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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

19 BETHANY MODISETTE, individually,
20 and as Personal Representative and/or
21 Successor-in-Interest of the ESTATE OF
22 MORIAH MODISETTE, a deceased
23 minor; JAMES MODISETTE,
24 individually; and ISABELLA
25 MODISETTE, a minor, by and through her
26 parents, BETHANY MODISETTE and
27 JAMES MODISETTE and/or her
28 anticipated Guardian ad Litem, BETHANY
MODISETTE;

Plaintiffs,

vs.

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

Defendants

UCS

FILED

DEC 23 2016

DAVID H. YAMASAKI

Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara

BY _____ DEPUTY

T. NGO

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

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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

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

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

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

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1 Santa Clara.

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PARTIES, JURISDICTION, AND VENUE

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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.

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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.

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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.

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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

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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.

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1 **FACTUAL ALLEGATIONS PERTINENT TO ALL CAUSES OF ACTION**

2 **The Incident**

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

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

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

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

23 Distracted Driving

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

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

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

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

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

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

21 20. On May 14, 2012, a published, independent survey conducted by a research
22 firm for AT&T demonstrated that while 97% of the 1,200 teens surveyed agreed texting
23 while driving was dangerous, and two-thirds acknowledged that it was very dangerous,
24 43% still admitted to having texted or emailed while driving in the previous three months.
25 [Exhibit E: "Despite Dangers U.S. Teens Text and Drive: Poll," Reuters.com, May 14,
26 2012.] The survey showed that 89% of teens expect a reply to emails or text messages
27 right away, or within five minutes. [*Id.*] In 2011, a survey relied upon by the United

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

5 21. An anonymous survey reported in June 2012 found that nearly half of high
6 school seniors admit they text or email while driving. [**Exhibit G**: “CDC: Nearly 60
7 Percent of Teens Text While Driving,” NBCNews.com.] In its 2012 “Traffic Safety
8 Culture Index” survey, the AAA Foundation for Traffic Safety found that over 95% of
9 people surveyed believed texting or emailing, and checking or updating social media,
10 behind the wheel are serious threats to their personal safety while driving. [See, “AAA
11 Foundation for Traffic Safety. Distracted and Risk-Prone Drivers: Select Findings from
12 the 2012 Traffic Safety Culture Index,” January 2013.] Despite expressing strong
13 disapproval of these behaviors, nearly 27% of the respondents reported typing or sending a
14 text or email while driving at least once in the 30 days prior to the survey, and nearly 35%
15 reported reading a text or email while driving during the same time frame. [**Exhibit H**:
16 “Distracted Driving: Survey of the States,” Governor’s Highway Safety Association, July
17 2013, p. 7.] As of July 2013, forty-one states and the District of Columbia had instituted
18 bans on texting while driving, a 45% increase in the number of states instituting texting
19 while driving bans since 2010. [**Exhibit H**, p. 3, Figure 1.] Texas, however, has no such
20 ban.

21 22. Defendant APPLE, INC., released the first generation Apple iPhone on June
22 29, 2007 the Apple iPhone 3G on July 11, 2008; the Apple iPhone 3Gs on June 19, 2009;
23 the Apple iPhone 4 on June 24, 2010; the Apple iPhone 4s on October 14, 2011; the Apple
24 iPhone 5 on September 21, 2012; and the Apple iPhone 5C and 5s on September 20, 2013.
25 As of April 30, 2013, there were six generations of iPhone models, and each release was
26 accompanied by one of five major releases of the iOS iPhone operating system. In this
27 time frame, nearly 500 million units were sold worldwide. The astounding volume of sales
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1 of the iPhone have been credited with reshaping the smartphone industry, which made
2 Defendant APPLE, INC. one of the world's most valuable publicly-traded companies in
3 2011 and 2012. In the fourth quarter of 2012, the Apple iPhone 5 and Apple iPhone 4s
4 were the best-selling cell phones, with sales of 27.4 million and 17.4 million units,
5 respectively. From 2007 to 2011, Defendant APPLE, INC. spent \$647 million on
6 advertising in the U.S. for the iPhone.

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

17 Smartphone Compulsion/Addiction

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

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

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

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

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- 12 • "The Link Between Texting and Motor Vehicle Collision Frequency in The
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- 18 • "Latent Class Analysis On Internet and Smartphone Addiction in College
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- 21 • "Objective Assessment of the Effect of Texting While Driving: A Simulator Study,"
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- 24 • "Texting and Driving," Moreno, M., JAMA Pediatric Patients Page,
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- 26 • "Post and During Event Effect of Cell Phone Talking and Texting on Driving
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- 2 • “I Need My Smartphone: A Hierarchical Model of Personality and Cell-Phone
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- 4 79: 13-19
- 5 • “Modeling Habitual and Addictive Smartphone Behavior: The Role of Smartphone
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- 10 University Student: A Mediation Model of Learning Self-Efficacy and Social Self-
- 11 Efficacy,” Shao-I, Chiu, Computers in Human Behavior, Feb. 2014, 34: 49-57
- 12 • “Smartphone Addiction Among University Students in Light of Some Variables,”
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- 18 Research, April 2015, 65: 139-145
- 19 • “A Systemic Smartphone Usage Pattern Analysis: Focusing on Smartphone
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- 24 • “Texting While Driving: The Development and Validation of the Distracted Driving
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- 27 • “Mutual Interferences of Driving and Texting Performance,” He, J., Computers in
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- 2 • “Texting While Driving and Other Risky Motor Vehicle Behaviors Among US
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- 10 • “Virtual Addiction: Why We Become Addicted to The Internet and Digital Media
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- 13 • “Internet Use Disorder: Clinical and Treatment Implications of Compulsive Internet
14 and Video Game Use in Adolescents,” Greenfield, D.N., Addictions and the
15 Adolescent Brain, Child and Adolescent Psychiatric Society of Greater Washington
16 Spring Symposium, Suburban Hospital, Bethesda, Maryland
- 17 • “The Choice to Text and Drive in Younger Drivers: Behavior May Shape Attitude,”
18 Atchley, P., et. al., Accident Analysis and Prevention, 2011, 43:134-142

19 **APPLE, INC.’s Knowledge of the Dangers of iPhone Use While Driving**

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

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

5 "In one embodiment, a handheld computing device can provide a lock-out
6 mechanism without requiring any modifications or additions to a vehicle by
7 using a motion analyzer, a scenery analyzer and a lock-out mechanism. In
8 other embodiments, the handheld computing device can provide a lock-out
9 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.]

10 The '143 Patent provides various examples to prevent iPhone use by drivers, but the most
11 logical embodiment consists of a "lock-out mechanism configured to disable" one or more
12 iPhone functions when "the output of the motion analyzer indicates" that the iPhone is "in
13 motion beyond a predetermined threshold level (e.g. speed)." [Exhibit L at Col. 3, L 41-
14 45.] On information and belief, the iPhone 6 Plus was sold and distributed with GPS and
15 accelerometer capability. Yet Defendant APPLE, INC. failed to configure the iPhone 6
16 Plus to "lock-out" the ability for a driver to utilize APPLE, INC.'s "FaceTime"
17 application, while driving at highway speed. Once the predetermined speed threshold is
18 reached, and "lock out engaged," the same embodiment describes a "scenery analyzer" that
19 "can be configured to determine whether a holder of a handheld computing device is
20 located within safe operating area of vehicle." [Exhibit L, at Col. 3, L 33-35.] "The lock
21 out mechanism can be configured to disable one or more functions" of an iPhone "based
22 on the output of the motion analyzer, and enable the one or more functions" of an iPhone
23 "based on the output of the scenery analyzer." [Exhibit L, at Col. 3, L 35-40.] According
24 to APPLE, INC., "this can enables (sic) passengers in moving vehicles to operate" an
25 iPhone "without one or more of its functions being disabled." [Exhibit L, at Col. 3, L 52-
26 55.]
27
28

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

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

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

20 "Texting while driving has become a major concern of parents, law
21 enforcement and the general public. An April 2006 study found that 80
22 percent of auto accidents are caused by distractions such as applying
23 makeup, eating, and text messaging on handheld computing devices
24 (texting). According to the Liberty Mutual Research Institute for Safety and
25 Students Against Destruction Decisions, teens report that texting while
26 driving is dangerous, but this is often not enough motivation to end the
27 practice. New laws are being written to make texting illegal while driving.
28 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

1 enforcement will have any significant effect on stopping the practice.

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

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

5 Time wrote:

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

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

23 32. The APPLE, INC. iPhone 6 Plus that was a substantial factor in causing or
24 contributing to cause this accident was defective because, at the time of the collision in
25 question, no universal solution or "built-in" method of disabling the sending or receiving
26 of text messages, emails, video calling services, or other notifications while driving had
27 been implemented by APPLE, INC. for the iPhone. Despite both the technology since
28 2008 and a patent on that technology so it could exploit its patent without competition for
29 20 years, Defendant APPLE, INC. has consistently and continuously failed to implement a
30 safer, alternative design that would lock-out and prevent use of "FaceTime" while driving,

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

6 33. As of August 19, 2012, Defendant APPLE, INC.'s sales of its iPhone alone
7 were worth more than the sales all of Microsoft products combined: "One APPLE, INC.
8 product, something that didn't exist five years ago, has higher sales than everything
9 Microsoft has to offer. More than Windows, Office, Xbox, Bing, Windows Phone, and
10 every other product that Microsoft has created since 1975. In the quarter ended March 31,
11 2012, iPhone had sales of \$22.7 billion; Microsoft as an entire company - \$17.4 billion."
12 [Exhibit I: "APPLE, INC.'s iPhone Is Now Worth More Than All of Microsoft," *Forbes*,
13 August 19, 2012.] As of July 2013, the U.S. wireless industry was valued at \$195.5
14 billion, which is larger than publishing, agriculture, hotels, and lodging, air transportation,
15 motion picture recording and motor vehicle manufacturing segments. It rivals the
16 computer system design service and oil and gas extraction industries. [Exhibit H, p. 2.]
17 Plaintiffs further allege Defendant APPLE, INC. was motivated to omit implementation of
18 this safer, alternative design for the purpose protecting its position in the marketplace and
19 thereby increasing its profits.

20 34. Further, Wilhelm's conduct (operating APPLE, INC.'s "FaceTime"
21 application on his Apple iPhone 6 Plus while traveling at highway speeds), is a derivative
22 of APPLE, INC.'s conduct (failure to implement its own safer technology to "lock out" the
23 use of the "FaceTime" application for a driver while travelling at highway speeds). At the
24 time of the collision in question, the iPhone utilized by Wilhelm contained the necessary
25 hardware (to be configured with software) to automatically disable or "lock-out" the ability
26 to utilize APPLE, INC.'s "FaceTime" application. However, APPLE, INC. failed to
27 configure the iPhone to automatically "lock-out" the ability to utilize "FaceTime" while
28

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

12 **FIRST CAUSE OF ACTION**

13 **(General Negligence)**

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

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

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

24 37. Defendant APPLE, INC. and Does 1-20, inclusive, and each of them, was, at
25 all times mentioned herein, engaged in the business of researching, manufacturing,
26 fabricating, designing, modifying, labeling, assembling, distributing, offering for sale,
27 supplying, selling, inspecting, servicing, repairing, marketing, warranting, packaging, and
28

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

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

19 39. Defendant APPLE, INC. had a legal duty to Plaintiffs to use due care in the
20 design, manufacture, and sale of its iPhone 6 Plus because of the foreseeability of the very
21 harm plaintiffs suffered --- injuries sustained in a motor vehicle accident caused by the
22 distraction of another driver who was using Apple's "FaceTime" application during the
23 operation of his vehicle while traveling at high speeds --- because APPLE, INC. was
24 specifically and expressly aware at least as early as 2008 of statistics demonstrating the
25 risk of injury occasioned by drivers using hand-held devices to engage in conduct which
26 foreseeably distracted them from the task of driving safely and in a manner to avoid injury
27 based on the factual assertions it made in its 2008 application for a patent on technology
28

1 that would avoid or limit those risks.

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

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

- 22 a. Failing to properly design the iPhone 6 Plus with a “lock-out” mechanism
23 that is configured to “lock-out” the ability to utilize APPLE, INC.’S
24 “FaceTime” application while driving at highway speed.
- 25 b. Failing to properly design the iPhone 6 Plus with a “lock-out” mechanism
26 that is configured to “lock-out” the ability to receive notifications of requests
27 for a “FaceTime” session.

28

- 1 c. Failing to properly design the iPhone 6 Plus with a “lock-out” mechanism
2 that is configured to “lock-out” the ability to utilize the iPhone 6 Plus to
3 access and use applications that are unsafe to use while driving.
- 4 d. Failing to provide a safer alternative design that would have prevented or
5 significantly reduced the risk of Plaintiffs’ injuries, without substantially
6 impairing the utility of the iPhone 6 Plus.
- 7 e. Failing to properly warn of the hazards and/or guard against the hazards
8 associated with the use of “FaceTime” and the iPhone 6 Plus while driving at
9 highway speed.
- 10 f. Such other acts or omissions that may be learned in discovery or at trial.

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

19 43. APPLE, INC.’s failure to exercise reasonable care caused or contributed to
20 the risk of causing Garrett Wilhelm to use “FaceTime” while driving his car on December
21 24, 2014, which caused him to be distracted from the conditions on the road ahead and
22 thereby to fail to appreciate in time the danger of causing the injuries and death actually
23 suffered by plaintiffs. The driver’s conduct was foreseeable to APPLE, INC., and the risk
24 of his conduct (injury to another person or property as a result of distracted driving) was
25 also foreseeable to APPLE, INC. Therefore, Defendant APPLE, INC. breached a duty of
26 care to plaintiffs, which was a substantial factor in causing or contributing to cause their
27 harm.

28

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

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

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

22 47. As a further, direct and proximate result of the said conduct of Defendant
23 APPLE, INC. and Does 1-20, inclusive, their "alternate entities," and each of them,
24 Plaintiffs BETHANY MODISETTE and JAMES MODISETTE are also entitled to recover
25 damages caused by the wrongful death of their minor child, MORIAH MODISETTE,
26 including the value of financial support, if any, that MORIAH MODISETTE would have
27 contributed to the family during either her life expectancy or plaintiffs BETHANY
28

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

10 **SECOND CAUSE OF ACTION**

11 **(Gross Negligence)**

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

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

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

1 proposed invention was specifically designed to “disable the ability of a handheld
2 computing device to perform certain functions, such as texting, *while one is driving.*”

3 APPLE, INC. explained the ease with which this design change could be implemented:

4 “In one embodiment, a handheld computing device can provide a lock-out
5 mechanism without requiring any modifications or additions to a vehicle by
6 using a motion analyzer, a scenery analyzer and a lock-out mechanism. In
7 other embodiments, the handheld computing device can provide a lock-out
8 mechanism with modifications or additions to the vehicle, including the use
9 of signals transmitted by the vehicle or by the vehicle key when engaged in
10 the vehicle.”

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

18 50. The ‘143 Patent provides various examples to prevent iPhone use by drivers,
19 but the most logical embodiment consists of a “lock-out mechanism configured to disable”
20 one or more iPhone functions when “the output of the motion analyzer indicates” that the
21 iPhone is “in motion beyond a predetermined threshold level (e.g. speed).” On
22 information and belief, the iPhone 6 Plus was sold and distributed with GPS and
23 accelerometer capability. Once the predetermined speed threshold is reached, and “lock
24 out engaged,” the same embodiment describes a “scenery analyzer” that “can be
25 configured to determine whether a holder of a handheld computing device is located within
26 safe operating area of vehicle.” “The lock out mechanism can be configured to disable one
27 or more functions” of an iPhone “based on the output of the motion analyzer, and enable
28 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

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

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

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

24 “Texting while driving has become a major concern of parents, law
25 enforcement and the general public. An April 2006 study found that 80
26 percent of auto accidents are caused by distractions such as applying
27 makeup, eating, and text messaging on handheld computing devices
28 (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

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

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

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

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

27 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

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

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

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

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

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

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

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

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

12 **THIRD CAUSE OF ACTION**

13 **(Products Liability - Negligence)**

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

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

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

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

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

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

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

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

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

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

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

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

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

- 15 a. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism
16 that is configured to "lock-out" the ability to utilize APPLE, INC.'S
17 "FaceTime" application while driving at highway speed.
- 18 b. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism
19 that is configured to "lock-out" the ability to receive notifications of requests
20 for a "FaceTime" session.
- 21 c. Failing to properly design the iPhone 6 Plus with a "lock-out" mechanism
22 that is configured to "lock-out" the ability to utilize the iPhone 6 Plus to
23 access and use applications that are unsafe to use while driving.
- 24 d. Failing to provide a safer alternative design that would have prevented or
25 significantly reduced the risk of Plaintiffs' injuries, without substantially
26 impairing the utility of the iPhone 6 Plus.
- 27 e. Failing to properly warn of the hazards and/or guard against the hazards

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1 associated with the use of “FaceTime” and the iPhone 6 Plus while driving at
2 highway speed.

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

4 75. Plaintiffs allege that the embodiment described above, as well as those
5 described in the ‘143 patent constitute safer alternative designs. In addition, Claim 1 of
6 APPLE, INC.’s constitutes a safer alternative design. This safer alternative design does not
7 require any additional device installation in a vehicle, nor does it require additional
8 hardware installed in the iPhone 6 Plus. In addition to APPLE, INC.’s safer alternative
9 design in the form of the ‘143 patent, Plaintiffs propose an alternative design based on
10 programming of the applications of the iPhone 6 Plus (and the existing iPhone 6 Plus
11 operating system - iOS 8) that APPLE, INC. has deemed safe to use while driving, and has
12 implemented in its CarPlay product. See **Exhibit M**, APPLE, INC. CarPlay
13 Advertisement. This safer alternative design was capable of implementation since at least
14 2011, and does not require any additional device installation in a vehicle, merely
15 modification of the software code (i.e. programming) of the existing iPhone 6 Plus
16 operating system (iOS 8) in conjunction with its existing hardware. APPLE, INC. has
17 deemed the modification of certain applications (and the present iteration of CarPlay) a
18 safer way to utilize the applications that consumers want (“CarPlay has been designed
19 from the ground up to be a safe, smart solution that optimizes the in-car experience while
20 minimizing driver distraction.”) See Exhibit M. A general description of this safer
21 alternative design is as follows:

- 22 i. A motion analyzer determines if the iPhone 6 Plus is traveling at a
23 predetermined speed threshold (i.e. 35 miles per hour);
- 24 ii. If predetermined speed threshold is met, the iPhone 6 Plus’ “Do Not Disturb”
25 function engages – ceasing all notifications other than calls to the iPhone – and a
26 “lock-out” is configured to perform the following:
- 27 a. Keyboard entry for functions other than calling are disabled;
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- 1 b. FaceTime and messaging based applications (text, messages, email,
2 Snapchat, Messenger, etc.) are disabled;
- 3 c. Siri Input/Output allowed for answering an incoming call;
- 4 d. Siri Input/Output allowed for applications deemed to be safe for CarPlay,
5 except for Messages and Calendar, which are disabled;
- 6 e. All icons for applications which are disabled, are darkened and will not
7 open;
- 8 iii. Upon the “lock-out” engaging, a scenery analyzer engages to detect objects and
9 faces to determine if the user is located in the passenger area (i.e. “safe operating
10 area”) of the vehicle.
- 11 a. If the scenery analyzer determines the iPhone 6 Plus is located in the
12 passenger area, full use of the iPhone 6 Plus is allowed;
- 13 b. If the accelerometer and light sensors detect movement of the iPhone 6
14 Plus within the vehicle, beyond a predetermined distance (indicating
15 movement of the iPhone 6 Plus to the “unsafe operating area” of the
16 vehicle), the “lock-out” identified in (ii) above re-engages.
- 17 iv. Once traveling speed is reduced below predetermined speed threshold, for a
18 predetermined period of time, “lock-out” and “Do Not Disturb” are disengaged.

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

23 77. The ‘143 Patent and Plaintiffs’ proposed alternative design provide safer
24 alternative designs that would have, in all reasonable probability prevented or
25 significantly reduced the risk of the occurrence in question without substantially
26 impairing the iPhone 6 Plus’ utility; and was economically and technologically feasible at
27 the time the iPhone 6 Plus left the control of APPLE, INC. by the application of existing
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1 or reasonably achievable scientific knowledge.

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

4 **FIFTH CAUSE OF ACTION**

5 **(Negligent Infliction of Emotional Distress)**

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

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

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

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

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

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

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

13 SIXTH CAUSE OF ACTION

14 (Intentional Infliction of Emotional Distress)

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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

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

13 Plaintiffs JAMES MODISETTE and BETHANY MODISETTE:

- 14 1. For the economic damages they are entitled to recover pursuant to Code
15 of Civil Procedure section 377.60, et seq. for the wrongful death of
16 MORIAH MODISETTE including, but not limited to, the value of the
17 financial support that MORIAH MODISETTE would have contributed
18 to the family during either her life or that of plaintiffs, whichever is
19 shorter; the loss of gifts or benefits that plaintiffs could have expected to
20 receive from MORIAH MODISETTE; funeral and burial expenses; and
21 the reasonable value of household services that MORIAH
22 MODISETTE would have provided.
- 23 2. For the non-economic damages they are entitled to recover pursuant to
24 Code of Civil Procedure section 377.60 for the wrongful death of
25 MORIAH MODISETTE including, but not limited to, the loss of love,
26 companionship, comfort, care, assistance, protection, affection, society
27 and moral support of Decedent, MORIAH MODISETTE.
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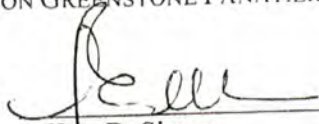
3. For damages that, under all the circumstances of the case, may be just.
ESTATE OF MORIAH MODISETTE, by and through her Personal Representative and/or Successor-in-Interest, BETHANY MODISETTE

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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