

III. PARTIES

3.1 Plaintiffs are residents of Fort Bend County, Texas.

3.2 Defendant TK Holdings, Inc. ("Takata") is a Delaware company doing business in Texas and its registered agent is Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

3.3 Defendant American Honda Motor Co., Inc. ("Honda") is a foreign company doing business in Texas and its registered agent is CT Corp. System, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136.

3.4 Defendant Westside Hummer, Inc. ("Westside Hummer") is a Texas company doing business in Texas with its principal office in Harris County, Texas that may be served through its registered agent, Walid Al-Achi, 8707 Schumacher Ln., Ste. 103, Houston, Texas 77063.

3.5 Defendant Nizari Group Incorporated d/b/a Discount Lube and Tune ("Discount Lube") is a Texas company doing business in Texas with its principal office in Fort Bend County, Texas that may be served through its registered agent, Kinjal Chheda, 3911 Camden Fields Lane, Richmond, Texas 77407.

3.6 Defendant Samantha Iona Martin ("Martin") is a natural person residing in Fort Bend County, Texas that may be served at 358 Ranch House Ln., Richmond, Texas 77469.

IV. VENUE

4.1 Venue is proper in Harris County, Texas because Harris County, Texas is the location of the principal office of Defendant Westside Hummer, Inc. *See* TEX. CIV. PRAC. & REM. CODE §§ 15.001, 15.002(a)(3).

V. JURISDICTION

5.1 This Court has subject-matter jurisdiction over this case under its general jurisdiction as conferred by the Texas Constitution, because the amount in controversy is within the Court's jurisdictional limits, and because no other court has exclusive jurisdiction over this case. Further, each defendant does substantial business in Texas and is subject to the Court's general and specific personal jurisdiction.

VI. REMOVAL IS IMPROPER

6.1 Any attempt to remove this case to federal court is improper. There is no diversity of citizenship for removal under 28 U.S.C. Section 1332 because Westside Hummer, Discount Lube, and Defendant Martin are residents of Texas. Further, any argument that Westside Hummer, Discount Lube, or Defendant Martin have been fraudulently joined is without merit.

6.2 The Fifth Circuit has recognized two ways to establish improper joinder: (1) actual fraud in the pleading of jurisdictional facts; or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court. *See Smallwood v. Illinois Central R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004) (en banc); *Travis v. Irby*, 326 F.3d 644, 647 (5th Cir. 2003) (citing *Griggs v. State Farm Lloyds*, 181 F.3d 694, 698 (5th Cir. 1999)).

6.3 Here, as explained below, Plaintiffs' allegations and the facts show that Westside Hummer had actual knowledge of the dangers associated with the Subject Vehicle's airbag because of systematic and ongoing recalls of Takata's airbags throughout the United States and the world. *See* TEX. CIV. PRAC. & REM. CODE § 82.003. Further, Westside Hummer is liable to Plaintiffs for its independent acts of negligence, as further explained below. Additionally, Discount Lube is liable to Plaintiffs for its negligence during the inspection of the vehicle, as

further explained below. Defendant Martin is also liable to Plaintiffs for negligently driving her vehicle, as further explained below.

VII. PLAINTIFFS' CLAIMS ARE NOT PREEMPTED

7.1 Any argument that Plaintiffs' claims are preempted by federal law is also without merit. "Congress generally intended the federal safety standards to set a minimum standard for performance and allowed juries to determine in particular cases if the vehicle manufacturer should have done more." *MCI Sales and Service v. Hinton*, 329 S.W.3d 475, 495 (Tex. 2010). Moreover, Plaintiffs' claims are not preempted because any mandatory safety standards or regulations adopted by the federal government or an agency of the federal government that apply to the products at issue in this case were inadequate to protect the public from unreasonable risks of injury and damage. See TEX. CIV. PRAC. & REM. CODE § 82.008.

VIII. FACTS

8.1 This is a case about the tragic and needless death of seventeen year-old minor XXXX XXXXX ("Decedent") that occurred on or about March 31, 2016. On that date, Decedent was driving her 2002 Honda Civic with VIN number 1HGEM22552L043251 (the "Subject Vehicle") on FM 762 in Fort Bend County, Texas. Defendant Martin, in another vehicle, quickly slowed, causing Decedent's vehicle to have a low-speed collision with Defendant Martin's vehicle. As a result, the airbag on the Subject Vehicle began to deploy (the "Subject Airbag"). However, ammonium nitrate encompassed within the airbag detonated and caused the inflator to disintegrate into shrapnel that propelled directly towards the Decedent. Shrapnel from the Subject Airbag struck the Decedent in her neck, severing arteries vital for survival. Decedent exited her vehicle and walked around holding her bleeding neck until she

collapsed on the roadway, eventually succumbing to her injuries. She died an agonizing and horrific death.

8.2 The Subject Vehicle was designed, manufactured, marketed, assembled, distributed, tested, sold, maintained, and/or supplied by Honda. Furthermore, Honda and Takata designed, manufactured, tested, marketed, assembled, distributed, sold, maintained, and/or supplied the Subject Airbag.

8.3 The Subject Vehicle was sold by Westside Hummer and supplied to the Plaintiffs on or about March 24, 2011. Discount Lube inspected and verified the Subject Vehicle's vehicle identification number on or about June 10, 2015, in return for a fee, thereby allowing the Subject Vehicle to remain in the stream of commerce.

8.4 An essential design flaw of the Subject Vehicle and Subject Airbag was the use of ammonium nitrate as an airbag propellant. While ammonium nitrate is cheap, it is also dangerously unstable and highly sensitive to temperature changes and moisture and undergoes thermal cycling, which causes it to break down. When ammonium nitrate breaks down, it can combust rapidly and explosively. At the time Takata and Honda used ammonium nitrate as a cheap means of airbag propellant, the chemical's dangerous properties were internationally known and documented. Because of their decision to use a propellant known for its dangerous properties, Takata airbags are killing and maiming drivers and passengers throughout the country involved in otherwise minor and survivable accidents.

IX. HISTORY OF AMMONIUM NITRATE

9.1 The chemical compound used by Takata in its airbag system has a history of causing death and destruction:

DATE	LOCATION	FATALITIES
4/2/1916	Kent, UK	115
09/15/1916	Oakdale, PA	5
11/26/1920	Vergiatì, Italy	20
07/26/1921	Kriewald, Germany	19
09/26/1921	Oppau, Germany	561
03/01/1924	Nixon, NJ	17
04/29/1942	Tessengerloo, Belgium	189
03/02/1944	Milan, TN	4
04/16/1947	Texas City, TX	>600
07/28/1947	Brest, France	21
02/12/1953	Pinole, CA	12
12/28/1956	New Castle, PA	1
08/07/1959	Roseburg, OR	14
01/09/1963	Typpi Oy, Finland	10
09/1966	United Kingdom	1
03/1961	Holland	2
08/1972	Australia	3
1974	United Kingdom	1
09/1974	France	4
11/1988	Kansas City, MO	6
09/1989	South Africa	2
08/02/1994	New Guinea	11

12/13/1994	Port Neal, IA	4
01/06/1998	Xingping, China	22
09/21/2001	Toulouse, France	30
03/09/2004	Barracas, Spain	2
04/22/2004	North Korea	162
05/24/2004	Romania	18
09/10/2007	Mexico	40
04/17/2013	West, TX	15
08/12/2015	Port of Tianjin, China	173
05/27/2009	Oklahoma City, OK	1
12/24/2009	Richmond, VA	1
09/03/2013	Alhambra, CA	1
07/27/2014	Malaysia	1
09/07/2014	Los Angeles, CA	1
09/29/2014	Orlando, FL	1
01/18/2015	Houston, TX	1
04/05/2015	Lafayette, LA	1
07/22/2015	Pittsburgh, PA	1
12/22/2015	Kershaw, SC	1
03/31/2016	Sugar Land, TX	1

The Takata airbag deaths are just a continuation of the long list of victims of this explosive compound.

X. TAKATA'S USE OF AMMONIUM NITRATE

10.1 Takata has a lengthy history of manufacturing and marketing airbags propelled by ammonium nitrate. Takata has claimed that by using ammonium nitrate with a fuel, they can create a gas generator cheaper and more efficient than sodium azide airbags. Takata's formula uses 20% fuel, which is approximately three times more fuel than normally used in ammonium nitrate fuel oil, therefore causing it to deflagrate, producing gas, as opposed to deteriorate.

10.2 Takata acknowledged in a 1995 patent that ammonium nitrate can detonate. Takata suggested that it would primarily be due to a change in density from phase transition, which occurs around 90 degrees Fahrenheit and from humidity. Takata claims to eliminate phase transition by adding potassium nitrate. However, when ammonium nitrate undergoes phase transition, the density of ammonium nitrate is reduced and it becomes more prone to detonation. Testing and studies performed on ammonium nitrate show that repeated phase transitions *i.e.*, thermal cycling, significantly increases the detonation propensity and power of ammonium nitrate over time.

10.3 After undergoing hundreds of phase transitions/thermal cycles, specifically in the summer months, the density of the ammonium nitrate will deteriorate to such a level that it will no longer behave as a pyrotechnic (inflator) but rather as an explosive. The end result is similar to that of a hand grenade, a small amount explosive encased by a metal shell designed to fragment upon detonation.

10.4 Competitor airbag manufacturers, such as TRW Automotive and Autoliv Inc. have used other propellants such as guanidine nitrate to avoid the unreasonably dangerous risks posed to drivers and passengers of airbags equipped with Takata's airbags that contain ammonium nitrate as a propellant. The dangers of using ammonium nitrate as an airbag

propellant have been known to Honda, Takata, and Westside Hummer for years, yet they continued to sell their defective airbags and vehicles to the public.

XI. CAUSES OF ACTION

A. Causes of Action Against Honda

11.1 Plaintiffs bring design defect, marketing defect, breach of warranty, negligence, and gross negligence claims against Honda with respect to the Subject Vehicle and the Subject Airbag.

1. Design Defect

11.2 The Subject Vehicle and Subject Airbag were defectively designed, manufactured, tested, distributed, and sold, thereby making the Subject Vehicle uncrashworthy and unreasonably dangerous. The Subject Vehicle and Subject Airbag were defectively designed because: (1) there was a foreseeable risk that the ammonium nitrate within the selected airbag inflator would detonate and cause the metal container to fragment; (2) the risk could have been reduced or avoided with a safer alternative design, such as the use of a propellant for the airbag inflator other than ammonium nitrate; (3) Honda did not adopt a safer alternative design; and (4) Honda's failure to adopt the safer alternative design rendered the Subject Vehicle and Subject Airbag unreasonably dangerous.

11.3 At the time of manufacture, the safer alternative design was available and the harm to Decedent was easily foreseeable. The Subject Vehicle and Subject Airbag are defective in the following ways:

- a. The propellant used in the Subject Vehicle's airbag system does not provide a safe means of deploying the airbag, leading to a very serious detonation of the ammonium nitrate that causes the metal container to fragment;

- b. The explosion can cause metal shrapnel to be discharged and propelled at drivers and occupants of the Subject Vehicle and other vehicles throughout the United States and the world; and
- c. Individuals in the path of the trajectory can be maimed or killed.

11.4 The defective design, testing, distribution, sale, and supply of the Subject Vehicle and Subject Airbag rendered the Subject Vehicle and Subject Airbag uncrashworthy, defective, and unreasonably dangerous and directly and proximately caused Decedent's death and Plaintiffs' injuries and damages.

11.5 Honda's failure to use a safer alternative design was reckless, willful, wanton, heedless, and in flagrant disregard of public safety. As a result, Plaintiffs are entitled to recover actual and punitive and/or exemplary damages in an amount to be determined by the trier of fact.

2. Marketing Defect/Failure to Warn

11.6 Honda failed to give adequate and proper warnings and instructions regarding the dangers of the Subject Vehicle and Subject Airbag, and such failures rendered the Subject Vehicle and Subject Airbag defective and unreasonably dangerous. Specifically, Honda failed to warn of the Subject Airbag's propensity to detonate upon foreseeable and ordinary use, thereby propelling shrapnel at vehicle occupants.

11.7 Additionally, Honda affirmatively marketed that the Subject Vehicle and Subject Airbag were safe for their intended use even though Honda had actual knowledge of the dangerous propensities of ammonium nitrate and the products.

11.8 Honda's failure to give adequate and proper warnings and faulty marketing rendered the Subject Vehicle and Subject Airbag unreasonably dangerous and caused Decedent's death and Plaintiffs' injuries and damages.

3. Breach of Warranty

11.9 Honda is also liable for breaching the implied warranty of merchantability because neither the Subject Vehicle or the Subject Airbag was fit for the ordinary purpose for which such products are used.

11.10 In Texas, the warranty of merchantability is extended to any person who may be reasonably expected to use, consume, or be affected by the goods.

11.11 The unmerchantability of the Subject Vehicle and Subject Airbag directly and proximately caused Decedent's death and Plaintiffs' injuries and damages.

4. Negligence and Gross Negligence

11.12 Honda and its agents, servants, and employees, for whose acts it is responsible, was negligent and grossly negligent in designing, manufacturing, marketing, maintaining, distributing, selling and/or supplying the Subject Vehicle and Subject Airbag. Honda and its agents, servants, and employees engaged in certain acts and omissions constituting negligence and gross negligence, including, but not limited to:

- a. Failing to properly design the Subject Vehicle and Subject Airbag;
- b. Failing to properly market the Subject Vehicle and Subject Airbag;
- c. Failing to properly manufacture the Subject Vehicle and Subject Airbag;
- d. Failing to properly inspect the Subject Vehicle and Subject Airbag;
- e. Failing to properly design, manufacture and test the Subject Vehicle and Subject Airbag;
- f. Failing to adequately warn the parties to this case and others, including the general public, regarding the use, operation and dangers of the Subject Vehicle and Subject Airbag;

- g. Recklessly disregarding an extreme degree of risk to Decedent and drivers and passengers throughout the United States and the World that Honda was subjectively aware; and
- h. Other acts deemed negligent and grossly negligent.

11.13 These acts of negligence and gross negligence, among others, were a proximate cause of Decedent's death and Plaintiffs' injuries and damages.

B. Causes of Action Against Takata

11.14 Plaintiffs bring design defect, manufacturing defect, warranty, negligence, and gross negligence claims against Takata with respect to the Subject Airbag.

1. Design Defect

11.15 Takata designed, manufactured, distributed, tested, sold, and supplied the Subject Airbag. The Subject Airbag was defectively designed, manufactured, tested, distributed, sold and supplied because: (1) there was a foreseeable risk that the inflator of the Subject Airbag would fragment upon use and would propel metal shrapnel toward drivers and passengers of vehicles containing the Subject Airbag; (2) the risk could have been reduced or avoided with a safer alternative design, such as the use of a propellant for the airbag inflator other than ammonium nitrate; (3) Takata did not adopt a safer alternative design; and (4) Takata's failure to adopt the safer alternative design rendered the Subject Vehicle and Subject Airbag unreasonably dangerous.

11.16 At the time of manufacture, the safer alternative design was available and the harm to Decedent was easily foreseeable. The Subject Airbag is defective in the following ways:

- a. The propellant used in the Subject Airbag system does not provide a safe means of deploying the airbag, leading to a very serious detonation of the ammonium nitrate that causes the metal container to fragment;
- b. The explosion can cause metal shrapnel to be discharged and propelled at drivers and occupants of the Subject Vehicle and other vehicles throughout the United States and the world; and
- c. Individuals in the path of the trajectory can be maimed or killed.

11.17 The defective design, manufacture, testing, distribution, sale, and supply of the Subject Vehicle and Subject Airbag rendered the Subject Vehicle and Subject Airbag uncrashworthy, defective, and unreasonably dangerous and directly and proximately caused Decedent's death and Plaintiffs' injuries and damages.

11.18 Takata's failure to use a safer alternative design was reckless, willful, wanton, heedless, and in flagrant disregard of public safety. As a result, Plaintiffs are entitled to recover actual and punitive and/or exemplary damages in an amount to be determined by the trier of fact.

11.19 Plaintiffs' specifically seeks uncapped punitive damages against Takata because Takata's knowing and intentional acts constitute violations of Texas Penal Code Sections 32.46 and 32.47. *See* TEX. CIV. PRAC. & REM. CODE § 41.008.

2. Marketing Defect/Failure to Warn

11.20 Takata failed to give adequate and proper warnings and instructions regarding the dangers of the Subject Airbag, and such failure rendered the Subject Airbag defective and unreasonably dangerous. Specifically, Takata failed to warn of Subject Airbag's propensity to detonate upon foreseeable and ordinary use, thereby propelling shrapnel at vehicle occupants.

11.21 Additionally, Takata affirmatively marketed that the Subject Airbag was safe for its intended use even though Takata had actual knowledge of the dangerous propensities of ammonium nitrate and the product.

11.22 Takata's failure to give adequate and proper warnings and faulty marketing rendered the Subject Airbag defective and unreasonably dangerous and caused Decedent's death and Plaintiffs' injuries and damages.

3. Manufacturing Defect

11.23 Takata was engaged in the business of designing, manufacturing, marketing, selling and/or otherwise placing the Subject Airbag into the stream of commerce.

11.24 When the Subject Airbag left Takata's control, manufacturing defects in the Subject Airbag rendered it defective and unreasonably dangerous in that its components were prone to fail in the course of foreseeable and ordinary use. In particular, the metal container for the Subject Airbag's inflator was defectively manufactured and/or assembled by Takata. The failure of the metal container caused the container to disintegrate and propel shrapnel at Decedent, killing her.

11.25 Plaintiff used the Subject Airbag for its intended and foreseeable purpose.

11.26 The defective manufacture of the Subject Airbag directly and proximately caused Decedent's death and Plaintiffs' injuries and damages.

4. Breach of Warranty

11.27 Takata is also liable for breaching the implied warranty of merchantability because the Subject Airbag was not fit for the ordinary purpose for which such airbags are used.

11.28 In Texas, the warranty of merchantability is extended to any person who may be reasonably expected to use, consume, or be affected by the goods.

11.29 The unmerchantability of the Subject Airbag directly and proximately caused Decedent's death and Plaintiffs' injuries and damages.

5. Negligence and Gross Negligence

11.30 Takata and its agents, servants, and employees, for whose acts it is responsible, was negligent in designing, manufacturing, marketing, maintaining, distributing, selling and/or supplying the Subject Vehicle and Subject Airbag. Takata and its agents, servants, and employees engaged in certain acts and omissions constituting negligence, including, but not limited to:

- a. Failing to properly design the Subject Vehicle and Subject Airbag;
- b. Failing to properly market the Subject Vehicle and Subject Airbag;
- c. Failing to properly manufacture the Subject Vehicle and Subject Airbag;
- d. Failing to properly inspect the Subject Vehicle and Subject Airbag;
- e. Failing to properly design, manufacture and test the Subject Vehicle and Subject Airbag;
- f. Failing to adequately warn the parties to this case and others, including the general public, regarding the use, operation and dangers of the Subject Vehicle and Subject Airbag;
- g. Recklessly disregarding an extreme degree of risk to Decedent and drivers and passengers throughout the United States and the World that Takata was subjectively aware; and
- h. Other acts deemed negligent and grossly negligent.

11.31 These acts of negligence and gross negligence, among others, were a proximate cause of Decedent's death and Plaintiffs' injuries and damages.

C. Causes of Action Against Westside Hummer

11.32 Plaintiffs bring negligence, gross negligence, strict liability, and failure to warn claims against Westside Hummer. Each of Plaintiffs' claims against Westside Hummer are separate and distinct from Plaintiffs' claims against any other defendant.

1. Negligence and Gross Negligence

11.33 Westside Hummer and its agents, servants, and employees, whose acts it is responsible, is responsible to Plaintiffs' for negligence and gross negligence. The following acts or omissions caused or contributed to Decedent's death and Plaintiffs' injuries and damages and are separate from Plaintiffs' claims against any other defendant in this case:

- a. Supplying the Subject Vehicle and Subject Airbag with actual knowledge of their defective condition;
- b. Negligently inspecting the Subject Vehicle before it was sold;
- c. Making representations regarding the quality of the vehicle before it was sold;
- d. Selling a product with known defects;
- e. Failing to provide updates regarding warranty and warning issues after the Subject Vehicle and Subject Airbag were sold;
- f. Failing to ensure that Plaintiffs received notice of recalls issued by Honda relating to Takata airbags; and
- g. Other acts deemed negligent and grossly negligent.

11.34 Westside Hummer's choice to supply the Subject Vehicle and Subject Airbag with actual knowledge of their defective conditions was reckless, willful, wanton, heedless, and in flagrant disregard of public safety. As a result, Plaintiffs are entitled to recover actual and punitive and/or exemplary damages in an amount to be determined by the trier of fact.

2. *Strict Liability*

11.35 Westside Hummer is liable to Plaintiffs for strict product liability. Texas law provides that for the purpose of product liability law, any “seller” of a defective product may be held liable for damages resulting from the use of that product. “‘Seller’ means a person who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption a product or any component part thereof.” TEX. CIV. PRAC. & REM. CODE § 82.001. Westside Hummer sold and supplied the Subject Vehicle, thereby placing the defective products in the stream of commerce.

11.36 The Subject Vehicle and Subject Airbag were defectively designed, manufactured, tested, distributed, sold and supplied because: (1) there was a foreseeable risk that the inflator of the Subject Airbag would detonate upon use and would propel metal shrapnel toward drivers and passengers of vehicles containing the Subject Airbag; (2) the risk could have been reduced or avoided with a safer alternative design, such as the use of a propellant for the airbag inflator other than ammonium nitrate; (3) a safer alternative design was not adopted; and (4) the failure to adopt the safer alternative design rendered the Subject Vehicle and Subject Airbag unreasonably dangerous.

11.37 Westside Hummer was actually aware of the defects of the Subject Vehicle and Subject Airbag prior to the time that they were supplied. *See* TEX. CIV. PRAC. & REM. CODE § 82.003(6). Numerous reported accidents and recalls of Takata airbags were in the public domain and actually provided to Westside Hummer prior to the incident made the basis of this suit. Decedent’s death resulted from the defects that Westside Hummer was actually aware.

11.38 Westside Hummer’s supply of the defective Subject Vehicle and Subject Airbag directly and proximately caused Decedent’s death and Plaintiffs’ damages.

11.39 Westside Hummer's choice to supply the Subject Vehicle and Subject Airbag with actual knowledge of their defective condition was reckless, willful, wanton, heedless, and in flagrant disregard of public safety. As a result, Plaintiffs are entitled to recover actual and punitive and/or exemplary damages in an amount to be determined by the trier of fact.

3. Failure to Warn

11.40 Westside Hummer is liable to Plaintiffs for failing to warn of the dangerous condition of the Subject Vehicle and Subject Airbag. Westside Honda had a duty to warn Plaintiffs of dangerous conditions of the Subject Vehicle and Subject Airbag that it was actually aware of or should have been aware. Westside Hummer received notices from the manufacturing Defendants indicating the dangers of the Subject Vehicle and Subject Airbag. Westside Hummer was actually aware that the Subject Vehicle contained an airbag manufactured by Takata and that Takata airbags are dangerous due to their use of ammonium nitrate.

11.41 Westside Hummer failed to warn Plaintiffs of the dangerous condition of the Subject Vehicle and Subject Airbag. Westside Hummer's failure to warn was a direct and proximate cause of Decedent's death and Plaintiffs' injuries and damages.

D. Negligence Against Discount Lube

11.42 Plaintiffs bring negligence claims against Discount Lube. Each of Plaintiffs' claims against Discount Lube are separate and distinct from Plaintiffs' claims against any other defendant. Discount Lube performed a state mandated annual inspection of the vehicle on June 10, 2015.

11.43 Discount Lube and its agents, servants, and employees, whose acts it is responsible, are liable to Plaintiffs for negligence. The following acts or omissions caused or contributed to Decedent's death and Plaintiffs' injuries and damages:

- a. Failing to alert Plaintiff of known recalls of the Subject Vehicle;
- b. Failing to adequately perform an annual inspection and report to the Decedent that a recall had been issued for the driver side airbag of the Subject Vehicle;
- c. Failing to alert Plaintiff of known recalls of the Subject Airbag; and
- d. Other acts deemed negligent.

11.44 Each of Plaintiffs' claims against Discount Lube are separate and distinct from Plaintiffs' claims against any other defendant.

E. Negligence Against Defendant Martin

11.45 Plaintiffs bring claims of negligence against Defendant Martin. Plaintiffs' claims against Defendant Martin are separate and distinct from Plaintiffs' claims against any other defendant. The following acts or omissions caused or contributed to Decedent's death and Plaintiffs' injuries and damages:

- a. Stopping suddenly; and
- b. Failure to maintain speed.

11.46 These acts of negligence, among others, were a proximate cause of Decedent's death and the injuries and damages to Plaintiffs.

XII. PRESERVATION OF EVIDENCE

12.1 Plaintiffs hereby request and demand that Defendants and their agents, attorneys, and insurers preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit, or the damages resulting therefrom, including but not limited to training records, personnel records, photographs, videotapes, audiotapes, recordings, correspondence, memoranda, files, facsimiles, email, voice mail, text messages, or cellular

telephone records. Failure to maintain such items will constitute “spoliation” of the evidence and may subject Defendants to sanctions.

XIII. DAMAGES

13.1 As a result of Defendants’ acts and omissions described above, Decedent was severely injured and killed. Plaintiffs bring these wrongful death actions and survival action for the following damages:

- a. Past physical pain and suffering of Decedent;
- b. Past mental anguish of Decedent;
- c. Decedent’s medical and funeral expenses;
- d. Past and future pecuniary and nonpecuniary wrongful death damages including the loss of inheritance, loss of care and affection, loss of support, loss of services, loss of advice, loss of counsel, and loss of contributions of a pecuniary value;
- e. Costs of suit;
- f. Exemplary damages; and
- g. Any and all other damages in which Plaintiffs may be justly entitled.

13.2 Plaintiffs plead damages in excess of \$1,000,000.

XIV. PRAYER

14.1 For these reasons, Plaintiffs pray that citation issue and be served upon the Defendants in a form and manner prescribed by law, requiring that the Defendants appear and answer, and that upon final hearing, Plaintiffs have judgment against Defendants, jointly and severally, in a sum in excess of the minimum jurisdictional limits of this Court, plus prejudgment

and post judgment interest, all costs of Court, attorneys' fees, punitive damages, and all such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS, SORRELS,
AGOSTO & FRIEND**

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