

CAUSE NO. 2017527918

TANDI WAGNER and
KRISTI RAMIREZ

Plaintiffs,

v.

FEDEX FREIGHT, INC.

Defendant.

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IN THE ____ DISTRICT COURT

OF

LUBBOCK COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Tandi Wagner and Kristi Ramirez, Plaintiffs in the above entitled cause, complaining of FEDEX FREIGHT, INC., and would respectfully show the Court the following:

I. DISCOVERY

1.01 Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs intend to conduct discovery in this case under Level 3 (Rule 190.4 Texas Rules of Civil Procedure).

II. PARTIES

2.01 Plaintiff Tandi Wagner is a resident State of Texas. Pursuant to TEX. CIV. PRAC. REM. CODE § 30.014, the last three digits of her social security number are [REDACTED].

2.02 Plaintiff Kristi Ramirez is a resident State of Texas. Pursuant to TEX. CIV. PRAC. REM. CODE § 30.014, the last three digits of her social security number are [REDACTED].

2.03 Defendant FedEx Freight (Defendant FedEx) is a corporation doing business in Texas. Defendant FedEx may be served with process through its registered agent: C T Corporation System; 1999 Bryan Street, Ste 900, Dallas, Texas 75201.

III. JURISDICTION AND VENUE

3.01 Venue is proper in Lubbock County, Texas, pursuant to TEX. CIV. PRAC. REM. CODE §

15.002(a)(3), because it is the county in which all or substantial all of the acts or omissions occurred.

3.02 The amount of Plaintiffs' damages is substantial and well in excess of the jurisdictional minimums of this Court. Plaintiffs are seeking monetary relief over \$1,000,000.00.

IV. PLAINTIFFS' NARRATIVE

4.01 Michael Merton was working as a mechanic inside an airplane owned and operated by Defendant FedEx on or about October 17, 2017. Michael Merton was crushed inside of the airplane where he was working, which caused his life-ending injuries.

4.02 The gross negligence of Defendant FedEx proximately caused the death of Mr. Merton.

V. CAUSES OF ACTION

Gross Negligence

5.01 Defendant FedEx and/or its agents, servants, and officers were consciously indifferent to the rights, safety, or welfare of its employees in one or more of the following ways:

- a. Failing to adequately train FedEx employees how to safely and properly perform the tasks they were assigned;
- b. Failing to follow necessary safety procedures;
- c. Failing to provide safe equipment and machinery;
- d. Failing to provide working equipment and machinery;
- e. Failing to follow safety procedures;
- f. Failing to provide Mr. Merton with a safe place to work; and,
- g. Failing to properly instruct and supervise FedEx employees for the tasks they were assigned.

5.02 The above-mentioned acts of negligence on the part of Defendant were of such character as to make Defendant guilty of gross negligence. Defendant's acts of negligence when viewed

objectively from the standpoint of Defendant involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant had actual, subjective awareness of this risk but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of the Plaintiffs. The gross negligence of the Defendant was a proximate cause of the incident, the death of Mr. Merton, and the Plaintiffs' damages. Because of Defendant's gross negligence, Plaintiffs seek and are entitled to an award of exemplary damages.

VI. DAMAGES FOR WRONGFUL DEATH

6.01 At all times relevant to the events made the basis for this suit, Defendant was a "subscriber" to workers' compensation insurance coverage in accordance with the Texas Labor Code, and upon information and belief, maintained workers' compensation coverage for Michael Merton. Although this is an action for exemplary damages, it may be necessary for Plaintiffs to submit evidence of the actual damages to the jury and obtain findings from the jury regarding actual damages, in order to aid the Court's application of exemplary damage caps, if applicable.

6.02 As a direct and proximate result of the acts and/or omissions in question, Mr. Michael Merton was killed. Plaintiffs bring this action pursuant to §71.001, *et seq.*, of the Texas Civil Practices and Remedies Code, commonly referred to as the "Wrongful Death Act". Plaintiffs have suffered loss by virtue of the economic and non-economic damages associated with the death of Mr. Michael Merton as well as the destruction of the parent-child relationship. Plaintiffs have suffered the damages as set forth below.

Plaintiff Tandi Wagner

6.03 As a direct, proximate, and producing result of the conduct of Defendant as described above, Tandi Wagner sustained a loss of the positive benefits flowing from the love, comfort, companionship, and society that she would, in all reasonable probability, have received from her

father, Michael Merton, had he lived. Tandi Wagner has also suffered a loss of the care, maintenance support, services, advice, counsel, inheritance, and reasonable contributions of a pecuniary value provided by her father, Michael Merton. Further, she has suffered severe mental anguish, including emotional pain, torment and suffering as a result of the wrongful death of her father. These damages will, in all reasonable probability continue in the future.

Plaintiff Kristi Ramirez

6.04 As a direct, proximate, and producing result of the conduct of Defendant as described above, Kristi Ramirez sustained a loss of the positive benefits flowing from the love, comfort, companionship, and society that she would, in all reasonable probability, have received from her father, Michael Merton, had he lived. Kristi Ramirez has also suffered a loss of the care, maintenance support, services, advice, counsel, inheritance, and reasonable contributions of a pecuniary value provided by her father, Michael Merton. Further, she has suffered severe mental anguish, including emotional pain, torment, and suffering as a result of the wrongful death of her father. These damages will, in all reasonable probability, continue in the future.

6.05 As a result of Defendant's conscious indifference and the injuries suffered, Plaintiffs are entitled to exemplary damages pursuant to Section 41.001 et. seq. of the Texas Civil Practice and Remedies Code.

VII. CONCLUSION

7.01 WHEREFORE, premises considered, Plaintiffs respectfully request the Defendant be cited to appear and answer and that upon final trial by jury, Plaintiffs recover against the Defendants:

1. Punitive damages;
2. Pre-judgment and post-judgment interest as allowed by law;
3. Costs of court; and
4. Such other, further and different relief to which Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

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