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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY MARICOPA**

**Carrie Bachrach; and Randolph
Bachrach,**

Plaintiffs,

Case No.

**Complaint with Demand for
Trial by Jury**

vs.

Covenant Transport, Inc., a Tennessee
corporation; and **Alfred Ricardo
Simister;** and **Donovan B. McFarlane,**

Defendants.

Plaintiffs Carrie Bachrach and Randolph Bachrach file the following complaint:

PARTIES

A. Plaintiffs

1. Carrie Bachrach and Randolph Bachrach are adult individuals. Miss Bachrach is a citizen of Arizona, residing in Maricopa County. Mr. Bachrach is a citizen of Arizona, residing in Maricopa County.
2. Carrie Bachrach and Randolph Bachrach were previously married and are now divorced. They are both the natural parents of Matthew Aaron Bachrach, deceased.

B. Defendants

3. Defendant, Alfred Ricardo Simister (the “defendant truck driver” or “truck driver”), is an adult individual who resides at 103 Old Fort Rd. in Athens, Georgia. The defendant truck driver is a citizen of the state of Georgia.

4. Arizona Traffic Accident Report #2008-049284 alternately describes Mr. Simister and Mr. McFarlane as the driver of the tractor trailer. Mr. McFarlane is included as a defendant in the alternative event that he was in fact the truck driver, or if this fact cannot be ascertained through discovery. “Defendant truck driver” or “truck driver” in this complaint refer to Mr. Simister and/or Mr. McFarlane.

5. Defendant, Covenant Transport, Inc. (the “defendant truck company” or “Covenant”) is a corporation that has an address located at 400 Birmingham Hwy in Chattanooga, Tennessee. The defendant trucking company has its principal place of business in Tennessee. The defendant trucking company, therefore, is a citizen of the state of Tennessee. Gary T. Doyle is registered with the Federal Motor Carrier Safety Administration to receive service of process for defendant, Covenant Transport, Inc. in the State of Arizona at 2929 North 44th Street, Suite 120, Phoenix, AZ, 85018.

FIRST CAUSE OF ACTION

Negligence Claim against Defendant Truck Driver

6. On September 7, 2008, the defendant truck driver was driving a Covenant tractor-trailer Eastbound on I-10.

7. At the same time, Decedent Matthew Bachrach was driving his car Eastbound on I-10.

8. The defendant truck driver was negligent and reckless. He breached his duties to drive the tractor trailer in a safe and reasonable manner under the circumstances, resulting in loss of control of the tractor-trailer, causing it to roll over and block the roadway.

9. As a direct and proximate result of the defendant truck driver's negligence and recklessness, Matthew Bachrach was killed when his car crashed into the tractor trailer.

SECOND CAUSE OF ACTION

Negligence per se against Defendant Truck Driver

10. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

11. The defendant truck driver violated local, state and federal statutes and regulations by, among other things, traveling at speed greater than reasonable and prudent to avoid a collision (28-701A), false report of drivers record of duty status under 49 CFR 395.8(e), failing to maintain a current record of duty in his logbook under 49 CFR 395.8(f)(1), along with other violations under 49 CFR §§350-399.

12. Matthew Bachrach died as a direct and proximate result of the defendant truck driver's violations of local, state and federal statutes and regulations.

THIRD CAUSE OF ACTION

Punitive Damages Claim against Defendant Truck Driver

13. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

14. The defendant truck driver violated local, state and federal statutes and regulations by, among other things, traveling at speed greater than reasonable and prudent to avoid a

collision (28-701A), false report of drivers record of duty status under 49 CFR 395.8(e), failing to maintain a current record of duty in his logbook under 49 CFR 395.8(f)(1), driving while fatigued under 49 CFR 392.3, along with other violations under 49 CFR §§350-399.

15. The violations listed in the paragraph above clearly and convincingly demonstrate a conscious disregard for the safety of the motoring public, thus entitling the plaintiffs to punitive damages.

FOURTH CAUSE OF ACTION

Vicarious Liability against Truck Company

16. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

17. At all relevant times, the defendant truck driver was the defendant trucking company's agent, employee, servant, and/or independent contractor and was acting within the course and scope of his employment, under the direct control of the defendant trucking company.

18. Irrespective of the employment relationship, defendant trucking company is an interstate motor carrier subject to Federal Motor Carrier Safety Administration Regulations and is, therefore, responsible for the acts of defendant truck driver.

19. The tractor operated by the defendant truck driver bore Covenant Transport Inc.'s United States Department of Transportation No. 273818.

20. Accordingly, the defendant trucking company is vicariously liable for the defendant truck driver's aforementioned negligence.

FIFTH CAUSE OF ACTION

Direct Negligence against Defendant Truck Company

21. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.
22. The defendant trucking company had a duty to act reasonably in hiring and retaining the defendant driver; and to adopt and enforce policies, procedures, and rules to ensure that its drivers acted safely, and its tractor trailers were operated and maintained safely.
23. Defendant trucking company's breached its duties listed in the paragraph above, directly and proximately causing the death of Matthew Bachrach.
24. Defendant trucking company's conduct demonstrated a conscious disregard of the known risks to decedent Bachrach and to the rest of the public.

SIXTH CAUSE OF ACTION

Negligence per se against Defendant Truck Company

25. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.
26. The defendant trucking company violated—and encouraged defendant truck driver to violate—local, state and federal statutes and regulations, including but not limited to traveling at speed greater than reasonable and prudent to avoid a collision (28-701A) under 49 CFR 392.2, false report of drivers record of duty status under 49 CFR 395.8(e), failing to maintain a current record of duty in his logbook under 49 CFR 395.8(f)(1),

aiding and abetting violations under 49 CFR 390.13, along with other violations under 49 CFR §§350-399.

27. Matthew Bachrach died as a direct and proximate result of the defendant trucking company's violations of local, state and federal statutes and regulations that were designed to protect the public.

SEVENTH CAUSE OF ACTION

Punitive Damages Claim against Defendant Truck Company

28. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

29. The defendant trucking company violated—and encouraged defendant truck driver to violate—local, state and federal statutes and regulations, including but not limited to traveling at speed greater than reasonable and prudent to avoid a collision (28-701A) under 49 CFR 392.2, false report of drivers record of duty status under 49 CFR 395.8(e), failing to maintain a current record of duty in his logbook under 49 CFR 395.8(f)(1), aiding and abetting violations under 49 CFR 390.13, along with other violations under 49 CFR §§350-399.

30. The violations listed in the paragraph above clearly and convincingly demonstrate a conscious disregard for the safety of the motoring public, thus entitling the plaintiffs to punitive damages.

EIGHTH CAUSE OF ACTION

Wrongful Death Claim

31. Plaintiffs incorporate all allegations and causes of action above into this cause of action by reference.

32. Plaintiffs bring this cause of action under Arizona Wrongful Death Statute A.R.S. § 12-611 et seq.

33. As a direct and proximate result of Defendants' negligence and recklessness, Carrie Bachrach and Randolph Bachrach have lost their son's love, affection, companionship, and consortium.

WHEREFORE, Plaintiffs Carrie Bachrach and Randolph Bachrach respectfully demand the following relief: reasonable and just damages in their favor not less than the jurisdictional limit of this Court, together with punitive damages, costs and whatsoever other relief that this Honorable Court deems just, given the circumstances.

A JURY TRIAL ON ALL CLAIMS IS DEMANDED

Respectfully submitted,

Dated: December ____, 2009

Kevin Koelbel
Attorney for Plaintiffs