

DC-17-05477
CAUSE NO. _____

BRIDGET ALEX, individually and on behalf	§	
of the ESTATE OF BRANDON ALEX, and	§	
JASHAWN ALEX,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiffs</i>	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
T-MOBILE USA, INC., METROPCS	§	
COMMUNICATIONS, INC., and	§	
METROPCS MIDWAY RD.,	§	
	§	_____ JUDICIAL DISTRICT
<i>Defendants.</i>	§	

**ORIGINAL PETITION
AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BRIDGET ALEX, Individually and on behalf of the ESTATE OF BRANDON ALEX and JASHAWN ALEX (collectively “Plaintiffs”) complaining of T-Mobile USA, Inc., MetroPCS Communications, Inc., and MetroPCS Midway, an authorized dealer (collectively, “Defendants”) and for cause of action would respectfully show the Court as follows:

DISCOVERY PLAN

1. *Discovery Control Plan.* Pursuant to Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE, discovery in this case should be conducted under Level 3. Therefore, Plaintiffs respectfully request that this Court enter an appropriate Scheduling Order so that discovery may be conducted under Level 3.

RULE 47 STATEMENT

2. Plaintiffs seek relief as specified by Rules 47(c)(5) & 47(d) of the Texas Rules of Civil Procedure.

JURISDICTION AND VENUE

3. Plaintiffs affirmatively plead that this Court has jurisdiction because the amount in controversy exceeds the minimum jurisdictional limits of the Court. Furthermore, the causes of action asserted in this matter arose in the State of Texas. Therefore, this Court has subject matter and personal jurisdiction over all parties and all claims.

4. Venue is proper in this Dallas County under the general venue statute, TEX.CIV.PRAC. & REM.CODE § 15.002(a)(1), because all or a substantial part of the events or omissions giving rise to this claim occurred in Dallas County, TX.

PARTIES

5. Plaintiffs are individuals residing in Dallas County, Texas. The estate has no debts and no administration upon the estate is pending and none is necessary or desired by those interested in the estate.

6. Defendant T-MOBILE USA, INC. (“T-MOBILE”), upon information and belief, is a corporation organized under the laws of the State of Washington. T-MOBILE provides wireless voice, messaging and data services in the U.S., Puerto Rico, and the U.S. Virgin Islands. The causes of action set out herein arise from T-MOBILE’s contacts with the State of Texas. Service of process upon T-MOBILE may be had by serving its Registered Agent for Service of Process, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

7. Defendant METROPCS COMMUNICATIONS, INC. (“MetroPCS”) provides wireless voice, messaging and data services in the United States. MetroPCS, upon information and belief, is a Delaware corporation with its principal place of business at 2250 Lakeside Blvd., Richardson, Texas 75082. Service of process upon MetroPCS may be had by serving its Registered Agent for Service of Process, Corporation Service Company dba CSC - Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

8. Defendant MetroPCS Midway Rd. is, upon information and belief, an independent company that owns and operates as a MetroPCS Authorized Dealer and may be served with process by serving its registered agent for service of process, President, or Vice President, at MetroPCS Midway, 18110 Midway Rd., Suite 130, Dallas, TX 75287-6677.

9. Whenever in this Petition it is alleged that a Defendant did or failed to do any act or thing, it is meant that the Defendant's governing body, directors, officers, agents, servants, employees and/or other representatives and/or independent contractors subject to its control, did or failed to do any act or thing and that, at the time such conduct occurred, it occurred with the authorization and/or ratification of such Defendant and/or was done in the normal and routine course and scope of employment or agency of the Defendant, and/or pursuant to the Defendant's direction and control.

10. At all relevant times, each Defendant was an agent of the other Defendants. In committing the acts alleged herein, Defendants acted within the scope of their agency and were acting with the consent, permission, authorization and knowledge of the other respective Defendants, and perpetrated and/or conspired to or aided and abetted the unlawful acts described herein. All actions of the Defendants alleged herein were ratified and approved by the other respective Defendants or their respective officers, directors, controlling persons, agents, aiders and abettors or co-conspirators.

BACKGROUND FACTS

11. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

12. 9-1-1 service is statutorily defined as a telecommunications service that provides the user of the public telephone system the ability to reach a Public Safety Answering Point ("PSAP") by dialing the digits 9-1-1. Citizens rely on 9-1-1 to reach assistance in times of

individual crisis or major disaster. The 9-1-1 system is supposed to deliver 9-1-1 calls and location data to the PSAP.

13. The Texas Legislature created the Commission on State Emergency Communications (CSEC), which is an agency of the State of Texas charged with oversight of the Statewide 9-1-1 system. The 9-1-1 Program is funded from the fee on each telephone line reflected on an individual's telephone bill (*i.e.* wireline, wireless and VoIP). The CSEC's role is to preserve and enhance public safety and health in Texas through reliable access to emergency communications services. The CSEC is also charged with developing minimum performance standards for equipment and operation of 9-1-1 service, recommend minimum training standards, assist in training, and provide assistance in the establishment and operation of 9-1-1 service.

14. According to the Eight Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, in 2016, T-Mobile, MetroPCS, and other providers in Texas collected \$222,938,735 in fees from citizens for funding 911.

15. Defendants collected the 911 fees from BRIDGET ALEX and Michelle Cohen during the period covering the events complained of herein.

16. In September 2000, the FCC granted T-Mobile a temporary, conditional waiver of the E911 Phase II rules to implement a hybrid network and handset-based technology called Enhanced Observed Time Difference of Arrival across its Global System for Mobile Communications network. As part of this waiver, T-Mobile agreed to implement a network software solution that would make use of existing network capabilities to provide immediate location information for all 911 calls on the network. And as part of a Consent Decree terminating the FCC's investigation into violations by T-Mobile of the enhanced 911 ("E911") Phase II

provisions, T-Mobile was required to pay a fine to the United States Treasury in the amount of One Million One Hundred Thousand Dollars (\$1,100,000).

17. In a April 15, 2015, public press release regarding its investigation of an April 2014 multi-state 911 outage that prevented more than 11 million people in seven states from being able to reach emergency call centers for over six hours, both the Chairman and the Chief Enforcement Officer of the Federal Communications Commission (the “FCC”) during the FCC’s investigation of a 911 power outage stated:

Americans need to be confident that the service they use to reach first responders is reliable and accessible in their time of need,” said Chairman Tom Wheeler. “Providers have a responsibility to ensure that Americans can use 911 to call for help any time. When a company fails to live up to its obligations, it will be held accountable.

Delivering 911 calls is one of the most important public safety responsibilities a phone company has,” said Travis LeBlanc, Chief of the FCC’s Enforcement Bureau. “We will aggressively enforce the Commission’s 911 rules whenever the public’s trust in 911 is undermined.

18. In a July 2015 press release, the FCC announced that it had levied a \$17.5 million fine against T-Mobile to resolve charges brought against the carrier for two 911 outages that left many of the mobile carrier’s then 50 million subscribers unable to reach first responders for over three hours.

19. In addition to paying the \$17.5 million fine, the FCC ruled that T-Mobile is obliged to identify and protect against flaws in its operations that could lead to future outages. In announcing the fine, the FCC Commissioner stated, “The Commission has no higher priority than ensuring the reliability and resilience of our nation’s communications networks so that consumers can reach public safety in their time of need.” “Communications providers that do not take necessary steps to ensure that Americans can call 911 will be held to account.”

20. In or about July 2015, the Better Business Bureau (“BBB”) in Dallas informed MetroPCS that a concerning spike in the number of complaints has been identified and requested that they cooperate with the BBB in addressing this pattern in order to eliminate it in the future. On October 3, 2016, BBB determined that MetroPCS did not address the underlying cause for the significant increase in BBB complaints.

21. In or about January 2017, BRIDGET ALEX and Michelle Cohen, due in large part to their custody and guardianship of BRANDON ALEX and personal safety, made it known to Defendants’ representatives that they needed a cellular phone, telecommunications’ services and 911 technology that would allow them to be located quickly in order to obtain prompt medical and police attention. BRIDGET ALEX and Michelle Cohen were led to believe that the equipment and services they purchased and used from Defendants would satisfy their needs.

22. Upon information and belief, Defendants, through the City of Dallas, became aware of a T-Mobile 911 software glitch in October 2016.

23. According to Dallas City Councilman Philip Kingston, he learned about the 911 T-Mobile problem after receiving a call in January 2017 from a constituent who told him he had been placed on hold for 25 minutes after calling 911.

24. In or about February 2016, WFAA-TV in Dallas reported publicly that there are times when the 911 system is being overloaded by T-Mobile customers and that when a T-Mobile customer calls 911, their phone repeatedly redials 911 and the caller doesn't even know it.

25. On or about March 8, 2017, T-Mobile became aware that Brian Cross died after David Taffet waited on hold with 911 for 20 minutes to report that Mr. Cross had stopped snoring in his sleep. This is the same day that the City of Dallas, at one point, had approximately 360 emergency calls on hold, according to City Manager T.C. Broadnax.

26. Also on March 8, 2017, Dallas, Texas Mayor Mike Rawlings expressed his public outrage when T-Mobile's 9-1-1 service and technology caused calls to be, phantomlike, placed on hold, resulting in hundreds of unanswered calls and deaths or losses from the inability of callers to reach 911 because of T-Mobile's technological issues. The Mayor stated publicly, "This is unacceptable. This is a matter of life and death for our citizens, and we've got to make sure we fix this."

27. On the evening of Saturday, March 11, 2017, while BRIDGET ALEX was attending a funeral, BRANDON ALEX was being cared for by Michelle Cohen. When BRANDON ALEX rolled off the daybed and onto the floor, Ms. Cohen quickly came to his aid and observed him gasping and barely breathing.

28. At approximately 5:55 p.m., Ms. Cohen quickly dialed 911 from her T-Mobile/MetroPCS wireless device only to be placed on hold. The first hold lasted 55 seconds. She made a second call at 5:57 p.m. It lasted eight minutes and 40 seconds. She called for a third time at 6:11 pm. She stayed on the line for 31 minutes and 35 seconds.

29. Upon information and belief, because of Defendants' policies, software, or technology, BRIDGET ALEX'S apartment location did not immediately appear in the City of Dallas's 911 call center.

30. While BRANDON ALEX lay there in distress, struggling to survive, neither police nor EMT ever arrived at BRIDGET ALEX'S apartment to assist BRANDON ALEX.

31. Without an automobile with which to take BRANDON ALEX to the emergency room herself, Ms. Cohen called BRIDGET ALEX, who rushed over to take BRANDON to the emergency room. Unfortunately, by the time BRIDGET ALEX was able to get BRANDON ALEX to the emergency room herself, he was pronounced dead.

32. Following BRANDON's death, the City of Dallas issued a statement that included the following comment, "It is outrageous that T-Mobile still has not resolved the ghost call issue that is putting Dallasites in danger by clogging our 911 system. I'm in full agreement with our city manager that our citizens deserve better. This issue not only puts paying T-Mobile customers at risk, but it jeopardizes the safety of people throughout our city."

33. According to another public statement issued after BRANDON's death, Dallas Mayor Mike Rawlings said the issue has been known by T-Mobile since October 2016 and that he was disappointed T-Mobile did not send personnel to Dallas sooner.

34. According to a former Dallas police chief, officers respond to critical calls within six minutes. Therefore, if the Defendants' services, software, products and technology had worked as required, BRANDON ALEX would have received timely police and/or EMT assistance.

35. BRANDON ALEX's death was a foreseeable and preventable tragedy that occurred because Defendants failed to implement readily available technology and services that would have allowed Ms. Cohen's call to be processed as an authentic 911 call and quickly connected to the City of Dallas's 911 call center, along with the location from which the call originated.

CAUSES OF ACTION

COUNT ONE: STRICT LIABILITY

36. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

37. Defendants participated in providing a wireless cellular telephone, software, telecommunications technology, and wireless voice, messaging and data services to BRIDGET ALEX, Michelle Cohen, and the City of Dallas.

38. According to an affidavit from a City of Dallas call taker, “MetroPCS doesn’t always have addresses.” Consequently, while precious time elapsed, an adequate location and/or call back information was not immediately provided to the City of Dallas 9-1-1 call center.

39. Upon information and belief, Defendants did not provide adequate software to address issues necessary for Defendants’ products and services to operate properly with the City of Dallas’s 9-1-1 call center

40. In addition, Defendants did not provide available technology to BRIDGET ALEX, Michelle Cohen or the City of Dallas that would allow the 9-1-1 call center quickly to locate BRIDGET ALEX’s apartment within the accuracies available in other technologies on the market.

41. Defendants are and have been at all times pertinent to this Petition, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling telecommunications technology, wireless PDAs, cellular telephones, wireless voice, messaging and data services such as that used by BRIDGET ALEX and Michelle Cohen. The Defendants knew and anticipated that the telecommunications technology, software, and/or mobile device services and products used by BRIDGET ALEX and Michelle Cohen would be sold to and operated by users, including BRIDGET ALEX, Michelle Cohen, and City of Dallas. Defendants also knew that the telecommunications technology and/or mobile device services and products would reach BRIDGET ALEX and Michelle Cohen without substantial change in its condition from the time the services and technology and/or mobile device services and products were provided to BRIDGET ALEX and Michelle Cohen and other users.

42. The Defendants designed, manufactured, marketed, assembled, and/or tested the telecommunications technology, software, and/or mobile device services and products to be unreasonably dangerous and defective within the meaning of Section 402(A) Restatement

(Second) Torts, in that the telecommunications technology and/or mobile device services and products were defective and unreasonably dangerous as designed, manufactured, assembled, marketed, and/or tested because of the following design, manufacturing and/or marketing defects, among others:

- a. The Defendants' telecommunications technology, software, and/or mobile device services and products were defectively designed because they did not work properly with the City of Dallas's equipment and services;
- b. The telecommunications technology, software, and/or mobile device services and products were defectively designed because they failed to allow emergency personnel to accurately determine a caller's location;
- c. The telecommunications technology and/or mobile device services and products were defectively designed because they failed to use readily available GPS tracking technology;
- d. The telecommunications technology and/or mobile device services and products were defectively designed because they failed to provide a physical address for the 9-1-1 callers;
- e. The 911 related software used by Defendants were not state-of-the-art;
- f. The location-finding performance of the telecommunications technology and/or mobile device services and products used by BRIDGET ALEX and Michelle Cohen were not state-of-the-art;
- g. The telecommunications technology and/or mobile device services and products were unreasonably dangerous since the Defendants failed to warn of a foreseeable risk arising from the use of the telecommunications technology and/or mobile device services and products, and lack of adequate warnings or instructions rendered otherwise adequate products unreasonably dangerous;
- h. The Defendants failed to conduct proper engineering analysis, failure mode effects analysis, fault tree analysis, design, quality control analysis, root cause analysis, and emerging hazard analysis to evaluate the potential risks, hazard and dangers of the telecommunications technology and/or mobile device services and products performing inadequately in emergency situations; and
- i. The Defendants failed to prevent or guard against its telecommunications technology and/or mobile device services and products experiencing location deficiencies by using safer alternative designs that should have used better designed technologies and materials to prevent the catastrophic consequences that occurred here. The designs could have been provided at little additional cost.

43. There were no mandatory safety standards or regulatory adopted and promulgated by the federal government or an agency of the federal government that were applicable to the telecommunications technology, software, and/or mobile device services and products at the time of manufacture and development and that governed the product risk that caused this harm. Alternatively, the design of the telecommunications technology and/or mobile device services and products did not comply with the mandatory safety standards or regulations adopted by the federal or state government that were applicable to the telecommunications technology and/or mobile device services and products at the time of the development or manufacture and that governed the risks that proximately caused the death of BRANDON ALEX when responders did not reach him in time. Additionally, in the alternative, in the event that such standards were in effect, and they were complied with, they were nevertheless inadequate to protect the public from unreasonable risks of injury or danger, or the manufacturer, before or after marketing the telecommunications technology, software, and/or mobile device services and products, withheld or misrepresented the information or material relevant to the federal government's or agencies' determination of the adequacy of the safety standards or regulations at issue.

44. The defects in the telecommunications technology, software, and/or mobile device services and products could not have been anticipated by a reasonable person, and, therefore presented an unreasonably dangerous situation for expected users such as BRIDGET ALEX, Michelle Cohen, and the City of Dallas, even when used in a reasonable and foreseeable manner.

45. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective telecommunications technology, software and/or mobile device services and products would subject users to harm resulting from the defects. Defendants acted with conscious disregard for the safety of BRANDON ALEX, knowing that their conduct created a high and

unreasonable risk of serious harm to others and the jury should be permitted to return a verdict of aggravating circumstances damages that will serve to punish Defendants and deter others from like conduct.

46. BRIDGET ALEX, Michelle Cohen, and the City of Dallas used the Defendants' telecommunications technology, software and/or mobile device services and products for its intended purpose and in a reasonable and foreseeable manner. Nevertheless, Plaintiffs have suffered damages through no fault of their own but as a direct and proximate result of the Defendants' conduct and/or omissions.

47. As a proximate result of the actions and omissions of the Defendants, BRANDON ALEX died after suffering severe injuries, damages and property loss, for which Plaintiffs are entitled to recover, in excess of the minimum jurisdictional limits of this Court.

COUNT TWO:
NEGLIGENCE AND GROSS NEGLIGENCE

48. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

49. The Commission on State Emergency Communications ("CSEC") is charged with developing minimum performance standards for equipment and operation of 9-1-1 service, recommend minimum training standards, assist in training, and provide assistance in the establishment and operation of 9-1-1 service. As a result of the CSEC allowing the Defendants to provide 9-1-1 capable mobile equipment to Texas residents, Defendants have a duty to 9-1-1 users such as BRIDGET ALEX and Michelle Cohen, who are taxed for the 9-1-1 services.

50. The Defendants had a duty to Plaintiffs to provide safely designed and manufactured products, software and technology. Defendants also had a duty to warn Plaintiffs of

the true nature of the defective nature of the telecommunications technology, software, and/or mobile device services and products. Defendants failed to fulfill this duty.

51. Upon information and belief, other providers offer software packages that do not lead to the problems that plagued T-Mobile callers and led to BRANDON ALEX's death. However, Defendants made a conscious decision not to make this technology available for Plaintiffs' benefit.

52. According to several testing companies and independent engineering firms, the Defendants had available to it technology that would have allowed Ms. Cohen's call to be quickly connected to a 9-1-1 operator, who could have located the cell phone within 30 feet or less of her calling location, and to locate BRANDON ALEX. However, Defendants made a conscious decision not to make this technology available for Plaintiffs' benefit. Defendants' refusal to provide this technology and information constitutes negligence and gross negligence.

53. Defendants were negligent and grossly negligent in at least the following respects as it relates to the telecommunications technology and/or mobile device services and products:

- a. Creating a hazardous and dangerous condition for Plaintiffs, T-Mobile users and the public at large by using software and technology it knew to be incompatible with City of Dallas's 911 systems, services, and protocol;
- b. Ignoring repeated warnings from City of Dallas and news reports regarding Defendants' software glitches, technological incompatibility and obsolete technology;
- c. Ignoring repeated warnings from the FCC regarding the dangers inherent in Defendants' 911 services and technology;
- d. Failing to comply with the statute or regulation designed to protect a class of individuals such as BRANDON ALEX from being unable to be located by 9-1-1 dispatchers when using a cell phone;
- e. Designing and distributing telecommunications technology, software and/or mobile device services and products with a design standard that was intended barely to meet the minimum government regulations, if any, instead of safely designing

telecommunications technology and mobile device services and products to reasonably minimize injuries in foreseeable situations;

- f. Failing to adequately monitor the performance of the telecommunications technology, software and/or mobile device services and products in the field to ensure that they were reasonably minimizing failures to track a caller's location in an emergency;
 - g. Failing to adequately test the telecommunications technology, software and/or mobile device services and products to ensure that it would be reasonably safe in foreseeable situations;
 - h. Failing to program its services and products to automatically send GPS coordinates to 9-1-1 operators as soon as the call is initiated;
 - i. Failing to adequately train the City of Dallas 9-1-1 operators on the standard operating protocol in responding to calls from MetroPCS and T-Mobile callers;
 - j. Refusing to use readily available location performance technology that met or exceeded the FCC's 50-meter threshold at 80%;
 - k. Failing to adequately upgrade its cell towers;
 - l. Failing to design software, systems and technology to be able to report to 9-1-1 dispatchers the phone number of a wireless caller and the location of the antenna that receives the call;
 - m. Failing to adequately use global positioning satellite data to provide more precise information of where cellular calls are coming from, generally within 30 to 100 meters of the caller's location;
 - n. Failing to recall, retrofit, or issue post-sale warnings after the Defendants knew, or should have known, that the telecommunications technology and/or mobile device services and products and its component parts were defective and unreasonably dangerous;
 - o. Failing to monitor its quality control unit suppliers; and
 - p. Failing to impose rigorous manufacturing quality control standards on its suppliers.
54. Each of the foregoing grossly negligent acts and omissions, and other not listed

above, whether taken singularly or in any combination, proximately caused the injuries and damages of Plaintiffs set forth herein.

55. Defendants engaged in acts and/or omission which, when viewed objectively from their standpoints at the time of their occurrences, involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others and of which each had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs, users of Defendants' products and services and the public at large.

56. BRANDON ALEX died after suffering severe injuries and damages, for which Plaintiffs are entitled to recover, in excess of the minimum jurisdictional limits of this Court.

COUNT THREE:
BREACH OF EXPRESS AND IMPLIED WARRANTIES

57. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

58. Defendants breached express warranties that the telecommunications technology, software and/or mobile device services and products were safe, reliable and that quality was of paramount importance.

59. Defendants also breached the implied warranties of merchantability. The warranty of merchantability is implied into every commercial transaction. The warranty of merchantability requires that products be of reasonable workmanlike quality and free from defects. Defendants' impliedly warranted that the telecommunications technology and/or mobile device services and products were of merchantable quality. Defendants breached the warranty of merchantability by designing, manufacturing, distributing, selling and refusing to adequately repair or replace their telecommunications technology, software and/or mobile device services and products after it became apparent they were defective in its ability to connect calls to 911 and/or to locate callers.

60. At all times, Plaintiffs relied on representations made by Defendants that their telecommunications technology, software and/or mobile device services and products are reliable and of a quality that rendered them suitable for their intended use, including in emergency situations requiring the caller to be located quickly. Plaintiffs also relied on Defendants to produce telecommunications software, technology and/or mobile device services and products of merchantable quality as required by the implied warranty of merchantability.

61. The Defendants breached its warranties to Plaintiffs in that the defective design of their telecommunications technology, software and/or mobile device services and products renders them unusable for their intended purpose and Defendants refuse to properly repair or replace these items.

62. As a proximate result of the Defendants' conduct, which led to BRANDON ALEX's untimely death, Plaintiffs are entitled to recover, in excess of the minimum jurisdictional limits of this Court.

COUNT FOUR:
DTPA VIOLATIONS

63. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

64. Defendants breached express warranties that their telecommunications technology, software, and/or mobile device services and products contained features that would allow police, fire and other emergency responders easily to find the Alex family.

65. Defendants also violated §§ 17.46(b)(7), (13), (24), *inter alia*, when they (i) represented that the telecommunications technology, software and/or mobile device services and products were of a particular standard, quality, or grade, or that it was of a particular style or model, when it was of another; (ii) knowingly made false or misleading statements of fact concerning the

telecommunications technology and/or mobile device services and products and the alleged capabilities of its connectivity and location-finding technology; and (iii) failed to disclose information concerning the outdated and inadequate telecommunications technology, software and/or mobile device services and products that was known at the time of the transaction since such failure to disclose such information was intended to induce BRIDGET ALEX and her family into a transaction into which the family would not have entered had the correct information been disclosed.

66. As a proximate result of the Defendants' conduct, which contributed to BRANDON ALEX's untimely death, Plaintiffs are entitled to recover, in excess of the minimum jurisdictional limits of this Court.

COUNT FIVE:
MISREPRESENTATION

67. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

68. In various commercials, internet postings, periodicals, press releases, marketing materials and personal conversations etc., Defendants represented that their technology is state of the art and that the safety of their customers is paramount. These representations were intended to, and did, cause consumers such as BRIDGET ALEX and her family to rely on Defendants' representations and purchase telecommunications technology and/or mobile device services and products. As a result of their reliance on these representations of 911 connectivity and location accuracy, BRIDGET ALEX and Michelle Cohen made the decision to use Defendants' products and services.

69. However, as discussed above, the Defendants made misrepresentations of the quality, reliability and safety of its telecommunications technology, software and/or mobile device services and products, all to the detriment of BRANDON ALEX and Plaintiffs.

70. As a proximate result of the Defendants' misrepresentations, which ultimately contributed to BRANDON ALEX's untimely death, Plaintiffs are entitled to recover in excess of the minimum jurisdictional limits of this Court.

COUNT SIX:
BYSTANDER RECOVERY

71. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

72. After repeatedly attempting to get emergency assistance using Defendants' products and services, Ms. Cohen was forced to call BRIDGET ALEX, who came to take BRANDON ALEX to the emergency room herself.

73. Upon walking into the apartment, BRIDGET ALEX observed BRANDON ALEX's near lifeless body, him fighting for life but apparently hanging on by a thread. Ms. Cohen was still on the Defendants' cell phone waiting on hold. BRANDON's face was flush. For the next several minutes, BRIDGET ALEX observed her son's unresponsive body as she rushed him to an emergency room.

74. BRIDGET ALEX and Michelle Cohen suffered direct injury in form of mental anguish and emotional distress from observing BRANDON shaking and attempting to breath while in the apartment and witnessing BRANDON's body for what seemed like a lifetime, while Ms. Cohen was on hold because of Defendants' preventable conduct.

COUNT SEVEN:
WRONGFUL DEATH

75. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

76. Plaintiffs are entitled to and do bring this action pursuant to Title 4, Chapter 71, Subchapter A of the Texas Civil Practice and Remedies Code, Texas Wrongful Death statute. During his short time in this life, BRANDON brought incalculable joy to Plaintiffs' lives as well as to amongst others. Plaintiffs have experienced a loss that is perhaps every family member's greatest fear: They buried their beloved son. Defendants are liable to Plaintiffs for the actual damages arising from the conduct that caused BRANDON ALEX's death.

77. Defendants' wrongful acts proximately caused BRANDON ALEX's death and he would have been entitled to bring an action for his injuries had he lived.

78. As a proximate result of Defendants' conduct, which caused BRANDON ALEX's untimely death, Plaintiffs are entitled to recover in excess of the minimum jurisdictional limits of this Court.

COUNT EIGHT:
SURVIVAL ACTION

79. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

80. Plaintiffs are entitled to and do bring this action in such representative capacity pursuant to Title 4, Chapter 71, Subchapter B of the Texas Civil Practice and Remedies Code, the Texas Survival statute, and BRIDGET ALEX is the legal representative of the estate of BRANDON ALEX.

81. BRANDON ALEX would have been entitled to bring an action for his injuries had he lived.

82. As a proximate result of Defendants' conduct, which caused BRANDON ALEX's untimely death, Plaintiffs are entitled to recover in excess of the minimum jurisdictional limits of this Court.

COUNT NINE:
OTHER DAMAGES

83. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

84. As a result of Defendants' acts and/or omissions and BRANDON ALEX's death, Plaintiffs suffered damages in the past and will suffer damages in the future including, but not limited to, mental anguish, loss of consortium, grief, bereavement, loss of future financial contributions, loss of services, loss of advice, care and counsel, loss of society and companionship, medical, funeral, and burial expenses, for which damages are sought under Article XVI, section 26 of the Texas Constitution and Chapter 41 of the Texas Civil Practice and Remedies Code.

85. Plaintiffs will continue to suffer these injuries for the rest of Plaintiffs' lives, and seek compensation for such future damages.

86. Defendants are also liable to the Estate of BRANDON ALEX for, among other things, his physical pain, suffering and mental anguish, loss of earning capacity, physical disfigurement, physical impairment, and funeral and burial expenses.

87. Defendants are also liable to Plaintiffs for actual and statutory treble damages, prejudgment interest, post judgment interest, attorneys' fees, and all other damages for which Plaintiffs are entitled, under law and in equity.

COUNT TEN:
EXEMPLARY DAMAGES

88. Plaintiffs also seek exemplary damages for injuries caused by Defendants' gross negligence under Texas Civil Practice & Remedies Code section 41.003(a)(3), as defined by Section 41.001(11). Plaintiffs also seek exemplary damages for the wrongful death of the decedent caused by Defendants' willful act or omission or gross neglect, as provided in Texas Constitution, article 16, section 26, and Texas Civil Practice & Remedies Code section 71.009. Finally, Plaintiffs seek exemplary damages under any and all other statutes, acts, or law providing for such damages.

CONDITIONS PRECEDENT

89. Defendants have actual notice of BRANDON ALEX's death and the other damages and injuries complained of herein. Any conditions precedent has occurred, been performed, or have been waived.

JURY DEMAND

90. Plaintiffs demand a jury trial.

PRESERVING EVIDENCE

91. On or about April 4, 2017, Defendants received correspondence notifying of their obligation to preserve all documents, including electronically stored information in any way related to the litigation of this matter. The April 4, 2017, letter was not designed to limit the categories of information that must be preserved. Nor was it designed to limit the period for which preservation is required. It was merely designed to provide Defendants with an example of the minimum categories of information that Defendants are obligated to preserve. Plaintiffs reiterate this preservation request and demand that Defendants 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 letters; e-mails; electronically stored

information; faxes; reports; agreements; intracompany and intercompany communications; correspondence; telegrams; memoranda; summaries or records of conversations; diaries; calendars; photographs; tape recordings; models; charts; plans; drawings; agendas; minutes or records of conferences or meetings; expressions or statements of policy; lists of persons attending meetings or conferences; summaries; investigations; opinions or reports of consultants; appraisals; records; brochures; pamphlets; advertisements; circulars; trade letters; reports, summaries or analyses prepared by or for any governmental entity or agency; press releases; drafts of any documents; revisions of drafts of any documents; FCC investigations; consent decrees; request for waivers; notes and other information related to each of the facts and allegations referenced in this Petition. Failure to maintain such items will constitute “spoliation” of the evidence, for which Plaintiffs will seek appropriate sanctions and remedies.

REQUEST FOR DISCLOSURES

92. *Request for Disclosure.* Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiffs request that Defendants disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the TEXAS RULES OF CIVIL PROCEDURE. Plaintiffs specifically request that the responding parties produce responsive information at the undersigned law offices within fifty (50) days of service of this Petition.

PRAYER

Wherefore, Premises Considered, Plaintiffs pray that Defendants be cited to appear and answer herein and, upon final trial hereof, that Plaintiffs have and recover from Defendants Plaintiffs’ actual damages, exemplary damages, pre- and post-judgment interest, costs of court, attorneys’ fees, and such other and further relief, both general and special, at law and in equity, to which they may be justly entitled.

Respectfully submitted,



AUBREY "NICK" PITTMAN
State Bar No. 16049750

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon Defendants by private process server at the time and in the manner set forth in the return of service.



AUBREY "NICK" PITTMAN