

IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

MATTHEW FENNELL, KATHERINE  
FENNELL LIANG, ETHAN FENNELL &  
ARCHER FENNELL, Individually and as  
Surviving Children of FREDERICK D.  
FENNELL, JR. & KATHERINE FENNELL  
LIANG, as EXECUTOR and/or  
ADMINISTRATOR OF THE ESTATE OF  
FREDERICK D. FENNELL, JR.,

Plaintiffs,

vs.

CHARTER COMMUNICATIONS, INC., J. B.  
HUNT TRANSPORT, INC. d/b/a J. B. HUNT  
TRANSPORT, STANTON N. JENKINS, &  
MICHAEL ROTHWELL,

Defendants.

CIVIL ACTION FILE NO.

15 C-02590-2

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

CHARTER COMMUNICATIONS, INC.

You are hereby summoned and required to file with the Clerk of said court and serve upon Plaintiffs' attorney, whose name and address is:

Kavan Singh Grover  
J. Geoffrey Anderson  
EHRENCLOU & GROVER LLC  
Attorneys and Counselors at Law  
3399 Peachtree Road, N.E.  
Suite 1220  
Atlanta, Georgia 30326-1150

an answer to the complaint which is herewith served upon you, within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 19 day of May, 2015.

Clerk,  
State Court of Gwinnett County

Deputy Clerk

DEBORAH L. ALLEN, JR., CLERK

*Debra Parker*  
Deputy Clerk

IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

MATTHEW FENNELL, KATHERINE  
FENNELL LIANG, ETHAN FENNELL &  
ARCHER FENNELL, Individually and as  
Surviving Children of FREDERICK D.  
FENNELL, JR. & KATHERINE FENNELL  
LIANG, as EXECUTOR and/or  
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Plaintiffs,

vs.

CHARTER COMMUNICATIONS, INC., J. B.  
HUNT TRANSPORT, INC. d/b/a J. B. HUNT  
TRANSPORT, STANTON N. JENKINS, &  
MICHAEL ROTHWELL,

Defendants.

CIVIL ACTION FILE NO.

15 C-02590-2

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

J. B. HUNT TRANSPORT, INC. d/b/a J. B.  
HUNT TRANSPORT

You are hereby summoned and required to file with the Clerk of said court and serve upon Plaintiffs' attorney, whose name and address is:

Kavan Singh Grover  
J. Geoffrey Anderson  
EHRENCLOU & GROVER LLC  
Attorneys and Counselors at Law  
3399 Peachtree Road, N.E.  
Suite 1220  
Atlanta, Georgia 30326-1150

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This 19 day of May, 2015.

Clerk,  
State Court of Gwinnett County

Deputy Clerk  
*Shanna Parker*

DEPT. CLERK OF SUPERIOR COURT, GWINNETT COUNTY, GEORGIA

IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

MATTHEW FENNEL, KATHERINE  
FENNEL LIANG, ETHAN FENNEL &  
ARCHER FENNEL, Individually and as  
Surviving Children of FREDERICK D.  
FENNEL, JR. & KATHERINE FENNEL  
LIANG, as EXECUTOR and/or  
ADMINISTRATOR OF THE ESTATE OF  
FREDERICK D. FENNEL, JR.,

Plaintiffs,

vs.

CHARTER COMMUNICATIONS, INC., J. B.  
HUNT TRANSPORT, INC. d/b/a J. B. HUNT  
TRANSPORT, STANTON N. JENKINS, &  
MICHAEL ROTHWELL,

Defendants.

CIVIL ACTION FILE NO.

~~15 C-02590-2~~

SUMMONS

TO THE ABOVE NAMED DEFENDANT: *STANTON N. JENKINS*

You are hereby summoned and required to file with the Clerk of said court and serve upon Plaintiffs' attorney, whose name and address is:

**Kavan Singh Grover  
J. Geoffrey Anderson  
EHRENCLOU & GROVER LLC  
Attorneys and Counselors at Law  
3399 Peachtree Road, N.E.  
Suite 1220  
Atlanta, Georgia 30326-1150**

an answer to the complaint which is herewith served upon you, within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 19 day of May, 2015.

Clerk,  
State Court of Gwinnett County  
*Brian Parker*  
Deputy Clerk

IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

MATTHEW FENNELL, KATHERINE  
FENNELL LIANG, ETHAN FENNELL &  
ARCHER FENNELL, Individually and as  
Surviving Children of FREDERICK D.  
FENNELL, JR. & KATHERINE FENNELL  
LIANG, as EXECUTOR and/or  
ADMINISTRATOR OF THE ESTATE OF  
FREDERICK D. FENNELL, JR.,

Plaintiffs,

vs.

CHARTER COMMUNICATIONS, INC., J. B.  
HUNT TRANSPORT, INC. d/b/a J. B. HUNT  
TRANSPORT, STANTON N. JENKINS, &  
MICHAEL ROTHWELL,

Defendants.

CIVIL ACTION FILE NO.

~~15 C-02590~~

SUMMONS

TO THE ABOVE NAMED DEFENDANT: *MICHAEL ROTHWELL*

You are hereby summoned and required to file with the Clerk of said court and serve upon Plaintiffs' attorney, whose name and address is:

**Kavan Singh Grover  
J. Geoffrey Anderson  
EHRENCLOU & GROVER LLC  
Attorneys and Counselors at Law  
3399 Peachtree Road, N.E.  
Suite 1220  
Atlanta, Georgia 30326-1150**

an answer to the complaint which is herewith served upon you, within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 19 day of May, 2015.

RECEIVED MAY 19, 2015

Clerk,  
State Court of Gwinnett County

*Shaine Parker*  
Deputy Clerk

IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

FILED IN OFFICE  
CLERK STATE COURT  
GWINNETT COUNTY, GA  
2015 MAY 19 PM 3:07  
RICHARD MANNING, CLERK

MATTHEW FENNELL, KATHERINE  
FENNELL LIANG, ETHAN FENNELL &  
ARCHER FENNELL, Individually and as  
Surviving Children of FREDERICK D.  
FENNELL, JR. & KATHERINE FENNELL  
LIANG, as EXECUTOR and/or  
ADMINISTRATOR OF THE ESTATE OF  
FREDERICK D. FENNELL, JR.,

CIVIL ACTION FILE NO.

Plaintiffs,

15 C-02590-

vs.

CHARTER COMMUNICATIONS, INC.,  
J. B. HUNT TRANSPORT, INC. d/b/a J. B.  
HUNT TRANSPORT, STANTON N.  
JENKINS, & MICHAEL ROTHWELL,

Defendants.

**COMPLAINT FOR WRONGFUL DEATH & SURVIVAL ACTION**

COME NOW MATTHEW FENNELL, KATHERINE FENNELL LIANG, ETHAN FENNELL and ARCHER FENNELL, Individually and as Surviving Children of FREDERICK D. FENNELL, JR. and KATHERINE FENNELL LIANG, as EXECUTOR and/or PERSONAL REPRESENTATIVE of the ESTATE OF FREDERICK D. FENNELL, JR. (hereinafter collectively "Plaintiffs"), Plaintiffs in the above-styled action, and hereby file this, their Complaint for Wrongful Death & Survival Action, against the Defendants CHARTER COMMUNICATIONS, INC., J. B. HUNT TRANSPORT, INC. d/b/a J. B. HUNT

TRANSPORT, STANTON N. JENKINS and MICHAEL ROTHWELL (hereinafter collectively “Defendants”), and show this Honorable Court the following:

**PARTIES, JURISDICTION & VENUE**

1.

Frederick D. Fennell, Jr (hereinafter “Fennell”) died on February 6, 2015.

2.

Fennell was a resident of Gwinnett County, Georgia on the day of his death.

3.

Fennell died without a spouse.

4.

Matthew Fennell, Katherine Fennell Liang, Ethan Fennell and Archer Fennell (hereinafter collectively “Fennell Children”) are the surviving, biological and legal children of Fennell.

5.

The Fennell Children hold the statutory rights under O.C.G.A. § 51-4-2 to pursue a wrongful death action regarding Fennell’s death.

6.

Fennell resided in the same household as Plaintiff Archer Fennell (hereinafter “Archer”), located at 902 Traymore Drive, Norcross, Gwinnett County, Georgia 30093 on the day of his death.

7.

Plaintiff Katherine Fennell Liang (hereinafter “Katherine”) is named as administrator/executor of the Estate of Frederick D. Fennell, Jr. (hereinafter “Estate”) in Fennell’s last will and testament.

8.

The Fennell Children are natural persons and citizens of the United States of America and are all eighteen (18) years of age or older.

9.

Defendant Charter Communications, Inc. (hereinafter “Charter”) is a corporation with a corporate office at 1925 Breckinridge Plaza, Suite 100, Duluth, Gwinnett County, Georgia 30096 and may be served via its registered agent, Corporation Service Company, at 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092.

10.

Defendant J. B. Hunt Transport, Inc. (hereinafter “J. B. Hunt”) is a corporation in Lowell, Arkansas with a corporate office at 615 J. B. Hunt Corporate Drive, Lowell, Arkansas 72745, as well as many Georgia offices and facilities, and may be served via its registered agent, Corporation Service Company, at 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092.

11.

Defendant Stanton N. Jenkins (hereinafter “Jenkins”) is a resident of the State of Georgia who lives at 376 Golden Acres Drive, Stockbridge, Georgia 30281 and may be served at his residence or wherever he may be found.

12.

Defendant Michael Rothwell (hereinafter “Rothwell”) is a resident of the State of Georgia who lives at 1204 Crossing Boulevard, McDonough, Georgia 30253 and may be served at his residence or wherever he may be found.

13.

Jurisdiction and venue are proper in this Court.

#### **GENERAL FACTS**

14.

On February 6, 2015 between approximately 4:00 PM to 4:10 PM (hereinafter “Time”), Fennell was operating a 2012 Harley-Davidson motorcycle (hereinafter “Motorcycle”) in heavy, slow traffic, traveling southbound on Interstate 285 Parkway near the Chamblee-Tucker Road exit in DeKalb County, Georgia. Teresa Wilson (hereinafter “Wilson”) was Fennell’s passenger on the Motorcycle on said date, place and approximate time.

15.

At that Time, Fennell was traveling to the grave of Earl Watkins, Jr., one of Fennell’s closest friends who perished in combat in Vietnam, as was Fennell’s custom during various anniversary dates during the year. Mr. Watkins’ grave is located in southwest DeKalb. Fennell



further intended to “introduce” Wilson to his friend Mr. Watkins as Fennell and Wilson’s relationship was becoming closer.

16.

At that Time, Jenkins was operating a vehicle within the scope of his employment for Charter, and was traveling southbound on Interstate 285 near the Chamblee-Tucker exit in DeKalb County, Georgia in a Charter-customized Ford Transit van (hereinafter “Charter Van”).

17.

At that Time, Rothwell was operating a vehicle within the scope of his employment for J. B. Hunt, and was traveling southbound on Interstate 285 near the Chamblee-Tucker exit in DeKalb County, Georgia in an industrial box truck (hereinafter “J. B. Hunt Box Truck”).

18.

Prior to any contact between the Charter Van and the Motorcycle (including Fennell’s person or Wilson’s person) or the J. B. Hunt Box Truck and the Motorcycle (including Fennell’s person or Wilson’s person), the entirety of the Motorcycle was within the lane of travel between the lane in which the Charter Van was traveling and the lane in which the J. B. Hunt Box Truck was traveling.

19.

Fennell was traveling at a low rate of speed in his lane between the lanes containing the Charter Van and the J. B. Hunt Truck when the Charter Van improperly moved into Fennell’s lane and struck the Motorcycle and/or Fennell and/or Wilson, causing the Motorcycle to topple over in Fennell’s lane and slide (hereinafter “Initial Collision”).

20.

Prior to or about the same time as the Initial Collision, the J. B. Hunt Box Truck improperly moved into Fennell's lane, and after the Initial Collision when the Motorcycle and Fennell's person hit the road, the J. B. Hunt Box Truck's rear left side tire struck and ran over Fennell's head while the Motorcycle and Fennell's person were on the ground in Fennell's lane (hereinafter "Subsequent Collision"; hereinafter the Initial Collision and Subsequent Collision are referred to as a whole as the "Collision").

21.

Fennell's passenger, Wilson, was thrown from the Motorcycle as a result of the Initial Collision but was able to escape with her life with unfortunate and serious injuries. Wilson was rushed from the scene to Grady Memorial Hospital.

22.

At or about the time of the Collision, Jenkins was driving negligently and recklessly as demonstrated by his failure to pay attention to his surroundings, including but not limited to the Motorcycle and other vehicles, his failure to maintain his lane, his improper movement of the Charter Van out of his lane (without a signal), his improper lane change, his driving in a manner so as to deprive the Motorcycle of the full use of its lane, and his failure to operate his vehicle with due care in a reasonably safe manner and free from distractions, in violation of O.C.G.A. § 40-6-48, O.C.G.A. § 40-6-123, O.C.G.A. § 40-6-124 and O.C.G.A. § 40-6-241, O.C.G.A. § 40-6-312, O.C.G.A. § 40-6-390, and O.C.G.A. § 40-6-393 (hereinafter "Jenkins Statutory Violations").

23.

At or about the time of the Collision, Rothwell was driving negligently and recklessly as demonstrated by his failure to pay attention to his surroundings, including but not limited to the Motorcycle and other vehicles, his failure to maintain his lane, his improper movement of the J. B. Hunt Box Truck out of his lane, his improper lane change, his driving in a manner so as to deprive the Motorcycle of the full use of its lane, his improper lane and highway usage, and his failure to operate his vehicle with due care in a reasonably safe manner and free from distractions, in violation of O.C.G.A. § 40-6-48, O.C.G.A. § 40-6-123, O.C.G.A. § 40-6-124 and O.C.G.A. § 40-6-241, O.C.G.A. § 40-6-312, O.C.G.A. § 40-6-52, O.C.G.A. § 40-6-390, and O.C.G.A. § 40-6-393 (hereinafter “Jenkins Statutory Violations”).

24.

As a result of the Collision, Fennell died at the scene.

25.

All conditions precedent to the bringing of this action and Plaintiffs’ right to the relief sought herein have occurred, have been performed, waived, or have been excused.

### **COUNT I – WRONGFUL DEATH**

26.

Plaintiffs reallege and incorporate herein by reference Paragraphs One (1) through Twenty-Five (25) as if fully set forth herein.

27.

Defendant Jenkins owed Fennell a duty to use reasonable care in operating and controlling the Charter Van.

28.

Defendant Jenkins failed to use reasonable care in operating the Charter Van on February 6, 2015 when he darted into the right lane adjacent to the Charter Van when it was unsafe to do so and sideswiped the Motorcycle.

29.

Defendant Jenkins was reckless and demonstrated an entire want of care regarding his driving of the Charter Van in the moments leading up to and at the time of the Initial Collision.

30.

Defendant Jenkins caused the Initial Collision between the Motorcycle and the Charter Van, and breached Jenkins' duties owed to Fennell.

31.

As a direct and proximate result of Defendant Jenkins' negligence, negligence per se, recklessness, entire want of care and breach of duties owed to Fennell, Fennell sustained fatal bodily injuries and died on Interstate 285.

32.

Upon information and belief, February 6, 2015 was the first day Jenkins drove the Charter Van.

33.

Upon information and belief, on February 6, 2015, Charter had actual knowledge that Jenkins had not driven the Charter Van prior to February 6, 2015.

34.

On February 6, 2015, the Charter Van was equipped with an Internal Rear View Mirror (hereinafter “IRVM”).

35.

On February 6, 2015, the Charter Van had a white panel installed directly behind the driver and passenger seats, blocking any ability to see or view the road or vehicles to the rear of the Charter Van via the IRVM, as the IRVM displayed a reflection of the white panel wall when the Charter Van was engaged in any gear except reverse.

36.

On February 6, 2015, the Charter Van had rear panels on the rear windows of the Charter Van and had side panels on the back side windows of the Charter Van, blocking any ability to see or view the road or vehicles to the rear of the Charter Van via the back side windows or rear windows, leaving only the driver and passenger windows (including the side mirrors) and the windshield as the sole avenues to see or view the road or vehicles either to the rear or sides or front of the Charter Van (allegations in Paragraphs Thirty-Three (33) through Thirty-Five (35) hereinafter referred to as the “Charter Van Configuration”).

37.

The IRVM in the Charter Van served absolutely no safety purpose when the Charter Van was in forward motion as any ability to see or view the road or vehicles to the rear of the Charter Van via the IRVM was completely blocked by the white panel behind the driver and passenger's seats and further completely blocked by the side panels and rear panels on the back side windows and the rear windows (hereinafter "Non-Functional IRVM").

38.

The existence of the Non-Functional IRVM created a dangerous distraction to Jenkins regarding his duties to other drivers, including Fennell, to safely operate the Charter Van and further created an unreasonable risk that Jenkins would focus his gaze on the IRVM instead of his passenger and driver side windows (including side mirrors) and windshield at moment(s) of decision regarding lane changes or other driving maneuvers.

39.

The unreasonable risk and danger created by the existence of the Non-Functional IRVM in the Charter Van was reasonably foreseeable to Charter.

40.

The unreasonable risk and danger created by the Charter Van Configuration's effect on Charter drivers' rear and back sides visibility was reasonably foreseeable to Charter.

41.

Upon information and belief, Jenkins had not driven a vehicle with a Non-Functional IRVM prior to February 6, 2015.

42.

Upon information and belief, Jenkins had not driven a vehicle that had no IRVM installed prior to February 6, 2015.

43.

Charter knew or should have known that Jenkins had not driven a vehicle with a Non-Functional IRVM prior to February 6, 2015.

44.

Charter knew or should have known that Jenkins had not driven a vehicle that had no IRVM installed prior to February 6, 2015.

45.

On February 6, 2015, Charter knew that the prior vehicles used by technician and installation drivers such as Jenkins that were to be replaced by the new Ford Transit vans (hereinafter "Prior Charter Vans") were configured with back side windows with see-through glass and rear windows with see-through glass, without a white panel behind the driver and passenger seats, and further configured with IRVMs that functioned properly to allow a Charter driver to see or otherwise view the road or vehicles to the rear of such Prior Charter Vans via the rear view window glass.

46.

Charter knew or should have known that Jenkins was only at best prepared to operate a vehicle configured like the Prior Charter Vans, and not the Charter Van, as the Charter Van

Configuration was substantially and materially different from and specifically provided substantially less visibility to the rear and back sides of the vehicle than the Prior Charter Vans.

47.

As of February 6, 2015, Charter provided no training to Jenkins regarding the new Charter Van Configuration and how to engage in safe operation of a vehicle without an IRVM and/or with a Non-Functional IVRM.

48.

As of February 6, 2015, Charter provided no supervision of Jenkins regarding the new Charter Van Configuration and how to engage in safe operation of a vehicle without an IRVM installed and/or with a Non-Functional IVRM.

49.

Prior to February 6, 2015, Charter provided no notice to Jenkins that he would be required to operate a vehicle with the Charter Van Configuration.

50.

On February 6, 2015, the dangers and unreasonable risk created by the operation of the Charter Van by a person, such as Jenkins, without any training regarding the operation of a vehicle without an IRVM or with a Non-Functional IRVM or supervision regarding same was an open and obvious danger to other drivers on the road and reasonably foreseeable by Charter.

51.

Upon information and belief, Jenkins was using a cell phone or communications device or other electronic device (“Jenkins Usage”) at the time of the Collision and/or before the Initial



Collision while operating the Charter Van and Jenkins Usage resulted in distraction of Jenkins' focus on driving the Charter Van safely and duty to use due care.

52.

The unreasonable risk and danger created by the Jenkins Usage was an open and obvious danger to other drivers on the road which reasonably foreseeable by Charter.

53.

The unreasonable risk and danger created by the operation of the Charter Van in the circumstances described herein in a heavy traffic portion of Interstate 285 was an open and obvious danger to other drivers on the road which was reasonably foreseeable by Charter.

54.

Upon information and belief, Charter's selection of the Charter Van Configuration with a Non-Functional IRVM was motivated at least in part by the desire to reduce the cost of Charter's purchase of 800 Ford Transits from the Ford Motor Company, Inc. (hereinafter "Ford").

55.

The specifications publicly distributed by Ford regarding the Ford Transit model of the Charter Van specifically stated in reference to an IRVM as follows "Inside Rearview Mirror, Included (When Equipped with Rear Glass)" (hereinafter "Ford Specifications").

56.

Despite the Ford Specifications, upon information and belief, Charter required the installation of the Non-Functional IRVM to save money because while the Charter Van was operated in reverse the IRVM displayed a small screen view of the rear of the Charter Van on

half of the IRVM, thereby avoiding the increased cost of installing a video monitor in the center of the dashboard of the Charter Van to display the backup camera instead of the Non-Functional IRVM. Charter also required panels on all the back side windows and rear windows and required the installation of a white panel behind the passenger and driver seats (hereinafter “Configuration Decisions”).

57.

Upon information and belief, the Configuration Decisions were made with knowledge of and without addressing or otherwise accounting for the open and obvious safety risks to other vehicles and pedestrians on or about any roadway to be occupied by a Charter Van that a Charter driver would be distracted by the Non-Functional IRVM or that there would be an inability of a Charter driver to see or view vehicles on the side or rear of a Charter Van via a back side or rear window (blocked by window panels and interior white panels).

58.

Upon information and belief, the Configuration Decisions were made with knowledge of and without addressing or otherwise accounting for the fact that training and supervision would be required to allow veteran Charter drivers to operate the Charter Van safely as the Charter Van Configuration differed so substantially from the configuration of the Prior Charter Vans.

59.

Charter directed, planned for, authorized and intended to utilize drivers with little to no training or experience driving a vehicle without a functional IRVM or with a Non-Functional IRVM to operate the customized Ford Transit vans purchased by Charter and further directed the

makeup of the Charter Van Configuration (including the deviations from Ford Specifications) to include a Non-Functional IRVM with absolutely no safety function while in forward motion while also directing Jenkins to drive the Charter Van, for the first time, in heavy traffic on Interstate 285 at rush hour. Such conduct demonstrates an entire want of care, conscious indifference to the consequences of Charter's actions and is further evidence of recklessness and wantonness which authorizes the imposition of punitive damages.

60.

The Jenkins Statutory Violations create negligence per se as to liability in favor of the Fennell Children.

61.

At all times relevant hereto, Defendant Jenkins was employed by, and was an agent, servant and/or employee of Defendant Charter.

62.

The above-described acts of Defendant Jenkins on February 6, 2015 were committed within the scope of his employment with Defendant Charter, in that they were committed while on duty and in furtherance of Defendant Charter's operations.

63.

As Defendant Jenkins' employer, Defendant Charter is responsible for all of the negligent acts, negligence per se, recklessness, entire want of care and breach of duties committed by Defendant Jenkins within the scope of his employment.

64.

Defendant Rothwell owed Fennell a duty to use reasonable care in operating and controlling the J. B. Hunt Box Truck.

65.

Defendant Rothwell failed to use reasonable care in operating the J. B. Hunt Box Truck on February 6, 2015 when he improperly moved into the lane adjacent and to the left of the J.B. Hunt Box Truck when it was unsafe to do so and crushed the skull of Fennell with the rear tires of the J. B. Hunt Box Truck.

66.

Defendant Rothwell was reckless and demonstrated an entire want of care regarding his driving of the J. B. Hunt Truck in the moments leading up to and at the time of the Subsequent Collision.

67.

Defendant Rothwell caused the Subsequent Collision between the rear tires of the J. B. Hunt Box Truck and the skull/head of Fennell on Interstate 285.

68.

Defendant Rothwell breached his duties owed to Fennell.

69.

As a direct and proximate result of Defendant Rothwell's negligence, negligence per se, recklessness, entire want of care and breach of duties owed to Fennell, Fennell sustained fatal bodily injuries in the Subsequent Collision and died on Interstate 285 on February 6, 2015.

70.

On February 6, 2015, the interior cabin of the J. B. Hunt Box Truck contained many packages, bottles and containers, some opened and some not, in various states of use and/or consumption, which created a dangerous distraction to Rothwell regarding his duties to other drivers and Fennell to safely operate the J. B. Hunt Box Truck.

71.

Upon information and belief, Rothwell was using a cell phone or communications device or other electronic device (hereinafter "Rothwell Usage") at or around the time of the Collision and before the Subsequent Collision while operating the J. B. Hunt Box Truck and the Rothwell Usage resulted in distraction of Rothwell's focus on driving the J. B. Hunt Box Truck safely and with due care.

72.

On February 6, 2015, the windshield of the J. B. Hunt Box Truck had affixed a loosely-fitted suction cup, which, upon information and belief, connected or secured some form of electronic display, directly in the field of vision of Rothwell, which created a dangerous distraction to Rothwell regarding his duties to other drivers and Fennell to safely operate the J. B. Hunt Box Truck.

73.

On February 6, 2015, the interior cabin of the J. B. Hunt Box Truck was occupied by a non-driver person, which created a dangerous distraction to Rothwell regarding his duties to other drivers and Fennell to safely operate the J. B. Hunt Box Truck.

74.

J. B. Hunt authorized, allowed, condoned or otherwise tolerated the use of the distracting suction cup and attached electronics on the windshield of the J. B. Hunt Box Truck, the Rothwell Usage, the multiple packages, bottles, or containers and active consumption of same while driving and the presence of a non-driver in the J. B. Hunt Box Truck and as such is directly responsible for the negligence and recklessness evidenced by such conduct.

75.

The Rothwell Statutory Violations create negligence per se as to liability in favor of the Fennell Children.

76.

At all times relevant hereto, Defendant Rothwell was employed by, and was an agent, servant and/or employee of Defendant J. B. Hunt.

77.

The above-described acts of Defendant Rothwell on February 6, 2015 were committed within the scope of his employment with Defendant J. B. Hunt, in that they were committed while on duty and in furtherance of Defendant J. B. Hunt's operations.

78.

As Defendant Rothwell's employer, Defendant J. B. Hunt is responsible for all of the negligent acts, negligence per se, recklessness, entire want of care and breach of duties committed by Defendant Rothwell within the scope of his employment.

79.

As a direct and proximate result of the Defendants' negligence, negligence per se, recklessness and entire want of care and a breach of duties owed to Fennell, Defendants caused Fennell's death and as such are liable to the Fennell Children for the damages authorized by law for Fennell's wrongful death.

80.

At the time of his death, Fennell had the Fennell Children, and four (4) grandchildren, three (3) via Katherine (two (2) boys [ages 10 and 2] and one (1) girl [age 6]) and one (1) via Archer (a baby boy who was born in January 2015), and Fennell had ongoing and close relationships with the Fennell Children and his grandchildren (hereinafter "Familial Relationships").

81.

At the time of his death, Fennell had many friends with which he enjoyed spending time, and Fennell was engaged in a romantic relationship with Wilson that was growing more serious (hereinafter "Friends and Significant Other Relationships").

82.

In determining the value of Fennell's life, the jury may consider his relationships that existed when he died, including the Familial Relationships and Friends and Significant Other Relationships, as well as living conditions, family circumstances, pecuniary loss, economic damages and loss (including any benefits to be received), mental anguish, emotional pain and suffering, loss of society, loss of companionship, loss of comfort, loss of protection, loss of

parental care, loss of advice, loss of counsel, loss of training, loss of guidance, loss of education and loss of filial care. The standard for measuring such damages is the enlightened conscience of impartial jurors.

83.

The Fennell Children demand judgment against the Defendants for their wrongful death claims in an amount to be determined by the jury, including economic and non-economic damages, compensatory damages, plus costs, attorney's fees, pre-judgment interest and post-judgment interest.

### **COUNT II – SURVIVAL ACTION**

84.

Plaintiff Katherine, as representative of the Estate, realleges and incorporates herein by reference Paragraphs One (1) through Eighty-Three (83) as if fully set forth herein.

85.

Defendants' conduct as alleged herein demonstrates a failure to use reasonable care, negligence, negligence per se, recklessness and an entire want of care and a breach of duties owed to Fennell, such that Fennell sustained fatal bodily injuries and died on Interstate 285 in his own lane on February 6, 2015 and suffered from pre-impact fright and conscious pain and suffering until he passed away.



86.

As a direct and proximate result of Defendants' negligence, negligence per se, recklessness, entire want of care and breach of duties owed to Fennell, the Estate and/or Fennell has incurred funeral expenses and other expenses and damages.

87.

Plaintiff Katherine, on behalf of the Estate, demands judgment against the Defendants, in a total amount to be determined by the enlightened conscious of the jury, including but not limited to damages for the following:

- (a) Compensatory damages for the shock, fright, and terror experienced by Fennell from initial impact until the time of this death;
- (b) Compensatory damages for all components of the mental and physical pain and suffering endured by Fennell from initial impact until the time of his death;
- (c) Special damages for the funeral and burial expenses and other expenses.

### **COUNT III – PUNITIVE DAMAGES**

88.

Plaintiffs reallege and incorporate herein by reference Paragraphs One (1) through Eighty-Seven (87) as if fully set forth herein.

89.

Defendants' reckless actions amounted to an entire want of care which would raise the presumption of conscious indifference to the consequences of his actions sufficient for an award of punitive damages under O.C.G.A. § 51-12-5.1.

Charter directed, planned for and authorized the use of drivers, such as Jenkins, with little to no training or experience driving a vehicle without a functional IRVM or with a Non-Functional IRVM to operate the customized Ford Transit vans purchased by Charter, further directed the makeup of the Charter Van Configuration (including the deviations from Ford Specifications) to include a Non-Functional IRVM with absolutely no safety function while in forward motion while also directing Jenkins to drive the Charter Van, for the first time, in heavy traffic on Interstate 285 at rush hour while also allowing the Jenkins Usage. Such conduct and Charter's additional conduct as the evidence may show demonstrates an entire want of care, conscious indifference to the consequences of Charter's actions and is further evidence of recklessness which authorizes the imposition of punitive damages.

J. B. Hunt authorized, allowed, condoned or otherwise tolerated the use of the distracting suction cup and attached electronics on the windshield of the J. B. Hunt Box Truck, the multiple packages, bottles, or containers of food and beverages and active consumption of same while driving and the presence of another person in the J. B. Hunt Box Truck while also allowing the Rothwell Usage. J. B. Hunt's conduct and additional conduct as the evidence may show demonstrates an entire want of care, conscious indifference to the consequences of J. B. Hunt's actions and is further evidence of recklessness and wantonness which authorizes the imposition of punitive damages.

92.

Plaintiffs seek to recover punitive damages pursuant to O.C.G.A. § 51-12-5.1 in such an amount as the jury determines to be just and appropriate to fully and completely deter Defendants from committing the tortious acts and omissions complained of in this Complaint as well as attorney's fees and costs.

**COUNT IV – ATTORNEYS FEES**

93.

Plaintiffs reallege and incorporate herein by reference Paragraphs One (1) through Ninety-Two (92) as if fully set forth herein.

94.

Defendants' reckless conduct constitutes bad faith and stubborn litigiousness sufficient to award attorney's fees under O.C.G.A. §13-6-11, and Defendants are liable to Plaintiffs for all expenses of litigation, including reasonable attorneys fees incurred in bringing this action.

WHEREFORE, the Plaintiffs pray:

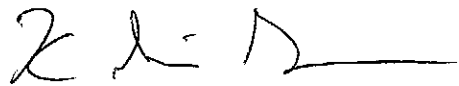
- A. For Summons and Process to issue according to law;
- B. For a Trial by Jury of Twelve (12) as to all issues so triable;
- C. For a Judgment against Defendants in such an amount as will fully compensate the Fennell Children for the full value of the life of Fennell in an amount to be determined by the enlightened conscience of the jury;

- D. For a Judgment against Defendants in such an amount as will fully compensate the Estate for all compensatory and special damages in an amount to be determined by the enlightened conscience of the jury;
- E. For punitive damages to be awarded to Plaintiffs against Defendants in an amount to be determined by the enlightened conscience of the jury;
- F. For reasonable attorneys fees and all costs and expenses of this action to be awarded to Plaintiffs against Defendants;
- G. For pre and post judgment interest as applicable on all awards to Plaintiffs;
- H. For all other damages as are allowed under the law against Defendants; and,
- I. For such other and additional relief as this Court deems just and proper.

This 19<sup>th</sup> day of May, 2015.

Respectfully submitted,

**EHRENLOU & GROVER LLC**



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