

CAUSE NO. D-1-GN-22-000664

DIMITRULA VELEZ, INDIVIDUALLY §
AND AS REPRESENTATIVE OF THE §
ESTATE OF ILIANA ARIE VELEZ, §
DECEASED, §

Plaintiff, §

VS. §

AMAZON.COM, INC., §
AMAZON.COM, LLC, §
AMAZON LOGISTICS, INC., §
AMAZON.COM SERVICES, INC., §
TAKE FLIGHT WITH B TRUCKING §
COMPANY, LLC and JORDAN §
MICHAEL SANNICOLA, §

Defendants. §

IN THE DISTRICT COURT

345TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFF’S FIRST AMENDED PETITION

Plaintiff Dimitrula Velez, Individually and on Behalf of the Estate of Iliana Arie Velez, Deceased, files this Plaintiff’s First Amended Petition complaining of Defendants Amazon.com, Inc., Amazon.com, LLC, Amazon.com Services, LLC, Amazon Logistics, Inc., Take Flight With B Trucking Company, LLC, and Jordan Michael Sannicola (referred to collective as “Defendants”), and for cause of action would show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Pursuant to the provisions of Texas Rule of Civil Procedure 190.4, Plaintiff proposes to conduct discovery according to Discovery Control Plan Level 3.

II. PARTIES

2. Plaintiff Dimitrula Velez (“Trula”) is an individual residing in Katy, Texas. Trula is the surviving mother of Decedent Iliana Arie Velez (“Iliana”) and is asserting claims herein both individually and as personal representative of the estate of Iliana (“Plaintiff”).

3. Defendant Amazon.com, Inc. (“Amazon Inc.”) is a corporation organized under the laws of Delaware with its principal place of business in Seattle, Washington. Upon information and belief, Amazon Inc.’s principal place of business in Texas is Austin, Texas. Amazon Inc. has already been served with process herein and can be served with this petition by service on its counsel of record.

4. Defendant Amazon.com, LLC (“Amazon LLC”) is a limited liability company organized under the laws of Delaware with its principal place of business in Seattle, Washington. Upon information and belief, Amazon LLC’s principal place of business in Texas is Austin, Texas. Amazon LLC has already been served with process herein and can be served with this petition by service on its counsel of record.

5. Defendant Amazon.com Services, Inc. (“Amazon Services”) is a corporation organized under the laws of Delaware with its principal place of business in Seattle, Washington. Upon information and belief, Amazon Service’s principal place of business in Texas is Austin, Texas. Amazon Services has already been served with process herein and can be served with this petition by service on its counsel of record.

6. Defendant Amazon.com Logistics, Inc. (“Amazon Logistics”) is a corporation organized under the laws of Delaware with its principal place of business in Seattle, Washington. Upon information and belief, Amazon Logistics’ principal place of business in Texas is Austin, Texas. Amazon Logistics has already been served with process herein and can be served with this petition by service on its counsel of record.

7. Defendants Amazon.com Inc., Amazon.com LLC, Amazon.com Services, Inc. and Amazon Logistics.com Logistics, Inc. are legally, and in reality, the same entity, and/or are

partners, joint venturers, alter egos, agents, and/or apparent agents of the other and will be collectively referred to as “Amazon.”

8. Defendant Take Flight With B Trucking Company, LLC (“B Trucking”) is a limited liability company organized under the laws of North Carolina with its principal place of business in Charlotte, North Carolina. Substituted service of process can be made on the Texas Secretary of State under Section 17.044 of the Texas Civil Practice & Remedies Code as B Trucking is a non-resident who engages in business in Texas but who does not maintain a regular place of business in this state or a designated agent for service of process. B Trucking can be served by serving the Texas Secretary of State at 1019 Brazos, Room 105, Austin, Texas 78701, who should then forward process to B Trucking’s home office at 101 North Tryon Street, Suite 112, Charlotte, North Carolina 28246.

9. Defendant Jordan Michael Sannicola (“Sannicola”) is an individual residing at 295 County Road 458, Hondo, Texas 78861. Sannicola has already been served with process herein.

III. VENUE AND JURISDICTION

10. In accordance with Texas Rule of Civil Procedure 47, Plaintiff seeks monetary relief over \$1,000,000.

11. The Court has subject matter jurisdiction over this lawsuit because the amount in controversy exceeds the Court’s minimum jurisdictional requirements.

12. Travis County is where Amazon maintains its principal place of business in Texas. Venue is therefore proper in Travis County, Texas, pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(3).

13. The Court has personal jurisdiction over all Defendants as Sannicola resides in Texas, Amazon conduct continuous and systematic business in the State of Texas, and the subject collision resulted directly from Defendants' business activities in Texas.

14. Plaintiff expressly disavows that any claims are being made pursuant to federal law, treaties, or constitution. Although the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, there is a lack of complete diversity because of the presence of Plaintiff and Sannicola who are both residents of Texas. As such, this case is not removable to federal court. Any removal would be improper and should be remedied by sanctions and a remand with an award of all costs, expenses, and fees including, but not limited to, attorney fees under 28 U.S.C. § 1447(c).

IV. FACTUAL BACKGROUND

15. Iliana was a 19-year old student at Texas State University who was pursuing a dual major in Architecture and Interior Design. To put herself through school, Iliana worked the overnight shift (6:00 p.m. to 6:00 a.m.) at Amazon's facility in Kyle, Texas.

16. When working, Iliana would take her "lunch break" at her apartment in nearby San Marcos, Texas. On January 3, 2022, at approximately 2:15 a.m., Iliana was traveling northbound on Interstate 35 (around mile marker 204), returning to the Amazon facility from her apartment, when she was struck and run off the road by a box truck driven by Sannicola. The violent crash caused Iliana's vehicle to rollover and Iliana was tragically pronounced dead at the scene.

17. After crashing into Iliana and running her off the road, Sannicola simply continued driving—failing to stop and render aid to Iliana as required by law. To make matters worse, it is believed that Sannicola thereafter exited the freeway, turned around, and drove by the scene of the

crash a **second** time without stopping. Sannicola was later identified, arrested, and charged with Accident Involving Death (a second-degree felony).

18. It turns out that at the time of the crash, Sannicola had multiple outstanding felony warrants: (a) one count of Evading Arrest in a Vehicle; and (b) two counts of Abandoning/Endangering a Child. Upon information and belief, Sannicola had previously entered no contest pleas to criminal charges of (a) Aggravated Assault with a Deadly Weapon¹ (second degree felony); and (b) Possession of Marijuana (misdemeanor).

19. At the location where the crash occurred, northbound Interstate 35 is three lanes. Plaintiff expects the evidence will show that at the time of the crash, Iliana was traveling in the right lane, Sannicola was traveling in the center lane at a faster rate of speed than Iliana, and that Sannicola's vehicle entered Iliana's lane, and hit her vehicle in the left rear quarter panel and caused her vehicle to leave the freeway and roll over.

20. Upon information and belief, Sannicola was traveling in excess of the posted speed limit at the time of the crash. It is further believed that Sannicola was using a hand-held mobile device immediately preceding the crash—such that he was distracted—in violation of applicable law.

21. Amazon is, among other things, an e-commerce company that allows customers to order a variety of products over the internet and have them delivered to their home. If the customer pays a premium to be a PRIME member, he or she can have most orders delivered within two days.

¹ Upon information and belief, the “deadly weapon” was a motor vehicle.

22. Amazon has experienced explosive growth over the last few years, especially after the onset of the Covid-19 pandemic. Public filings show Amazon’s annual revenues for the past five years to be as follows:

2017:	\$178 billion
2018:	\$233 billion
2019:	280 billion
2020:	\$386 billion
2021:	\$470 billion

23. Amazon’s business model, as well as the sheer volume of business done, requires that Amazon have one of the biggest and most sophisticated supply chain operations in the world. One of the critical components of Amazon’s supply chain is transportation. To meet its transportation needs, Amazon has implemented a variety of programs purporting to use “third-party contractors.”

24. One such program is called “Amazon Relay.” Under the Amazon Relay program, Amazon enters into contracts with carriers to transport freight with all transactions conducted through an Amazon Relay application. Among other things, the Relay application allows for the scheduling of loads, and the carrier can receive notifications, check-in and out at facilities, receive load instructions, and generate and submit invoices. Upon information and belief, the Amazon Relay application also tracks driver’s locations and provides them with the routes they should use for making pickups and deliveries.

25. Upon information and belief, B Trucking was an Amazon Relay Partner and at the time of the crash was performing services for Amazon (*i.e.* Amazon was the shipper and/or broker/hirer for the load in question). B Trucking was performing such services under Amazon’s direction and control. Upon information and belief, Sannicola was an employee of B Trucking, and was driving the truck in the course and scope of his employment with B Trucking.

26. Given Amazon's ability to control and direct the work being done by B Trucking/Sannicola, Amazon is vicariously liable for the actions of Sannicola/B Trucking.

V. CAUSES OF ACTION AGAINST AMAZON

A. NEGLIGENCE

27. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

28. Sannicola owed a duty to exercise reasonable care in the operation of the subject commercial vehicle.

29. Amazon retained sufficient control over Sannicola such that he was an actual or constructive employee of Amazon. Since Sannicola was acting in the course and scope of his duties for Amazon at the time of the crash, Amazon is liable for the conduct of Sannicola.

30. Amazon (through Sannicola) breached its duty of care in at least one or more of the following ways:

- a. Failing to maintain a proper lookout;
- b. Speeding and/or failing to drive an appropriate speed for the conditions;
- c. Driving while distracted, including, but not limited, to by a cell phone and/or handheld electronic device;
- d. Failing to properly exercise control of his vehicle;
- e. Failing to drive in a single lane;
- f. Making an unsafe lane change;
- g. Failing to maintain a safe distance between his vehicle and the vehicle in front of him;
- h. Failing to timely apply the brakes;
- i. Failing to yield right of way;

- j. Failing to take evasive action;
- k. Failing to obey and adhere to Texas traffic laws and other rules for operating a motor vehicle on a public street;
- l. Failing to stop and render aid; and
- m. Other negligent acts.

31. Plaintiff would further show that Amazon is directly liable for negligence in one or more of the following respects:

- a. Failing to properly screen its drivers, agents, employees or other individuals acting on its behalf;
- b. Failing to hire competent and qualified drivers to drive and act on its behalf;
- c. Failing to properly train its drivers, agents, employees or other individuals acting on its behalf;
- d. Failing to properly monitor its drivers, agents, employees or other individuals acting on its behalf;
- e. Failing to have or properly implement, train on, and/or enforce policies and procedures to prevent drivers from speeding;
- f. Failing to have or properly implement, train on, and/or enforce policies and procedures to prevent distracted driving, including, but not limited to, use of cell phones and mobile devices while driving;
- g. Failing to have or properly implement, train on, and/or enforce policies and procedures to ensure that drivers maintain a proper lookout and maintain proper distance from vehicles in front of its trucks;
- h. Failing to have or properly implement, train, and/or enforce policies and procedures to ensure that drivers make safe lane changes;
- i. Failing to properly utilize a driver monitoring system to monitor and counsel its drivers who speed, engage in distracted driving (including, but not limited to, the use of cell phones and mobile devices), or otherwise drive in an unsafe manner, or in the alternative to remove drivers who engage in such behaviors;
- j. Failing to properly supervise its drivers, agents, employees or other individuals acting on its behalf;

- k. Failing to follow applicable laws and regulations;
- l. Failing to follow its own safety guidelines, policies, and procedures;
- m. Failing to supervise and properly instruct its drivers, agents, employees or other individuals acting on their behalf to safely navigate Texas public roadways and follow the safety laws in place at the time of the incident; and
- n. Other negligent acts.

32. Each of the foregoing acts and omissions, singularly or in combination with others, constituted negligence and proximately caused the occurrence made the basis of this action, including the injuries and damages complained of herein.

B. NEGLIGENCE, TRAINING, SUPERVISION, RETENTION AND/OR ENTRUSTMENT

33. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

34. Amazon owed Plaintiff a duty to hire, train, supervise, retain and/or entrust competent drivers to drive the trucks transporting Amazon's freight.

35. Amazon knew or should have known that Sannicola was an inexperienced, unsafe, unqualified, incompetent, reckless driver. Amazon knew or should have known that B Trucking was an inexperienced, unsafe, unqualified, and incompetent freight carrier.

36. A reasonable company under similar circumstance would have conducted a basic investigation into the background, competence and qualifications of Sannicola and B Trucking. Such investigation would have shown that Sannicola and B Trucking were unqualified and unfit to be engaged in an occupation that required skill and could be hazardous to others.

37. Plaintiff would show that Amazon breached its duty to the public by failing to ascertain the qualifications and competence of their employees/agents, especially in light of their engagement in an occupation that required skill and could be hazardous to others.

38. Once retained, Amazon breached its duty to the public by failing to properly train and supervise its employees/agents. Had Amazon exercised reasonable care in training and supervising Sannicola, they would have known he was incompetent and unfit, therefore creating an unreasonable risk to others, and would not have retained him.

39. Each of these acts and omissions, singularly or in combination with others, constituted negligence, which proximately caused the occurrence made the basis of this action and the serious injuries and resulting damages complained of herein.

C. GROSS NEGLIGENCE

40. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

41. “Gross negligence” according to Texas Civil Practice and Remedies Code Sections 41.001(11)(A)–(B) means an act or omission:

- a. which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- b. of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

42. Plaintiff would show the Court and jury that the conduct of Amazon described herein constitutes gross negligence as defined in Texas Civil Practice & Remedies Code Sections 41.001(11)(A)-(B). Amazon is liable to Plaintiff for gross negligence-to wit:

- a. Amazon consciously and/or deliberately engaged in recklessness, willfulness, wantonness, and/ or malice through Amazon’s actions, and/ or inactions and Amazon should be held liable for punitive and exemplary damages to Plaintiff.
- b. Amazon’s actions or inactions directly and proximately caused the injuries and the subsequent tragic death of Iliana, which resulted in the damages as further described herein.

43. Amazon's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Iliana. Amazon had actual, subjective awareness of the risk involved, but nevertheless, proceeded in conscious indifference to the rights, safety, and/or welfare of Plaintiff.

44. Amazon's gross negligence conduct proximately caused Plaintiff's damages. As a result of such gross negligence of Amazon, Plaintiff is entitled to exemplary damages.

VI. CAUSES OF ACTION AGAINST B TRUCKING

A. NEGLIGENCE

45. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

46. Sannicola owed a duty to exercise reasonable care in the operation of the subject commercial vehicle.

47. Sannicola was an employee/agent of and/or under the direction and control of B Trucking at the time of the crash. Since Sannicola was acting in the course and scope of his duties for B Trucking at the time of the crash, B Trucking is liable for the conduct of Sannicola.

48. B Trucking (through Sannicola) breached its duty of care in at least one or more of the following ways:

- a. Failing to maintain a proper lookout;
- b. Speeding and/or failing to drive an appropriate speed for the conditions;
- c. Driving while distracted, including, but not limited, to by a cell phone and/or handheld electronic device;
- d. Failing to properly exercise control of his vehicle;
- e. Failing to drive in a single lane;
- f. Making an unsafe lane change;

- g. Failing to maintain a safe distance between his vehicle and the vehicle in front of him;
- h. Failing to timely apply the brakes;
- i. Failing to yield right of way;
- j. Failing to take evasive action;
- k. Failing to obey and adhere to Texas traffic laws and other rules for operating a motor vehicle on a public street;
- l. Failing to stop and render aid; and
- m. Other negligent acts.

49. Plaintiff would further show that B Trucking is directly liable for negligence in one or more of the following respects:

- a. Failing to properly screen its drivers, agents, employees or other individuals acting on its behalf;
- b. Failing to hire competent and qualified drivers to drive and act on its behalf;
- c. Failing to properly train its drivers, agents, employees or other individuals acting on its behalf;
- d. Failing to properly monitor its drivers, agents, employees or other individuals acting on its behalf;
- e. Failing to have or properly implement, train on, and/or enforce policies and procedures to prevent drivers from speeding;
- f. Failing to have or properly implement, train on, and/or enforce policies and procedures to prevent distracted driving, including, but not limited to, use of cell phones and mobile devices while driving;
- g. Failing to have or properly implement, train on, and/or enforce policies and procedures to ensure that drivers maintain a proper lookout and maintain proper distance from vehicles in front of its trucks;
- h. Failing to have or properly implement, train, and/or enforce policies and procedures to ensure that drivers make safe lane changes;

- i. Failing to properly utilize a driver monitoring system to monitor and counsel its drivers who speed, engage in distracted driving (including, but not limited to, the use of cell phones and mobile devices), or otherwise drive in an unsafe manner, or in the alternative to remove drivers who engage in such behaviors;
- j. Failing to properly supervise its drivers, agents, employees or other individuals acting on its behalf;
- k. Failing to follow applicable laws and regulations;
- l. Failing to follow its own safety guidelines, policies, and procedures;
- m. Failing to supervise and properly instruct its drivers, agents, employees or other individuals acting on their behalf to safely navigate Texas public roadways and follow the safety laws in place at the time of the incident; and
- n. Other negligent acts.

50. Each of the foregoing acts and omissions, singularly or in combination with others, constituted negligence and proximately caused the occurrence made the basis of this action, including the injuries and damages complained of herein.

B. NEGLIGENCE, TRAINING, SUPERVISION, RETENTION AND/OR ENTRUSTMENT

51. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

52. B Trucking owed Plaintiff a duty to hire, train, supervise, retain and/or entrust competent drivers to perform transportation services for B Trucking.

53. B Trucking knew or should have known that Sannicola was an inexperienced, unsafe, unqualified, incompetent, reckless driver.

54. A reasonable company under similar circumstance would have conducted a basic investigation into the background, competence and qualifications of Sannicola. Such investigation would have shown that Sannicola was unqualified and unfit to be engaged in an occupation that required skill and could be hazardous to others.

55. Plaintiff would show that B Trucking breached its duty to the public by failing to ascertain the qualifications and competence of their employees/agents, especially in light of their engagement in an occupation that required skill and could be hazardous to others.

56. Once retained, B Trucking breached its duty to the public by failing to properly train and supervise its employees/agents. Had B Trucking exercised reasonable care in training and supervising Sannicola, they would have known he was incompetent and unfit, therefore creating an unreasonable risk to others, and would not have retained him.

57. Each of these acts and omissions, singularly or in combination with others, constituted negligence, which proximately caused the occurrence made the basis of this action and the serious injuries and resulting damages complained of herein.

C. GROSS NEGLIGENCE

58. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

59. “Gross negligence” according to Texas Civil Practice and Remedies Code Sections 41.001(11)(A)–(B) means an act or omission:

- c. which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- d. of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

60. Plaintiff would show the Court and jury that the conduct of B Trucking described herein constitutes gross negligence as defined in Texas Civil Practice & Remedies Code Sections 41.001(11)(A)-(B). B Trucking is liable to Plaintiff for gross negligence-to wit:

- c. B Trucking consciously and/or deliberately engaged in recklessness, willfulness, wantonness, and/ or malice through B Trucking's actions, and/ or inactions and B Trucking should be held liable for punitive and exemplary damages to Plaintiff.
- d. B Trucking's actions or inactions directly and proximately caused the injuries and the subsequent tragic death of Iliana, which resulted in the damages as further described herein.

61. B Trucking's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Iliana. B Trucking had actual, subjective awareness of the risk involved, but nevertheless, proceeded in conscious indifference to the rights, safety, and/or welfare of Iliana/Plaintiff.

62. B Trucking's gross negligence conduct proximately caused Plaintiff's damages. As a result of such gross negligence of B Trucking, Plaintiff is entitled to exemplary damages.

VII. CAUSES OF ACTION AGAINST DEFENDANT SANNICOLA

A. NEGLIGENCE

63. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

64. Sannicola owed a duty to exercise reasonable care in the operation of the subject commercial vehicle.

65. Sannicola breached his duty of care in at least one or more of the following ways:

- a. Failing to maintain a proper lookout;
- b. Speeding and/or failing to drive an appropriate speed for the conditions;
- c. Driving while distracted, including, but not limited, to by a cell phone and/or handheld electronic device;
- d. Failing to properly exercise control of his vehicle;
- e. Failing to drive in a single lane;
- f. Making an unsafe lane change;

- g. Failing to maintain a safe distance between his vehicle and the vehicle in front of him;
- h. Failing to timely apply the brakes;
- i. Failing to yield right of way;
- j. Failing to take evasive action;
- k. Failing to obey and adhere to Texas traffic laws and other rules for operating a motor vehicle on a public street;
- l. Failing to turn the direction of his vehicle in a timely and prudent manner, in order to avoid the accident;
- m. Failing to be attentive and yield to the flow of traffic;
- n. Failing to use due care to avoid the collision;
- o. Driving recklessly, in violation of Texas Transportation Code § 545.401;
- p. Causing an accident involving personal injury or death in violation of Texas Transportation Code § 550.021;
- q. Failing to act as a reasonably prudent person would have under the same or similar circumstances;
- r. Failing to exercise the degree of care as would have been exercised by a driver of ordinary prudence under the same or similar circumstances;
- s. Failing to regard the safety and welfare of others, specifically including Decedent;
- t. Failing to identify, predict, decide and execute evasive maneuvers appropriately in order to avoid collision;
- u. Failing to operate a motor vehicle at a speed that is reasonable and prudent under the conditions and with regard to the actual and potential hazards then existing and at a speed necessary to avoid colliding with any person, vehicle, or other conveyance on the highway, in violation of Texas Transportation Code § 545.351;
- v. Failing to stop and render aid; and
- w. Other negligent acts.

66. Each of these of these acts and omissions, singularly or in combination with others, constituted negligence and proximately caused the occurrence made the basis of this action, including the injuries and resulting damages complained of herein by the Plaintiff.

B. GROSS NEGLIGENCE

67. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

68. “Gross negligence” according to Texas Civil Practice and Remedies Code Sections 41.001(11)(A)–(B) means an act or omission:

- e. which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- f. of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

69. Plaintiff would show the Court and jury that the conduct of Sannicola described herein constitutes gross negligence as defined in Texas Civil Practice & Remedies Code Sections 41.001(11)(A)–(B). Sannicola is liable to Plaintiff for gross negligence-to wit:

- e. Sannicola consciously and/or deliberately engaged in recklessness, willfulness, wantonness, and/ or malice through Sannicola’s actions, and/ or inactions and Sannicola should be held liable for punitive and exemplary damages to Plaintiff.
- f. Sannicola’s actions or inactions directly and proximately caused the injuries and the subsequent tragic death of Iliana, which resulted in the damages as further described herein.

70. Sannicola’s conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Iliana. Sannicola had actual, subjective awareness of the risk involved, but nevertheless, proceeded in conscious indifference to the rights, safety, and/or welfare of Iliana.

71. Sannicola's gross negligence conduct proximately caused Plaintiff's damages. As a result of such gross negligence of Sannicola, Plaintiff is entitled to exemplary damages.

C. NEGLIGENCE PER SE

72. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

73. Alternatively, and without waiving the foregoing, Plaintiff would show Sannicola was negligent *per se* for violating the rules and regulations regarding commercial motorized vehicles and the traffic laws of the State of Texas. Upon information and belief, Sannicola violated the Texas Transportation Code by failing to maintain an assured clear distance between his vehicle and Iliana's vehicle (§ 545.062), failing to drive within the posted speed limit (§ 545.352), disobeying a warning sign (§ 472.002 (a)(1)), and driving while distracted and/or operating a cellular device while driving (§ 545.4251). Sannicola's negligence *per se* is not limited to these acts.

VIII. VICARIOUS LIABILITY

74. Sannicola was acting within the course and scope of his employment with Amazon. Alternatively, Amazon had sufficient ability to exercise direction and control over Sannicola's activities that he was a constructive employee of Amazon. Plaintiff hereby invokes the common law doctrine of vicarious liability and seeks to hold the master/employer (Amazon) liable for the acts and/or omissions of its servant/employee/agent/apparent agent (Sannicola).

75. Sannicola was acting within the course and scope of his employment with B Trucking. Alternatively, B Trucking had sufficient ability to exercise direction and control over Sannicola's activities that he was a constructive employee of B Trucking. Plaintiff hereby invokes the common law doctrine of vicarious liability to hold the master/employer (B Trucking) liable for

the acts and/or omissions of its servant/employee/agent/apparent agent (Sannicola).

IX. RESPONDEAT SUPERIOR

76. Sannicola was acting within the course and scope of his employment with Amazon. Alternatively, Amazon had sufficient ability to exercise direction and control over Sannicola's activities that he was a constructive employee of Amazon. Plaintiff hereby invokes the common law doctrine of respondeat superior to hold Amazon liable for the acts and/or omissions of Sannicola.

77. Sannicola was acting within the course and scope of his employment with xxxxxxxx. Alternatively, B Trucking had sufficient ability to exercise direction and control over Sannicola's activities that he was a constructive employee of B Trucking. Plaintiff hereby invokes the common law doctrine of respondeat superior to hold B Trucking liable for the acts and/or omissions of Sannicola.

X. DAMAGES

78. Plaintiff seeks all damages that are proper under Texas law, both individually and on behalf of the Estate of Iliana.

79. As a proximate result of the conduct of Defendants, Iliana suffered indescribable pain and anguish, both physically and mentally, and ultimately died from her injuries. Her mother, Trula, brings her survival claim pursuant to Section 71.021 of the Texas Civil Practice & Remedies Code, and any other claims permitted by Texas law for the estate of the Iliana, to recover all damages provided by law, including but not limited to Iliana's pain and suffering and disfigurement, lost wages, lost earnings, medical bills, funeral expenses, and burial expenses.

80. As a proximate result of the conduct of the Defendants, Trula suffered the loss of her beloved daughter. She seeks all appropriate damages under Texas law. Plaintiff brings this

wrongful death action pursuant to Sections 71.001, *et. seq.* of the Texas Civil Practice & Remedies Code, seeking to recover damages arising from the untimely and tragic death of Iliana, as predicated upon the facts and legal theories set forth herein. At such time, Iliana was in good health with a normal life expectancy. Trula is entitled to recover wrongful death damages for the loss of child consortium, the love, affection, care, counseling, guidance, protection, companionship and support she would have received from her daughter had Iliana not died. Trula is entitled to recover for her mental suffering, anguish and depression resulting from the death of her daughter Iliana Velez.

81. Plaintiff seeks monetary damages from Defendants to compensate for the following elements:

- a. Past and future physical pain and mental anguish;
- b. Past and future loss of earning capacity;
- c. Past and future lost wages;
- d. Past and future disfigurement;
- e. Past and future physical impairment;
- f. Past and future medical expenses;
- g. Property damage;
- h. Loss of parent-child relationship;
- i. Loss of consortium; and
- j. All other damages allowed under Texas law.

XI. EXEMPLARY DAMAGES

82. The conduct of Defendants was more than momentary thoughtlessness, inadvertence, or error of judgment and was of such a character as to make the Defendants guilty of gross negligence. Defendants' acts or omissions involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others of which the Defendants had actual awareness, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Therefore, Plaintiff sues for the maximum amount of exemplary damages,

pursuant to Texas Civil Practice and Remedies Code § 41.003, in the amount determined by the trier of fact.

XII. CONDITIONS PRECEDENT

83. All conditions precedent to Plaintiff's right to recover the relief sought herein have occurred or been waived.

XIII. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

84. Plaintiff seeks pre- and post-judgment interest at the maximum rate allowed by law.

XIV. JURY DEMAND

85. Plaintiff hereby requests a jury trial on this matter.

XV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendants be cited to appear and answer herein, that this cause be set for trial before a jury, that Plaintiff recovers judgment of and from said Defendants, jointly and severally, for her actual damages in this cause in such amounts as the evidence may show and the Jury may determine to be proper, together with the costs of suit, pre-judgment interest and post judgment interest, and for all such other and further relief, both in equity and at law, to which Plaintiff may show that she is justly entitled.

Respectfully submitted,

HILLIARD MARTINEZ GONZALES LLP

By: /s/ Michael E. Richardson

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