wilhelm's 4Runner continued its trajectory by rolling up and over the driver's side of the Modisette car. This caused severe damage to the entire vehicle, and such extreme damage to the driver's side of the car that rescue workers labored extensively to extract JAMES MODISETTE and MORIAH MODISETTE from their car. BETHANY MODISETTE and ISABELLA MODISETTE visually and audibly witnessed rescue workers' grueling efforts to extract JAMES MODISETTE and MORIAH MODISETTE from the mangled vehicle, as well as evidence of their co-plaintiffs' serious and life-threatening injuries and struggles to stay alive. JAMES MODISETTE, who was in critical condition, BETHANY MODISETTE, and ISABELLA MODISETTE were transported to the regional medical center for treatment of their injuries. MORIAH MODISETTE, who was also in critical condition, was air-lifted to the area Children's Hospital, where she later died of her injuries. Wilhelm told police at the scene that he was using "FaceTime" on his iPhone at the time of the crash, and the police located his iPhone at the crash scene with the FaceTime application still active.

Distracted Driving

16. "Distracted driving" is a specific type of inattention that occurs when a driver's attention is diverted away from the task of driving to focus on another activity. Driver distraction can occur in different ways, broadly categorized into the following types:

- Visual distraction: Tasks that require the driver to look away from the roadway to visually obtain information (i.e. looking at, or watching, the screen of an Apple iPhone 6 Plus while engaged in a "FaceTime" video session);
- Manual distraction: Tasks that require the driver to take one or both hands off the steering wheel to manipulate a device (i.e. holding an Apple iPhone 6 Plus while making, receiving, and/or engaging in a "FaceTime" video session);
- Cognitive distraction: Tasks that require the driver to avert his mental attention away from the driving task (i.e. engaging in video communication with another person in a "FaceTime" session while watching and holding the Apple iPhone 6 Plus).

17. According to the National Highway Traffic Safety Administration ("NHTSA"), at any given daylight moment across America, approximately 660,000 drivers are using cell phones or manipulating electronic devices while driving. [**Exhibit A**: "What is Distracted Driving? Key Facts and Statistics".] Engaging in visual-manual sub-tasks (such as engaging in video communication with another person in a "FaceTime" session while watching and holding the Apple iPhone 6 Plus) associated with the use of hand-held phones and other portable devices increases the risk of a crash by three times. [**Exhibit A**.]

18. In 2012, an estimated 421,000 people were injured in motor vehicle crashes involving a distracted driver. This was a 9% increase from the estimated 387,000 people injured in 2011. [**Exhibit B**: Dkt. No. NHTSA-2013-0137, Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Devices.] According to NHTSA, highway deaths in just the first six months of 2016 increased 10.4%. [Exhibit C: Neal Boudette, "Auto Safety Regulators Seek a Driver Mode to Block Apps," *The New York Times*, November 22, 2016 (http://www.nytimes.com/2016/11/22/business/auto-safety-regulators-seek-a-driver-mode-to-block-apps.html?smprod=nytcore-ipad&smid=nytcore-ipad-share).] This was in addition to the 2015 spike in traffic fatalities, which saw an 8.8%

increase, the largest annual percentage increase in traffic deaths in 50 years. [**Exhibit C**, p.5.] NHTSA Administrator Dr. Mark Rosenkind said, "With driver distraction one of the factors behind the rise of traffic fatalities, we are committed to working with the industry to ensure that mobile devices are designed to keep drivers' eyes where they belong—on the road." [**Exhibit D**: NHTSA Press Release, "U.S. DOT proposes guidelines to address driver distraction caused by mobile devices in vehicles," November 23, 2016.]

19. Time distortion and dissociation occurs during use of smartphones. That is, a user is not able to accurately perceive the amount of time it takes to pick up the phone, read it, and/or reply. This is especially dangerous during operation of a vehicle at highway speeds. Commentators and studies demonstrate that the level of impairment associated with the use of smartphones while driving is as profound and dangerous as drunk driving. [*See, e.g.*, "Texting While Driving: The new Drunk Driving," by Stephanie Hanes and Julie Masis, *Christian Science Monitor*, November 5, 2009; "Texting While Driving: How Dangerous Is It?" by Michael Austin, *Car & Driver*, June 2009; *see also*, Strayer, DL, et al., "A Comparison of the Cell Phone Driver and the Drunk Driver: Human Factors," *The Journal of the Human Factors and Ergonomics Society*, Vol. 48, No. 2 (2006).] Text messaging requires visual, manual and cognitive attention from the driver. For every text message sent or received, the average driver's attention is off the road for twenty-three seconds. [**Exhibit B.**] When traveling at 55 mph, that is enough time to cover a third of a mile --- blindfolded. *Id.*

20. On May 14, 2012, a published, independent survey conducted by a research firm for AT&T demonstrated that while 97% of the 1,200 teens surveyed agreed texting while driving was dangerous, and two-thirds acknowledged that it was very dangerous, 43% still admitted to having texted or emailed while driving in the previous three months. [**Exhibit E**: "Despite Dangers U.S. Teens Text and Drive: Poll," Reuters.com, May 14, 2012.] The survey showed that 89% of teens expect a reply to emails or text messages right away, or within five minutes. [*Id.*] In 2011, a survey relied upon by the United

States Centers for Disease Control found that 31.2% of U.S. drivers aged 18-64 years had read or sent text or email messages at least once while driving in the past 30 days prior to the survey. [**Exhibit F**: "Mobile Device Use While Driving – United States and Seven European Countries," 2011.]

21. An anonymous survey reported in June 2012 found that nearly half of high school seniors admit they text or email while driving. [**Exhibit G**: "CDC: Nearly 60 Percent of Teens Text While Driving," NBCNews.com.] In its 2012 "Traffic Safety Culture Index" survey, the AAA Foundation for Traffic Safety found that over 95% of people surveyed believed texting or emailing, and checking or updating social media, behind the wheel are serious threats to their personal safety while driving. [*See*, "AAA Foundation for Traffic Safety. Distracted and Risk-Prone Drivers: Select Findings from the 2012 Traffic Safety Culture Index," January 2013.] Despite expressing strong disapproval of these behaviors, nearly 27% of the respondents reported typing or sending a text or email while driving at least once in the 30 days prior to the survey, and nearly 35% reported reading a text or email while driving during the same time frame. [**Exhibit H**: "Distracted Driving: Survey of the States," Governor's Highway Safety Association, July 2013, p. 7.] As of July 2013, forty-one states and the District of Columbia had instituted bans on texting while driving, a 45% increase in the number of states instituting texting while driving bans since 2010. [**Exhibit H**, p. 3, Figure 1.] Texas, however, has no such ban.

22. Defendant APPLE, INC., released the first generation Apple iPhone on June 29, 2007 the Apple iPhone 3G on July 11, 2008; the Apple iPhone 3Gs on June 19, 2009; the Apple iPhone 4 on June 24, 2010; the Apple iPhone 4s on October 14, 2011; the Apple iPhone 5 on September 21, 2012; and the Apple iPhone 5C and 5s on September 20, 2013. As of April 30, 2013, there were six generations of iPhone models, and each release was accompanied by one of five major releases of the iOS iPhone operating system. In this time frame, nearly 500 million units were sold worldwide. The astounding volume of sales

of the iPhone have been credited with reshaping the smartphone industry, which made Defendant APPLE, INC. one of the world's most valuable publicly-traded companies in 2011 and 2012. In the fourth quarter of 2012, the Apple iPhone 5 and Apple iPhone 4s were the best-selling cell phones, with sales of 27.4 million and 17.4 million units, respectively. From 2007 to 2011, Defendant APPLE, INC. spent $647 million on advertising in the U.S. for the iPhone.

23. On November 21, 2016, the National Highway Traffic Safety Administration ("NHTSA") released proposed voluntary guidelines to reduce and/or eliminate driver distraction caused by visual-manual interfaces of portable electronic devices (e.g. the iPhone 6 Plus) used in vehicles. [**Exhibit B.**] The Driver Distraction Guidelines acknowledge that crashes are caused by smartphones used by drivers while traveling at highway speeds: "The crash data indicate that visual-manual interaction (an action that requires a user to look away from the roadway and manipulate a button or interface) with portable devices, particularly cell phones, is often the main distraction for drivers involved in crashes.[1]" Of the 967,000 distraction-affected crashes in 2013, 7 percent (7%) involved the use of cell phones and resulted in 33,000 people injured. [**Exhibit B**, at p. 6.]

Smartphone Compulsion/Addiction

24. On November 5, 2014, a survey commissioned by AT&T and conducted by Dr. David Greenfield, director of The Center for Internet and Technology Addiction, was released. The survey reported there is near-universal agreement that texting while driving is dangerous, yet three-fourths of drivers have texted while driving. [**Exhibit J**: "2014 AT&T It Can Wait -- Compulsion Survey."] Greenfeld, an Associate Professor of Clinical Psychiatry at the University of Connecticut School of Medicine, refers to smartphones as "the world's smallest slot machines" because they affect the brain in similar ways that

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[1] In 2014, there were 385 fatal crashes that involved the use of a cell phone, resulting in 404 fatalities. These crashes represent 13 percent of the distraction-affected fatal crashes or 1.3 percent of all fatal crashes. Exhibit B., *at 5.*

gambling or drugs can (dopamine levels increase as you anticipate messages, and that leads to higher levels of pleasure). [**Exhibit K**: "Survey Finds People Text and Drive Knowing Dangers," *El Paso Times*, November 5, 2014.] An iPhone operates on a Variable Ratio Schedule of Reinforcement, similar to a slot machine, and the user doesn't know whether the information will be satisfying or discomfiting. This triggers a second dopamine release. Therefore, the user checks the smart phone over and over in an unconscious manner, i.e. compulsively.

25. The body of studies and data that demonstrate the compulsive/addictive nature of smartphone use, even while driving, is extensive and incorporated by reference below:

- 2014 AT&T It Can Wait Survey Report, Greenfield et al., 2014
- "The Link Between Texting and Motor Vehicle Collision Frequency in The Orthopaedic Trauma Population," Issar, NM et. al, Journal of Injury & Violence, June 2013; 5(2): 95-100
- "Addressing the Texting and Driving Epidemic: Mortality Salience Priming Effect on Attitudes and Behavioral Intentions," Kareklas and Muehling, Journal of Consumer Affairs, Summer 2014; Volume 48, Number 2, pp 223-250
- "Latent Class Analysis On Internet and Smartphone Addiction in College Students," Mok, Jung-Yeon, Neuropsychiatric Disease and Treatment, May 2014, Dove Press
- "Objective Assessment of the Effect of Texting While Driving: A Simulator Study," Bendak, S., International Journal of Injury Control and Safety Promotion, 22:4, 387-392
- "Texting and Driving," Moreno, M., JAMA Pediatric Patients Page, www.jamapediatrics.com
- "Post and During Event Effect of Cell Phone Talking and Texting on Driving Performance – A Driving Simulator Study," Thapa, R., et. al., 2015, Traffic Injury

Prevention, 16:5, 461-467

- "I Need My Smartphone: A Hierarchical Model of Personality and Cell-Phone Addiction," Roberts, J.A., et. al., Personality and Individual Differences, Feb. 2015, 79: 13-19
- "Modeling Habitual and Addictive Smartphone Behavior: The Role of Smartphone Usage Types, Emotional Intelligence, Social Stress, Self-Regulation, Age, and Gender," Alexander, J.A.M., et. al., Computers in Human Behavior, Jan. 2015, 45: 411-420
- "The Relationship Between Life Stress and Smartphone Addiction On a Taiwanese University Student: A Mediation Model of Learning Self-Efficacy and Social Self-Efficacy," Shao-I, Chiu, Computers in Human Behavior, Feb. 2014, 34: 49-57
- "Smartphone Addiction Among University Students in Light of Some Variables," Suliman, S.A., et. al., Computers in Human Behavior, Mar. 2016, 61: 155-164
- "Smartphone Addiction and Its Relationship with Social Anxiety and Loneliness," Darcin, A.E., et. al., Behaviour & Information Technology, 2016, 35: 7, 520-525
- "Time Distortion Associated with Smartphone Addiction: Identifying Smartphone Addiction Via a Mobile Application," Lin, Yu-Hsuan, et. al. Journal of Psychiatric Research, April 2015, 65: 139-145
- "A Systemic Smartphone Usage Pattern Analysis: Focusing on Smartphone Addiction Issues," Ahn, H., et. al., International Journal of Multimedia and Ubiquitous Engineering, 2014, Vol. 9, No. 6, pp. 9-14
- "Texting and Driving: Can It Be Explained by the General Theory of Crime?" Quisenberry, P.N., American Journal of Criminal Justice, 2015, 40: 303-316
- "Texting While Driving: The Development and Validation of the Distracted Driving Survey and Risk Score Among Young Adults," Bergmark, R.W., et. al., Injury Epidemiology, 2016, 3:7
- "Mutual Interferences of Driving and Texting Performance," He, J., Computers in

Human Behavior, 2015, 52: 115-123

- "Texting While Driving and Other Risky Motor Vehicle Behaviors Among US High School Students," Olsen, E.O., et. al., Pediatrics, June 2013, Vol. 131, No. 6.
- "Cell Phoning and Texting While Driving: Multitasking Ourselves to Death," Telemaque, J.H.R., et. al., SAGE Open Access, 2015: 1-5
- "Texting While Driving as Impulsive Choice: A Behavioral Economic Analysis," Hayashi, Y., et. al., Accident Analysis and Prevention, 2015, 83: 182-189
- "The Effects of Texting On Driving Performance in A Driving Simulator: The Influence of Driver Age," Rumschlag, G., et. al., Accident Analysis and Prevention, 2015, 74: 145-149
- "Texting While Driving On Automatic: Consider The Frequency-Independent Side of Habit," Bayer & Campbell, Computers in Human Behavior, 2012, 28: 2083-2090
- "A Meta-Analysis of the Effects of Texting On Driving," Caird, J.K., et. al., Accident Analysis and Prevention, 2014, 71: 311-318
- "Compulsive Cell Phone Use and History of Motor Vehicle Crash," O'Connor, S., et. al., Journal of Adolescent Health, (2013), 53: 512-519
- "Habits Make Smartphone Use More Pervasive," Oulasvirta, A., et. al., Pers Ubiquit Comput, 2011
- "What Is the Role of Dopamine in Reward: Hedonic Impact, Reward Learning, or Incentive Salience?" Berridge & Robinson, Brain Research Reviews, 1998, 28: 309-369
- "The Nature of Internet: Psychological Factors in Compulsive Internet Use," Greenfield, D. N., Paper presentation at the 1999 American Psychological Association Convention, Boston, Massachusetts (1999a)
- "Psychological Characteristics of Compulsive Internet Use: A Preliminary Analysis," Greenfield, D.N., CyberPsychology & Behavior, 8(5), 403-412.

- "What Makes Internet Use Addictive?" Greenfield, D.N., In K. Young & Abreu, C.N. Internet Addiction: a handbook for evaluation and treatment. Wiley: New York
- "A Meta-Analysis of the Effects of Texting On Driving," Caird, J., et. al., Accident Analysis and Prevention (2014), 71:311-318
- "Smartphone Addiction Among University Students in The Light of Some Variables," Aijomaa, S., et. al., Computers in Human Behavior, 2016, 61:155-164
- "Internet and Gaming Addiction: A Systematic Literature Review of Neuroimaging Studies," Kuss & Griffiths, Brain Sciences, 2012, 347-374
- "Virtual Addiction: Why We Become Addicted to The Internet and Digital Media Technology," Greenfield, D.N., 1st International Congress on Technology Addiction, Istanbul, Turkey
- "Internet Use Disorder: Clinical and Treatment Implications of Compulsive Internet and Video Game Use in Adolescents," Greenfield, D.N., Addictions and the Adolescent Brain, Child and Adolescent Psychiatric Society of Greater Washington Spring Symposium, Suburban Hospital, Bethesda, Maryland
- "The Choice to Text and Drive in Younger Drivers: Behavior May Shape Attitude," Atchley, P., et. al., Accident Analysis and Prevention, 2011, 43:134-142

APPLE, INC.'s Knowledge of the Dangers of iPhone Use While Driving

26. Defendant APPLE, INC. has had the technology to prevent these events, and the Modisette's injuries specifically, since at least December 12, 2008, when it filed an application with the U.S Patent Office for a "driver handheld computing device lock-out." Defendant APPLE, INC.'s 2008 patent application reveals that Apple expressly knew and/or should have known of the risks to human life and safety associated with, and created by, the intended or reasonably foreseeable use and misuse of certain functions available on the iPhone, such as texting, while operating a motor vehicle.

27. The application's "Abstract" indicates the proposed invention was specifically designed to "disable the ability of a handheld computing device to perform certain functions, such as texting, *while one is driving*." It explains the ease with which this design change could be implemented:

> "In one embodiment, a handheld computing device can provide a lock-out mechanism without requiring any modifications or additions to a vehicle by using a motion analyzer, a scenery analyzer and a lock-out mechanism. In other embodiments, the handheld computing device can provide a lock-out mechanism with modifications or additions to the vehicle, including the use of signals transmitted by the vehicle or by the vehicle key when engaged in the vehicle." [**Exhibit L**: Elias, J.G., "Driver Handheld Computing Device," U.S. Patent 8,706,143, issued April 22, 2014.]

The '143 Patent provides various examples to prevent iPhone use by drivers, but the most logical embodiment consists of a "lock-out mechanism configured to disable" one or more iPhone functions when "the output of the motion analyzer indicates" that the iPhone is "in motion beyond a predetermined threshold level (e.g. speed)." [Exhibit L at Col. 3, L 41-45.] On information and belief, the iPhone 6 Plus was sold and distributed with GPS and accelerometer capability. Yet Defendant APPLE, INC. failed to configure the iPhone 6 Plus to "lock-out" the ability for a driver to utilize APPLE, INC.'s "FaceTime" application, while driving at highway speed. Once the predetermined speed threshold is reached, and "lock out engaged," the same embodiment describes a "scenery analyzer" that "can be configured to determine whether a holder of a handheld computing device is located within safe operating area of vehicle." [Exhibit L, at Col. 3, L 33-35.] "The lock out mechanism can be configured to disable one or more functions" of an iPhone "based on the output of the motion analyzer, and enable the one or more functions" of an iPhone "based on the output of the scenery analyzer." [Exhibit L, at Col. 3, L 35-40.] According to APPLE, INC., "this can enables (sic) passengers in moving vehicles to operate" an iPhone "without one or more of its functions being disabled." [Exhibit L, at Col. 3, L 52-55.]

28. The embodiments described and Claim 1 of the '143 patent could have been configured by Defendant APPLE, INC. (but encrypted to prevent modification by the user) through programming to allow or not allow certain applications deemed to be unsafe, or applications deemed to be necessary for the utility of the iPhone 6 Plus. As the '143 Patent states: "Although embodiments of this invention have been fully described with reference to the accompanying drawings, it is to be noted that various changes and modification will become apparent to those skilled in the art. Such changes and modifications are to be understood as being included within the scope of embodiments of this invention as defined by the appended claims." [Exhibit L, at Col. 7, L 6-12.]

29. Regarding "Field of the Invention," the application states: "This relates generally to safe operation of handheld computing devices, and more particularly, to providing a lock-out mechanism to prevent operation of one or more functions of handheld computing devices by drivers *when operating vehicles*."

30. Defendant APPLE, INC. actually used and relied on facts demonstrating the risk of auto accidents caused by distractions "such as text messaging on handheld computing devices" to support and encourage the granting of this patent. Relying on study published in 2006, a year before the first iPhone was released and 8 years before the fatal crash at issue here, Defendant APPLE, INC. described the "Background of the Invention" as follows:

> "Texting while driving has become a major concern of parents, law enforcement and the general public. An April 2006 study found that 80 percent of auto accidents are caused by distractions such as applying makeup, eating, and text messaging on handheld computing devices (texting). According to the Liberty Mutual Research Institute for Safety and Students Against Destruction Decisions, teens report that texting while driving is dangerous, but this is often not enough motivation to end the practice. New laws are being written to make texting illegal while driving. However, law enforcement officials report that their ability to catch offenders is limited because the texting device can be used out of sight (e.g. on the driver's lap), thus making texting while driving even more dangerous. Texting while driving has become so widespread it is doubtful that law

enforcement will have any significant effect on stopping the practice.

That patent, United States Patent 8,706,143, was subsequently granted, and published to the world at Apple's request by the U.S. Patent Office on April 22, 2014.

31. By that time, according to Time magazine, the technology was "old news." Time wrote:

> "The idea that a master control device placed in your car or truck or rental vehicle might automatically deactivate your smartphone's ability to text has been around for awhile: There's an app that'll disable phone texting if it detects motion above 10 m.p.h., for instance, or another from AT&T that'll do so the same once you reach 25 mph...They're not really news...Bear that in mind as you're reading reports that Apple might (gasp!) have lockout designs on your handheld computing device while operating a motor vehicle.... Apple filed this particular patent back in 2008---this is just the patent coming to light."

Time referred to Apple's patent as "pretty much like the apps mentioned above." It cautioned: "Apple's imprimatur could carry significantly more water, of course, if it's working with automotive manufactures to make the technology work automatically (or optionally) with its iOS device lineup. And while anti-texting app makers like Cinqpoint have talked about offering iOS versions down the line, your alternatives in iOS at this point are limited to workarounds that *don't actually disable texting, because Apple doesn't allow it*." [**Exhibit N**, "Apple's Patent to Auto-Disable Texting While Driving is Old News," *Time*, April 22, 2014, emphasis added.)

32. The APPLE, INC. iPhone 6 Plus that was a substantial factor in causing or contributing to cause this accident was defective because, at the time of the collision in question, no universal solution or "built-in" method of disabling the sending or receiving of text messages, emails, video calling services, or other notifications while driving had been implemented by APPLE, INC. for the iPhone. Despite both the technology since 2008 *and* a patent on that technology so it could exploit its patent without competition for 20 years, Defendant APPLE, INC. has consistently and continuously failed to implement a safer, alternative design that would lock-out and prevent use of "FaceTime" while driving,

and failed again to do so when it released the iPhone 6 Plus on September 19, 2014, three months before the incident which gives rise to this action. Plaintiffs allege that even though Defendant APPLE, INC. has recognized for years prior to the accident at issue the compulsory, addictive, and dangerous nature of iPhone usage by drivers, it has nevertheless voluntarily and intentionally failed to implement this technology.

33. As of August 19, 2012, Defendant APPLE, INC.'s sales of its iPhone alone were worth more than the sales all of Microsoft products combined: "One APPLE, INC. product, something that didn't exist five years ago, has higher sales than everything Microsoft has to offer. More than Windows, Office, Xbox, Bing, Windows Phone, and every other product that Microsoft has created since 1975. In the quarter ended March 31, 2012, iPhone had sales of $22.7 billion; Microsoft as an entire company - $17.4 billion." [**Exhibit I**: "APPLE, INC.'s iPhone Is Now Worth More Than All of Microsoft," *Forbes*, August 19, 2012.] As of July 2013, the U.S. wireless industry was valued at $195.5 billion, which is larger than publishing, agriculture, hotels, and lodging, air transportation, motion picture recording and motor vehicle manufacturing segments. It rivals the computer system design service and oil and gas extraction industries. [**Exhibit H**, p. 2.] Plaintiffs further allege Defendant APPLE, INC. was motivated to omit implementation of this safer, alternative design for the purpose protecting its position in the marketplace and thereby increasing its profits.

34. Further, Wilhelm's conduct (operating APPLE, INC.'s "FaceTime" application on his Apple iPhone 6 Plus while traveling at highway speeds), is a derivative of APPLE, INC.'s conduct (failure to implement its own safer technology to "lock out" the use of the "FaceTime" application for a driver while travelling at highway speeds). At the time of the collision in question, the iPhone utilized by Wilhelm contained the necessary hardware (to be configured with software) to automatically disable or "lock-out" the ability to utilize APPLE, INC.'s "FaceTime" application. However, APPLE, INC. failed to configure the iPhone to automatically "lock-out" the ability to utilize "FaceTime" while

driving at highway speeds, despite having the technical capability to do so, and the knowledge that the use of the iPhone while driving at highway speeds created an unreasonable risk of harm to users and innocent bystanders. The conduct of Wilhelm, utilizing the "FaceTime" application on his iPhone 6 Plus while traveling at highway speeds, is inextricably intertwined with the conduct of APPLE, INC. wherein APPLE, INC., knowing the dangers involved with the use of the iPhone while driving: (a) designed an iPhone to alert Wilhelm of incoming "FaceTime" requests, and allow Wilhelm to conduct "FaceTime" sessions while driving at highway speeds; and (b) provided said iPhone to Wilhelm without implementing its own technology to automatically disable or "lock-out" the ability of driver to conduct "FaceTime" sessions while traveling at highway speeds.

FIRST CAUSE OF ACTION

(General Negligence)

PLAINTIFFS COMPLAIN OF DEFENDANT APPLE, INC., AND DOES 1-20, THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AND ALLEGE AS FOLLOWS:

35. Plaintiffs incorporate by reference, as though fully set forth herein, all of the allegations set forth above.

36. Civil Code section 1714(a) provides that "[e]veryone is responsible, not only for the result of his or her willful acts, but also for injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person. Here, there is no statutory provision which would create or permit an exception to this fundamental principle, such that defendants are liable for injuries to the plaintiffs caused by their failure to exercise reasonable care in the circumstances.

37. Defendant APPLE, INC. and Does 1-20, inclusive, and each of them, was, at all times mentioned herein, engaged in the business of researching, manufacturing, fabricating, designing, modifying, labeling, assembling, distributing, offering for sale, supplying, selling, inspecting, servicing, repairing, marketing, warranting, packaging, and

advertising personal communication and computing devices including, but not limited to, Apple iPhones.

38. Defendant APPLE, INC. and Does 1-20, inclusive, and each of them, singularly and jointly, negligently and carelessly researched, specified, designed, manufactured, fabricated, modified, tested or failed to test, warned or failed to warn, labeled, assembled, distributed, supplied, sold, inspected, serviced, failed to recall, failed to retrofit, repaired, marketed, warranted, packaged, and advertised the iPhone 6 Plus. Defendant APPLE, INC. specifically designed and manufactured its iPhones to include factory-installed, non-optional applications such as "Messages," "Phone", and "FaceTime" applications, and the camera/video feature, such that those applications could be accessed and used in any situation, including while operating a motor vehicle. Defendant APPLE, INC. knew or reasonably should have known that iPhone 6 Plus users would use those factory-installed and non-optional features, including "FaceTime," while operating a motor vehicle, and that they would foreseeably be distracted from the task of safe driving as a result of using those freely available features while driving, thereby foreseeably increasing the risk of injury and death as a result of distracted driving. Plaintiffs herein allege that APPLE, INC.'s negligence was a substantial factor in causing or contributing to cause plaintiffs' injuries.

39. Defendant APPLE, INC. had a legal duty to Plaintiffs to use due care in the design, manufacture, and sale of its iPhone 6 Plus because of the foreseeability of the very harm plaintiffs suffered --- injuries sustained in a motor vehicle accident caused by the distraction of another driver who was using Apple's "FaceTime" application during the operation of his vehicle while traveling at high speeds --- because APPLE, INC. was specifically and expressly aware at least as early as 2008 of statistics demonstrating the risk of injury occasioned by drivers using hand-held devices to engage in conduct which foreseeably distracted them from the task of driving safely and in a manner to avoid injury based on the factual assertions it made in its 2008 application for a patent on technology

that would avoid or limit those risks.

40. Defendant APPLE, INC. breached that duty by failing to use reasonable care to design and manufacture its iPhone 6 Plus with the safer, alternative "lock-out" technology it had already developed to prevent the use of its pre-installed "FaceTime" application during a driver's operation of a motor vehicle. APPLE, INC. was expressly aware at least as of 2008 of the risks of harm to persons and property from that foreseeable conduct based on statistical data publicly reported in 2006, since it expressly relied on that data in supporting its application to the U.S.P.O. for a patent on a safer design it had developed to "prevent operation of one or more functions of handheld computing devices by drivers *when operating vehicles*." Defendant APPLE, INC.'s 2008 patent application reveals that Apple expressly knew and/or should have known of the risks to human life and safety associated with, and created by, the intended or reasonably foreseeable use and misuse of certain functions available on the iPhone, such as texting, while operating a motor vehicle. APPLE, INC. further knew or should have known that individuals would foreseeably use or misuse its iPhone 6 Plus, and its interactive, pre-installed applications such as "FaceTime," while driving.

41. Despite the fact that Defendant APPLE, INC. has had the technology since at least 2008 to implement "a lock-out mechanism without requiring any modifications or additions to a vehicle by using a motion analyzer, a scenery analyzer and a lock-out mechanism," APPLE, INC. has never implemented that technology on any of its iPhones. Defendant APPLE, INC. further breached its duty to Plaintiffs by:

a. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism that is configured to "lock-out" the ability to utilize APPLE, INC.'S "FaceTime" application while driving at highway speed.

b. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism that is configured to "lock-out" the ability to receive notifications of requests for a "FaceTime" session.

c. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism that is configured to "lock-out" the ability to utilize the iPhone 6 Plus to access and use applications that are unsafe to use while driving.

d. Failing to provide a safer alternative design that would have prevented or significantly reduced the risk of Plaintiffs' injuries, without substantially impairing the utility of the iPhone 6 Plus.

e. Failing to properly warn of the hazards and/or guard against the hazards associated with the use of "FaceTime" and the iPhone 6 Plus while driving at highway speed.

f. Such other acts or omissions that may be learned in discovery or at trial.

42. Defendant APPLE, INC.'s failure to exercise reasonable care by implementing some version of the technology it already developed and paid for to minimize or decrease the risk of its iPhone being foreseeably used or misused in a way that causes driver distraction resulted in the sale of an iPhone 6 Plus whose design foreseeably allowed the driver to use the "FaceTime" application in its intended way while driving a motor vehicle at highway speed and simultaneously engaging in the cognitive, manual, visual, and auditory steps necessary to making, receiving, and/or engaging in a "FaceTime" communication.

43. APPLE, INC.'s failure to exercise reasonable care caused or contributed to the risk of causing Garrett Wilhelm to use "FaceTime" while driving his car on December 24, 2014, which caused him to be distracted from the conditions on the road ahead and thereby to fail to appreciate in time the danger of causing the injuries and death actually suffered by plaintiffs. The driver's conduct was foreseeable to APPLE, INC., and the risk of his conduct (injury to another person or property as a result of distracted driving) was also foreseeable to APPLE, INC. Therefore, Defendant APPLE, INC. breached a duty of care to plaintiffs, which was a substantial factor in causing or contributing to cause their harm.

44. As a direct and proximate result of the aforesaid conduct of Defendant APPLE, INC. and Does 1-20, inclusive, their "alternate entities," and each of them, Plaintiffs BETHANY MODISETTE, JAMES MODISETTE, and ISABELLA MODISETTE have incurred, are presently incurring, and will incur in the future, liability for physicians, surgeons, nurses, hospital care, medicine, hospices, X-rays and other medical treatment, the true and exact amount thereof being presently unknown to Plaintiffs, subject to proof at trial.

45. As a further, direct and proximate result of the said conduct of Defendant APPLE, INC. and Does 1-20, inclusive, their "alternate entities," and each of them, Plaintiffs BETHANY MODISETTE, JAMES MODISETTE, and ISABELLA MODISETTE have incurred, are presently incurring, and will incur in the future a loss of income, wages, profits and commissions, and a diminishment of earning potential.

46. As a further, direct and proximate result of the aforesaid conduct of Defendant APPLE, INC. and Does 1-20, inclusive, their "alternate entities," and each of them, Plaintiffs BETHANY MODISETTE, JAMES MODISETTE, and ISABELLA MODISETTE have suffered, and will continue to suffer, permanent and future injuries to their persons, bodies and health including, but not limited to, pain, discomfort, disfigurement, loss of weight, loss of appetite, fatigue, somnolence, lethargy, disease, and other physical symptoms, and the mental and emotional distress attendant thereto, all to their general damage in a sum in excess of the jurisdictional limit of a limited civil case and subject to proof at trial.

47. As a further, direct and proximate result of the said conduct of Defendant APPLE, INC. and Does 1-20, inclusive, their "alternate entities," and each of them, Plaintiffs BETHANY MODISETTE and JAMES MODISETTE are also entitled to recover damages caused by the wrongful death of their minor child, MORIAH MODISETTE, including the value of financial support, if any, that MORIAH MODISETTE would have contributed to the family during either her life expectancy or plaintiffs BETHANY

MODISETTE and JAMES MODISETTE's life expectancy, the reasonable value of household services that MORIAH MODISETTE would have provided, funeral and burial expenses, and other pecuniary losses, the true and exact amount thereof being presently unknown to Plaintiffs, subject to proof at trial. Plaintiffs JAMES MODISETTE and BETHANY MODISETTE have been, and in the future will be, deprived of the love, companionship, comfort, care, assistance, protection, affection, society and moral support of Decedent MORIAH MODISETTE, the full nature and extent of which are not yet known to Plaintiffs, all to their general damage in a sum in excess of the jurisdictional limit of a limited civil case and subject to proof at trial.

SECOND CAUSE OF ACTION

(Gross Negligence)

PLAINTIFFS COMPLAIN OF DEFENDANT APPLE, INC., AND DOES 1-20, THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AND ALLEGE AS FOLLOWS:

48. Plaintiffs incorporate by reference, as though fully set forth herein, all of the allegations set forth above.

49. The acts, and omissions to act, by defendant APPLE, INC. as set forth above also constitute gross negligence. Defendant APPLE, INC. had, and has, a duty to plaintiffs and others similarly-situated to use reasonable care to prevent harm from the intended and foreseeable use or misuse of the applications it pre-installs and bundles on its iPhone, such as "Messages," "Phone," and "FaceTime." Defendant APPLE, INC. has had the technology to prevent these events, and the Modisette's injuries specifically, since at least December 12, 2008, when it filed an application with the U.S Patent Office for a "driver handheld computing device lock-out." The patent application reveals that Apple expressly knew and/or should have known of the risks to human life and safety associated with, and created by, the intended or reasonably foreseeable use and misuse of certain functions available on the iPhone, such as texting through use of the applications such as "Messages," while operating a motor vehicle. APPLE, INC.'s "Abstract" indicates the

proposed invention was specifically designed to "disable the ability of a handheld computing device to perform certain functions, such as texting, *while one is driving*." APPLE, INC. explained the ease with which this design change could be implemented:

> "In one embodiment, a handheld computing device can provide a lock-out mechanism without requiring any modifications or additions to a vehicle by using a motion analyzer, a scenery analyzer and a lock-out mechanism. In other embodiments, the handheld computing device can provide a lock-out mechanism with modifications or additions to the vehicle, including the use of signals transmitted by the vehicle or by the vehicle key when engaged in the vehicle."

Regarding "Field of the Invention," APPLE, INC. stated: "This relates generally to safe operation of handheld computing devices, and more particularly, to providing a lock-out mechanism to prevent operation of one or more functions of handheld computing devices by drivers *when operating vehicles*." Yet Defendant APPLE, INC. has continuously chosen, and continues to chose, not to configure the iPhone 6 Plus, or any prior or subsequent generation iPhone, to "lock-out" the ability of a driver to utilize APPLE, INC.'s "FaceTime" application while driving at highway speeds.

50. The '143 Patent provides various examples to prevent iPhone use by drivers, but the most logical embodiment consists of a "lock-out mechanism configured to disable" one or more iPhone functions when "the output of the motion analyzer indicates" that the iPhone is "in motion beyond a predetermined threshold level (e.g. speed)." On information and belief, the iPhone 6 Plus was sold and distributed with GPS and accelerometer capability. Once the predetermined speed threshold is reached, and "lock out engaged," the same embodiment describes a "scenery analyzer" that "can be configured to determine whether a holder of a handheld computing device is located within safe operating area of vehicle." "The lock out mechanism can be configured to disable one or more functions" of an iPhone "based on the output of the motion analyzer, and enable the one or more functions" of an iPhone "based on the output of the scenery analyzer." According to APPLE, INC., "this can enables (sic) passengers in moving vehicles to

operate" an iPhone "without one or more of its functions being disabled." Yet Defendant APPLE, INC. chose not to configure the iPhone 6 Plus to "lock-out" the ability for a driver to utilize APPLE, INC.'s "FaceTime" application while driving at highway speed.

51. The embodiments described in Claim 1 of the '143 patent could have been configured by Defendant APPLE, INC. (but encrypted to prevent modification by the user) through programming to allow or not allow certain applications deemed to be unsafe, or applications deemed to be necessary for the utility of the iPhone 6 Plus. As the '143 Patent states: "Although embodiments of this invention have been fully described with reference to the accompanying drawings, it is to be noted that various changes and modification will become apparent to those skilled in the art. Such changes and modifications are to be understood as being included within the scope of embodiments of this invention as defined by the appended claims." Yet Defendant APPLE, INC. has continuously chosen, and continues to chose, not to configure the iPhone 6 Plus, or any prior or subsequent generation iPhone, to "lock-out" the ability of a driver to utilize APPLE, INC.'s "FaceTime" application while driving at highway speeds.

52. In fact, Defendant APPLE, INC. actually *used and relied on* the startling and copious factual evidence available to it as early as 2006, before it ever launched the first generation iPhone in 2007, using that evidence to demonstrate to the Patent Office the extreme risk of auto accidents caused by distractions "such as text messaging on handheld computing devices" specifically to support and encourage the granting of this patent. Relying on a study published in 2006, a year before the first iPhone was released and 8 years before the fatal crash at issue here, Defendant APPLE, INC. described the "Background of the Invention" as follows:

> "Texting while driving has become a major concern of parents, law enforcement and the general public. An April 2006 study found that 80 percent of auto accidents are caused by distractions such as applying makeup, eating, and text messaging on handheld computing devices (texting). According to the Liberty Mutual Research Institute for Safety and Students Against Destruction Decisions, teens report that texting while driving is dangerous, but this is often not enough motivation to end the

> practice. New laws are being written to make texting illegal while driving. However, law enforcement officials report that their ability to catch offenders is limited because the texting device can be used out of sight (e.g. on the driver's lap), thus making texting while driving even more dangerous. **Texting while driving has become so widespread it is doubtful that law enforcement will have any significant effect on stopping the practice.**"

The clear intent of this language was to persuade the Patent Office that this invention was novel, would be useful, and was deserving of patent protection. It worked. The patent, United States Patent 8,706,143, was subsequently granted, and published to the world at Apple's request by the U.S. Patent Office on April 22, 2014.

53. By that time, according to Time magazine, the technology was "old news." It cautioned: "Apple's imprimatur could carry significantly more water, of course, if it's working with automotive manufacturers to make the technology work automatically (or optionally) with its iOS device lineup. And while anti-texting app makers like Cinqpoint have talked about offering iOS versions down the line, your alternatives in iOS at this point are limited to workarounds that don't actually disable texting, because Apple doesn't allow it."

54. Despite its admitted knowledge of the fact that users will foreseeably operate the "FaceTime" application while driving, the fact that doing so carries a high and foreseeable risk of distracted driving which substantially increases the risk of causing an auto-related injury or death, and despite having both the technology and a patent to exploit for the next 18 years, APPLE, INC., has *never* implemented any such design change. With each successive launch of a new iOS and a "new and improved" generation of iPhone, no improvements have ever taken the form of safety mechanisms to prevent users from what APPLE, INC. told the U.S.P.T.O. was a known and major problem that could be solved with a design invention likely to be more effective than legislation and law enforcement.

55. APPLE INC. has not only failed to use reasonable care, its failure to take any steps whatsoever to implement a simple, easy, and inexpensive design change using technology it has had since 2008, that it expressly acknowledged would substantially limit

(and be more effective than legislation in preventing) automobile collisions, injuries, and deaths from distracted driving caused by using its handheld communications and computing devices while operating motor vehicles, demonstrates a complete lack of care that rises to the level of gross negligence.

56. Defendant APPLE, INC.'s continuous and ongoing failure to implement technology it already has through minimal alterations to the design of the iPhone, but with potentially significant reduction of the risk of auto-related injuries and deaths from distracted driving, is the breach of its duty to plaintiff and others similarly-situated to exercise *any* care, which constitutes gross negligence.

57. This lack of care, and the extreme departure from what a reasonably careful and prudent corporate citizen would do in the same situation to prevent harm to others, constitutes gross negligence. This gross negligence was a substantial factor in causing plaintiffs' harm.

58. Defendant APPLE, INC. engaged in these acts and omissions with fraud, malice, and/or oppression. This conduct was committed by one or more officers, directors, and managing agents of APPLE, INC. who acted on behalf of APPLE, INC.; authorized by one or more officers, directors, and managing agents of APPLE, INC.; and/or one or more officers, directors, and managing agents of APPLE, INC. knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred, and justifies an award of punitive and exemplary damages pursuant to Civil Code section 3294.

59. Defendant APPLE, INC. acted with intent to cause injury and/or was despicable, and was done with a willful and knowing disregard of the "rights and safety of another," including plaintiffs, in order to continue to profit financially therefrom, because APPLE, INC. was aware of the probable consequences of its conduct and deliberately failed to avoid those consequences.

60. Defendant APPLE, INC.'s conduct was despicable and subjected plaintiffs to cruel and unjust hardship in knowing disregard of their rights. Its conduct was so vile,

base, or contemptible that it would be looked down upon and despised by reasonable people.

61. Defendant APPLE, INC.'s conduct was sufficiently reprehensible to warrant punitive damages considering it caused physical harm and the death of a child; evidences a lack of concern for the health and safety of others; and involves a pattern and practice of failing to implement safety devices for known, high risk of injury and/or death from the ordinary and intended use of the product. Thus, in addition to the damages claimed above, plaintiffs, for the sake of example and by way of punishing defendant APPLE, INC., also seek punitive damages according to proof. Therefore, in addition to the compensatory damages alleged above, plaintiffs additionally seek punitive damages to punish APPLE INC. for the conduct that harmed plaintiffs and to discourage similar conduct in the future.

THIRD CAUSE OF ACTION

(Products Liability - Negligence)

PLAINTIFFS COMPLAIN OF DEFENDANT APPLE, INC., AND DOES 1-20, THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AND ALLEGE AS FOLLOWS:

62. Plaintiffs incorporate by reference, as though fully set forth herein, the allegations set forth above.

63. Defendant APPLE, INC., designed and manufactured the iPhone 6 Plus. APPLE, INC. was, and is, negligent for failing to use the amount of care in designing and manufacturing a product that a reasonably careful product designer and manufacturer would use in similar circumstances to avoid exposing others to a foreseeable risk of harm.

64. Defendant APPLE, INC. negligently designed, manufactured, and sold the iPhone 6 Plus, and bundled its "FaceTime" feature into the "Phone" application, that was being operated by the driver who struck the Modisette vehicle on December 24, 2014, killing MORIAH MODISETTE and injuring all three of the surviving members of her family. Defendant APPLE, INC. negligently and unreasonably failed to design and manufacture the iPhone 6 Plus to include a feature that would lock-out a driver from using

applications such as "FaceTime" while driving a motor vehicle, despite the fact that Apple had the technology since at least 2008 based on data and other information that it made it foreseeable to APPLE, INC. that some users would access and use "FaceTime" on the iPhone 6 Plus while operating a motor vehicle at highway speeds. This made the design and manufacture of the iPhone 6 Plus defective, and the defect existed at the time the iPhone 6 Plus left APPLE, INC.'s factory. That defect caused Garret Wilhelm, the driver who collided with the Modisette vehicle, to be able to access and operate "FaceTime" while driving his vehicle at highway speeds, a use of the product which was foreseeable to APPLE, INC. at all times mentioned herein.

65. The duty APPLE, INC. owed to the plaintiffs, to design and manufacture a product which did not have the defect at issue given the foreseeability of the harm and the availability of a safer, patented, alternative design, exists because the defective design and manufacture of the product rendered it inherently dangerous. Further APPLE, INC. owed a duty to plaintiffs to design and manufacture a safe product because it was reasonably foreseeable and certain to APPLE, INC. that users would continue to access "FaceTime" and other such interactive applications while operating motor vehicles, such that that the failure to implement the safer, alternative design and manufacture made it reasonably certain that life and limb of innocent parties, like plaintiffs, would continue to be in peril.

66. Defendant APPLE, INC. breached its duty to plaintiffs because defendant APPLE, INC. knew or should have known at the time it designed and manufactured the iPhone 6 Plus that there was a likelihood users would use the iPhone 6 Plus while driving, that there was a likelihood that the use of these features while driving would distract drivers, and it was foreseeable that distracted driving as a result of using "FaceTime" would substantially increase the risk of auto collisions, severe injuries, and/or deaths. Conversely, APPLE, INC.'s ability to implement safety measures through the design and manufacture of a simple "lock-out" feature using mechanisms already inherent to the iPhone 6 Plus, which would automatically prevent a driver from accessing "FaceTime"

while driving, with no financial burden given it has had the technology since 2008, demonstrates it failed to act as a reasonable and prudent manufacturer would, thereby resulting in a breach of its duty as a manufacturer. These failures were a substantial factor in causing or contributing to cause the plaintiffs' injuries.

67. Defendant APPLE, INC. also negligently failed to use reasonable care to warn or instruct users about the inherent dangers associated with accessing and using the "FaceTime" application on the iPhone 6 Plus while operating a motor vehicle, i.e., that said use would likely cause distracted driving, which foreseeably and reasonably, could cause injuries and death as a result of collisions. APPLE, INC. knew or should have known the iPhone 6 Plus would be used in this reasonably foreseeable manner, rendering the iPhone 6 Plus and use of the "FaceTime" application very dangerous, and failed to warn or adequately warn of the dangers, or instruct on the safe use of the application. A reasonable manufacturer under the same or similar circumstances would have warned of those dangers or instructed on the safe use of the product. As a result of these failures to warn or properly warn, plaintiffs were harmed. APPLE, INC.'s failure to warn or instruct in this manner was a substantial factor in causing or contributing to cause the plaintiffs' injuries.

68. Defendant APPLE, INC. was also negligent because it failed to recall and/or retrofit the iPhone 6 Plus despite its ongoing notice of the hazards associated with the foreseeable use of the device while operating a vehicle. Defendant APPLE, INC. was aware of the defect both prior to, and after the iPhone 6 Plus was sold, and failed to recall or retrofit, or warn users of the danger. A reasonable manufacturer under the same or similar circumstances would have recalled, retrofitted, or warned of those dangers or instructed on the safe use of the product. As a result of these failures to warn or properly warn, plaintiffs were harmed. APPLE, INC.'s failure to warn or instruct in this manner was a substantial factor in causing or contributing to cause the plaintiffs' injuries.

69. Therefore, plaintiffs seek recovery of the economic and non-economic damages to which they are entitled, as set forth above in the First Cause of Action.

FOURTH CAUSE OF ACTION

(Products Liability - Strict)

PLAINTIFFS COMPLAIN OF DEFENDANT APPLE, INC., AND DOES 1-20, THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AND ALLEGE AS FOLLOWS:

70. Plaintiffs incorporate by reference, as though fully set forth herein, the allegations set forth above.

71. Plaintiffs were harmed, and MORIAH MODISETTE was killed, as a result of the ordinary and intended use of a product sold by APPLE, INC. which was defectively designed, contained a manufacturing defect, and failed to be accompanied by warnings of known safety hazards. The iPhone 6 Plus had these defects when it left APPLE, INC.'s possession.

72. Defendant APPLE, INC.'s iPhone 6 Plus had an inherently dangerous design defect when it left APPLE, INC.'s factory. As a result, the iPhone 6 Plus did not perform as safely as an ordinary consumer would have expected it to perform when used or misused in an intended or reasonably foreseeable way, because it should have been equipped with a simple, inexpensive, known piece of technology that would "lock out" the user from accessing the "FaceTime" application while operating a motor vehicle at highway speed. This is true especially given the gravity of the potential harm from using "FaceTime" while operating a motor vehicle at highway speed, that the likelihood of this potential harm was entirely known and appreciated by Defendant APPLE, INC., defendant already had a feasible, patented, alternative safer design at the time of, and prior to, manufacture of the iPhone 6 Plus, the cost of altering the design would be minimal, and there are no conceivable disadvantages to implementing the technology Apple had already had patented. As a result of these defects, plaintiffs were harmed while the Apple iPhone 6 Plus was being used and/or misused in an intended and/or reasonably foreseeable

manner, and the defects were a substantial factor in causing plaintiffs' harm.

73. Further, Defendant APPLE, INC.'s iPhone 6 Plus lacked sufficient warnings of the potential harm that could flow from accessing "FaceTime" while operating a motor vehicle. The potential risks from the use or misuse of the iPhone 6 Plus and "FaceTime" in this intended and foreseeable way doing so were known and knowable by APPLE, INC., and presented a substantial danger that ordinary consumers may not have fully understood or appreciated, which also made it inherently dangerous. As a result of these warnings effects, plaintiffs were harmed while the Apple iPhone 6 was being used and/or misused in an intended and/or reasonably foreseeable manner, and the defects were a substantial factor in causing plaintiffs' harm.

74. The iPhone 6 Plus, placed into the stream of commerce by APPLE, INC., was designed and marketed in such a defective condition that it was unreasonably dangerous within the meaning of Section 402(A) Restatement (Second) of Torts in the following particulars, including but not limited to:

a. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism that is configured to "lock-out" the ability to utilize APPLE, INC.'S "FaceTime" application while driving at highway speed.

b. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism that is configured to "lock-out" the ability to receive notifications of requests for a "FaceTime" session.

c. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism that is configured to "lock-out" the ability to utilize the iPhone 6 Plus to access and use applications that are unsafe to use while driving.

d. Failing to provide a safer alternative design that would have prevented or significantly reduced the risk of Plaintiffs' injuries, without substantially impairing the utility of the iPhone 6 Plus.

e. Failing to properly warn of the hazards and/or guard against the hazards

associated with the use of "FaceTime" and the iPhone 6 Plus while driving at highway speed.

f. Such other acts or omissions that may be learned in discovery or at trial.

75. Plaintiffs allege that the embodiment described above, as well as those described in the '143 patent constitute safer alternative designs. In addition, Claim 1 of APPLE, INC.'s constitutes a safer alternative design. This safer alternative design does not require any additional device installation in a vehicle, nor does it require additional hardware installed in the iPhone 6 Plus. In addition to APPLE, INC.'s safer alternative design in the form of the '143 patent, Plaintiffs propose an alternative design based on programming of the applications of the iPhone 6 Plus (and the existing iPhone 6 Plus operating system - iOS 8) that APPLE, INC. has deemed safe to use while driving, and has implemented in its CarPlay product. See **Exhibit M**, APPLE, INC. CarPlay Advertisement. This safer alternative design was capable of implementation since at least 2011, and does not require any additional device installation in a vehicle, merely modification of the software code (i.e. programming) of the existing iPhone 6 Plus operating system (iOS 8) in conjunction with its existing hardware. APPLE, INC. has deemed the modification of certainapplications (and the present iteration of CarPlay) a safer way to utilize the applications that consumers want ("CarPlay has been designed from the ground up to be a safe, smart solution that optimizes the in-car experience while minimizing driver distraction.") See Exhibit M. A general description of this safer alternative design is as follows:

i. A motion analyzer determines if the iPhone 6 Plus is traveling at a predetermined speed threshold (i.e. 35 miles per hour);

ii. If predetermined speed threshold is met, the iPhone 6 Plus' "Do Not Disturb" function engages – ceasing all notifications other than calls to the iPhone – and a "lock-out" is configured to perform the following:

a. Keyboard entry for functions other than calling are disabled;

b. FaceTime and messaging based applications (text, messages, email, Snapchat, Messenger, etc.) are disabled;

c. Siri Input/Output allowed for answering an incoming call;

d. Siri Input/Output allowed for applications deemed to be safe for CarPlay, except for Messages and Calendar, which are disabled;

e. All icons for applications which are disabled, are darkened and will not open;

iii. Upon the "lock-out" engaging, a scenery analyzer engages to detect objects and faces to determine if the user is located in the passenger area (i.e. "safe operating area") of the vehicle.

a. If the scenery analyzer determines the iPhone 6 Plus is located in the passenger area, full use of the iPhone 6 Plus is allowed;

b. If the accelerometer and light sensors detect movement of the iPhone 6 Plus within the vehicle, beyond a predetermined distance (indicating movement of the iPhone 6 Plus to the "unsafe operating area" of the vehicle), the "lock-out" identified in (ii) above re-engages.

iv. Once traveling speed is reduced below predetermined speed threshold, for a predetermined period of time, "lock-out" and "Do Not Disturb" are disengaged.

76. The safer alternative designs identified above could have been easily modified by APPLE, INC. (but encrypted to prevent modification by the user) through programming to allow or not allow certain applications deemed to be unsafe, or applications deemed to be necessary for the utility of the iPhone 6 Plus.

77. The '143 Patent and Plaintiffs' proposed alternative design provide safer alternative designs that would have, in all reasonable probability prevented or significantly reduced the risk of the occurrence in question without substantially impairing the iPhone 6 Plus' utility; and was economically and technologically feasible at the time the iPhone 6 Plus left the control of APPLE, INC. by the application of existing

or reasonably achievable scientific knowledge.

78. Therefore, plaintiffs seek recovery of the economic and non-economic damages to which they are entitled, as set forth above in the and Third Causes of Action.

FIFTH CAUSE OF ACTION

(Negligent Infliction of Emotional Distress)

PLAINTIFFS COMPLAIN OF DEFENDANT APPLE, INC., AND DOES 1-20, THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AND ALLEGE AS FOLLOWS:

79. Plaintiffs incorporate by reference, as though fully set forth herein, the allegations set forth above.

80. Defendant APPLE, INC.'s conduct caused plaintiffs BETHANY MODISETTE, JAMES MODISETTE, and ISABELLA MODISETTE, and each of them, to suffer serious emotional distress as a result of the collision which was caused by a driver being distracted from the task of safe driving as a result of using "FaceTime" on his Apple iPhone 6 Plus. Plaintiffs, and each of them, have been directly injured as a result of their personal experiences associated with the collision, and continue to experiencea physical, mental, and emotional toll from their direct injury each has suffered to himself or herself.

81. Plaintiffs BETHANY MODISETTE, JAMES MODISETTE, and ISABELLA MODISETTE, and each of them, have also suffered injuries as a result of being bystanders to the injuries sustained by one another and their decedent. Plaintiffs were present in the car and at the scene of the injury when it occurred, and were aware that each and all of their family members, including but not limited to MORIAH MODISETTE, were being injured. Each plaintiff has suffered, and will continue to suffer serious emotional distress that the ordinary, reasonable person would not be able to cope with, including but not limited to suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock as a result of being in the car, viewing the injuries of each other, witnessing the events at the scene, in the hospital, and thereafter, including five year-old MORIAH MODISETTE's subsequent death and funeral, all of which was caused by

APPLE, INC.'s defective product. APPLE, INC.'s conduct as described herein was a substantial factor in causing or contributing the cause each plaintiff's serious emotional distress.

82. As alleged, APPLE, INC.'s negligent failure to implement "lock-out" capabilities on its iPhone 6 Plus smartphone was a substantial contributing factor in causing not just the collision, but also plaintiffs' injuries and Moriah's resulting injuries and death. As a direct and proximate result of APPLE, INC.'s conduct, and the severe injuries caused thereby to Moriah Modisette as set forth in this complaint, plaintiffs, and each of them, have suffered, and will continue to suffer, severe emotional distress.

83. Therefore, plaintiffs seek recovery of the economic and non-economic damages to which they are entitled, as set forth above in the First, Third, and Fourth Causes of Action.

SIXTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

PLAINTIFFS COMPLAIN OF DEFENDANT APPLE, INC., AND DOES 1-20, THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AND ALLEGE AS FOLLOWS:

84. Plaintiffs incorporate by reference, as though fully set forth herein, the allegations set forth above.

85. Plaintiffs, and each of them, have suffered severe emotional distress because APPLE, INC.'s conduct in failing to implement a simple, inexpensive, and patented design change that would prevent an iPhone 6 Plus user from being able to access "FaceTime" while operating a vehicle, when APPLE, INC. admits through its 2008 patent application that it was aware of the high likelihood and risk of injury and death from auto collisions caused by distracted driving from holding a handheld device such as the iPhone 6 Plus and sought to patent technology it had already developed ---but has failed to use in any generation of the iPhone, was outrageous and done in reckless disregard of the probability that any survivor of such a collision would suffer extreme emotional distress if present at

the scene of the accident. Plaintiffs have suffered extreme emotional distress resulting from APPLE, INC.'s inexplicable failure to take the reasonable step of a design change. This conduct has caused plaintiffs harm.

86. Defendant APPLE, INC. engaged in these acts and omissions with fraud, malice, and/or oppression. This conduct was committed by one or more officers, directors, and managing agents of APPLE, INC. who acted on behalf of APPLE, INC.; authorized by one or more officers, directors, and managing agents of APPLE, INC.; and/or one or more officers, directors, and managing agents of APPLE, INC. knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred, and justifies an award of punitive and exemplary damages pursuant to Civil Code section 3294.

87. Defendant APPLE, INC. acted with intent to cause injury and/or was despicable, and was done with a willful and knowing disregard of the "rights and safety of another," including plaintiffs, in order to continue to profit financially therefrom, because APPLE, INC. was aware of the probable consequences of its conduct and deliberately failed to avoid those consequences.

88. Defendant APPLE, INC.'s conduct was despicable and subjected plaintiffs to cruel and unjust hardship in knowing disregard of their rights. Its conduct was so vile, base, or contemptible that it would be looked down upon and despised by reasonable people.

89. Defendant APPLE, INC.'s intentional conduct was sufficiently reprehensible to warrant punitive damages considering it caused physical harm and the death of a child; evidences a lack of concern for the health and safety of others; and involves a pattern and practice of failing to implement safety devices for known, high risk of injury and/or death from the ordinary and intended use of the product. Therefore, plaintiffs, for the sake of example and by way of punishing defendant APPLE, INC., seek punitive damages according to proof. Plaintiffs seek punitive damages to punish APPLE INC. for the conduct that harmed plaintiffs and to discourage similar conduct in the future.

90. Therefore, in addition to the compensatory damages plaintiffs allege above, plaintiffs also seek punitive damages.

SEVENTH CAUSE OF ACTION

(Loss of Consortium)

PLAINTIFFS BETHANY MODISETTE AND JAMES MODISETTE COMPLAIN OF DEFENDANT APPLE, INC., DOES 1-20, THEIR "ALTERNATE ENTITIES", AND EACH OF THEM, AND ALLEGES AS FOLLOWS:

91. Plaintiffs BETHANY MODISETTE AND JAMES MODISETTE incorporate by reference each and every allegation contained in the general allegations and in the ---------Causes of Action herein.

92. Plaintiffs BETHANY MODISETTE AND JAMES MODISETTE were married at all times relevant to this action were, and are now, husband and wife.

93. Prior to Plaintiff JAMES MODISETTE's injuries as alleged, he was able to and did perform duties as a spouse. Subsequent to the injuries and as a proximate result thereof, Plaintiff JAMES MODISETTE has been unable to perform the necessary duties as a spouse and the work and services usually performed in the care, maintenance, and management of the family home, and he will be unable to perform such work, service and duties in the future. As a proximate result thereof, BETHANY MODISETTE has been permanently deprived and will be deprived of the consortium of her spouse, including the performance of duties, all to her damages, in an amount presently unknown but which will be proved at the time of trial.

94. Plaintiff BETHANY MODISETTE's discovery of this cause of her loss of consortium, as herein alleged, first occurred within one year of the date this Complaint was filed.

95. As a direct and proximate result of the acts of Defendants, their "alternate entities," and each of them, and the severe injuries caused thereby to Plaintiff JAMES MODISETTE as set forth in this complaint, Plaintiff BETHANY MODISETTE has suffered, is suffering, and will continue to suffer, loss of consortium, including, but not limited to, loss of love, companionship, comfort, care, assistance, protection, affection,

society, and moral support, as well as the loss of the enjoyment of sexual relations with JAMES MODISETTE, and has suffered severe mental and emotional distress and general nervousness as a result thereof.

96. Prior to Plaintiff BETHANY MODISETTE's injuries as alleged, she was able to and did perform duties as a spouse. Subsequent to the injuries and as a proximate result thereof, Plaintiff BETHANY MODISETTE has been unable to perform the necessary duties as a spouse and the work and services usually performed in the care, maintenance, and management of the family home, and she will be unable to perform such work, service and duties in the future. As a proximate result thereof, JAMES MODISETTE has been permanently deprived and will be deprived of the consortium of her spouse, including the performance of duties, all to her damages, in an amount presently unknown but which will be proved at the time of trial.

97. Plaintiff JAMES MODISETTE's discovery of this cause of her loss of consortium, as herein alleged, first occurred within one year of the date this Complaint was filed.

98. As a direct and proximate result of the acts of Defendants, their "alternate entities," and each of them, and the severe injuries caused thereby to Plaintiff BETHANY MODISETTE as set forth in this complaint, Plaintiff JAMES MODISETTE has suffered, is suffering, and will continue to suffer, loss of consortium, including, but not limited to, loss of love, companionship, comfort, care, assistance, protection, affection, society, and moral support, as well as the loss of the enjoyment of sexual relations with BETHANY MODISETTE, and has suffered severe mental and emotional distress and general nervousness as a result thereof. Plaintiffs therefore seek compensatory damages.

99. WHEREFORE, Plaintiffs pray for judgment against Defendants, their "alternate entities," and each of them, in an amount to be proved at trial in each individual case, as follows:

Plaintiff JAMES MODISETTE, Individually:

1. For Plaintiff's economic damages according to proof including, but not limited to, past and future loss of income, wages, and earning potential, household services, as well as past and future medical and related expenses according to proof;
2. For Plaintiff's non-economic damages, including the past and future physical pain and suffering and mental anguish caused by his own injuries, as well as being a bystander to BETHANY MODISETTE and ISABELLA MODISETTE, and MORIAH MODISETTE's injuries and MORIAH MODISETTE's death, and from the loss of his wife's consortium, according to proof;
3. For penalties, punitive, and/or exemplary damages.

Plaintiff BETHANY MODISETTE, Individually:

1. For Plaintiff's economic damages according to proof including, but not limited to, past and future loss of income, wages, and earning potential, household services, as well as past and future medical and related expenses according to proof;
2. For Plaintiff's non-economic damages, including the past and future physical pain and suffering and mental anguish caused by her own injuries; caused by being a bystander to JAMES MODISETTE, ISABELLA MODISETTE, and MORIAH MODISETTE's injuries and MORIAH MODISETTE's death; and from the loss of her husband's consortium, according to proof;
3. For penalties, punitive, and/or exemplary damages.

Plaintiff ISABELLA MODISETTE, a minor, by and through her parents and/or anticipated Guardian ad Litem, BETHANY MODISETTE:

1. For Plaintiff's economic damages according to proof including, but not limited to, past and future loss of income, wages, and earning potential, as well as past and future medical and related expenses according to proof;
2. For Plaintiff's non-economic damages, including the past and future physical pain and suffering and mental anguish caused by her own injuries, as well as being a bystander to JAMES MODISETTE and BETHANY MODISETTE, and MORIAH MODISETTE's injuries and MORIAH MODISETTE's death;
3. For penalties, punitive, and/or exemplary damages.

Plaintiffs JAMES MODISETTE and BETHANY MODISETTE:

1. For the economic damages they are entitled to recover pursuant to Code of Civil Procedure section 377.60, et seq. for the wrongful death of MORIAH MODISETTE including, but not limited to, the value of the financial support that MORIAH MODISETTE would have contributed to the family during either her life or that of plaintiffs, whichever is shorter; the loss of gifts or benefits that plaintiffs could have expected to receive from MORIAH MODISETTE; funeral and burial expenses; and the reasonable value of household services that MORIAH MODISETTE would have provided.
2. For the non-economic damages they are entitled to recover pursuant to Code of Civil Procedure section 377.60 for the wrongful death of MORIAH MODISETTE including, but not limited to, the loss of love, companionship, comfort, care, assistance, protection, affection, society and moral support of Decedent, MORIAH MODISETTE.

3. For damages that, under all the circumstances of the case, may be just.

ESTATE OF MORIAH MODISETTE, by and through her Personal Representative and/or Successor-in-Interest, BETHANY MODISETTE

1. For the damages decedent MORIAH MODISETTE, through her estate, would have been, and is, entitled to recover in this survival action pursuant to Code of Civil Procedure section 377.30 and 377.34 had she not died of her injuries including, but not limited to penalties, punitive or exemplary damages.

For ALL PLAINTIFFS:

1. For Plaintiffs' cost of suit herein;
2. For exemplary or punitive damages according to proof;
3. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided in Code of Civil Procedure section 998 and section 1032, and related provisions of law.

DATED: December 22, 2016

SIMON GREENSTONE PANATIER BARTLETT PC

By: _____

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