

# 2023-26184 / Court: 11

CAUSE NO. \_\_\_\_\_

CHRISTOPHER MCMULLIN AND  
LYNN MCMULLIN, individually and as  
representatives of the Estate of JOSEPH  
EDWARD MCMULLIN, deceased

Plaintiffs,

vs.

KRISTINA CHAMBERS,  
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

## **PLAINTIFFS' ORIGINAL PETITION, JURY DEMAND, AND RULE 193.7 NOTICE**

Plaintiffs, CHRISTOPHER MCMULLIN and LYNN MCMULLIN, individually and as representatives of the Estate of Joseph Edward McMullin, deceased (“Plaintiffs”), file this Original Petition, Jury Demand, and Rule 193.7 Notice, complaining of the acts and omissions of Defendant, KRISTINA CHAMBERS, and will show the Court the following:

### **I.**

#### **DISCOVERY CONTROL PLAN LEVEL**

1.1. Pursuant to Texas Rule of Civil Procedure 190.4 the discovery of this case is to be conducted under a Level 3 Discovery Control Plan.

### **II.**

#### **PARTIES & SERVICE**

2.1. Plaintiffs, Christopher McMullin and Lynn McMullin, are residents of Texas. They are also the surviving parents of Joseph Edward McMullin. They are representatives of the Estate of Joseph Edward McMullin and at this time, no administration of the Estate is necessary. They may be reached through his undersigned counsel at KHERKHER GARCIA, LLP.

2.2. Defendant, Kristina Chambers, is an individual who resides at 2201 Colquitt St., Houston, Texas 77098. She may be served with process at that address or wherever she may be found. Plaintiffs request a citation. Plaintiffs additionally assert all rights and request all relief under

Texas Rule of Civil Procedure 28 and demand that this defendant answer in her true name, if it differs from that outlined above.

### **III. JURISDICTION & VENUE**

- 3.1. The subject matter in controversy is within the jurisdictional limits of this court.
- 3.2. This Court has personal jurisdiction over the parties because all or a substantial part of the events giving rise to this dispute occurred within Texas, and Defendant committed a tort in Texas.
- 3.3. All other jurisdictional prerequisites and conditions precedent to suit have been met.
- 3.4. Pursuant to Section 15.002(a)(1) of the Texas Civil Practice & Remedies Code, venue is proper in Harris County, Texas, because Harris County is the county in which a substantial part of the events and omissions giving rise to this claim occurred. Further, Harris County is a convenient forum and venue to Defendant, maintaining this litigation in this forum and venue would not work a substantial injustice on them, and the interests of justice dictate that this litigation be maintained in this forum and venue.
- 3.5. This case cannot be removed to federal court because no federal question exists, Defendant is a citizen of Texas, and complete diversity does not exist between the parties because Defendant, Kristina Chambers and all Plaintiffs named herein are citizens of Texas. *See* 28 U.S.C. § 1441. Removal would therefore have no basis in law or fact, and an improper removal would subject Defendant to an award of costs, expenses, and fees, including, but not limited to, attorney's fees under 28 U.S.C. § 1447(c).

### **IV. FACTS**

- 4.1. Joe McMullin was a kind and compassionate soul that always wanted to help others. On

April 19, 2023, he was wrongfully taken away from this world at the young age of 33.

4.2. On April 19, 2023, Joe McMullin was on a first date. Joe and his date decided to walk to the donut shop to get something to eat.

4.3. On information and belief, as Joe McMullin was walking on the sidewalk on Westheimer Road near Waugh, Kristina Chambers was driving her Porsche Carrera over 100 miles per hour down Westheimer. On information and belief, Kristina Chambers was intoxicated, speeding, and not paying any attention to where she was driving. Defendant Chambers left the roadway, careened the sidewalk and violently collided with Joe McMullin. Defendant Chambers only stopped because she struck a pole in the parking lot.



4.4. On information and belief, Defendant, Kristina Chambers, was so severely intoxicated that her blood alcohol content was nearly four times the legal limit. Following the crash, she was charged with intoxication manslaughter.

4.5. The violent collision killed Joe McMullin. He is survived by his parents, Christopher and Lynn McMullin.

4.6. Plaintiffs have been damaged in an amount far in excess of the jurisdictional limits of this Court. Plaintiffs were severely injured as a result of Defendant's negligence.

**V.  
NEGLIGENCE AND GROSS NEGLIGENCE AGAINST  
DEFENDANT KRISTINA CHAMBERS**

5.1. Plaintiffs incorporate all other paragraphs by reference here fully.

5.2. Defendant Chambers had a duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein.

5.3. Plaintiffs' injuries were proximately caused by Defendant's negligent, careless, and reckless disregard of this duty. The disregard of this duty consisted of, but is not limited to, the following acts and omissions:

- a. driving while intoxicated;
- b. speeding;
- c. failing to maintain her lane of travel;
- d. reckless driving;
- e. failing to keep a proper lookout;
- f. failing to timely apply her brakes;
- g. failing to timely swerve or otherwise maneuver her vehicle so as to avoid the incident made the basis of the suit;
- h. failing to operate her vehicle in a reasonable and prudent manner;
- i. failing to operate the vehicle in obedience of traffic laws and regulations;
- j. driver inattention;
- k. driving while distracted;
- l. failing to control her vehicle and;
- m. such additional acts of negligence and gross negligence, which will be established as the case progresses.

5.4. Plaintiffs further allege that Defendant Chambers is liable under the doctrine of res ipsa loquitur. The character of the incident made the basis of this suit is such that it would not ordinarily occur in the absence of negligence, and Defendant Chambers had management and control over the instrumentality and activity in question.

5.5. One, some, or all of the foregoing acts and/or omissions or others on the part of this Defendant, constituted negligence and such negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages.

5.6. The acts or omissions described above, when viewed from Defendant's standpoint, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs and others. Defendant had actual, subjective awareness of this risk, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs and others.

## **VI. WRONGFUL DEATH DAMAGES**

6.1. Plaintiffs incorporate all other paragraphs by reference here fully.

6.2. Plaintiffs, Christopher and Lynn McMullin, the surviving parents of Joseph McMullin, are statutory beneficiaries under section 71.004 of the Texas Civil Practice and Remedies Code, the Wrongful Death Act.

6.3. The negligence and gross negligence of Defendant, outlined elsewhere herein more fully, caused the untimely death of Joseph McMullin.

6.4. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiffs have suffered severe injuries and damages. At the time of his death, Joseph McMullin's parents depended on him for love, companionship, affection, and support. Plaintiffs accordingly pray for the following damages:

- a. Mental anguish in the past;
- b. Mental anguish which, in all reasonable probability, will be suffered in the future;
- c. Loss of companionship and society in the past and future, including, but not limited to, the loss of positive benefits flowing from the love, comfort, companionship and society that would have been received from the Joseph McMullin, had he lived;
- d. Exemplary damages; *and*,
- e. Any and all other damages to which Plaintiffs are justly entitled as shown through the course of this proceeding.

## **VII. SURVIVAL DAMAGES**

7.1. Plaintiff incorporates all other paragraphs by reference here fully.

7.2. Plaintiffs are the representatives of the Estate of Joseph Edward McMullin. Joseph McMullin had a legal cause of action for personal injuries to his health and person before he died. While alive, Joseph McMullin was forced to endure the unbearable physical trauma of the incident described elsewhere herein that ultimately resulted in his tragic death. Joseph McMullin experienced excruciating physical pain, suffering and mental anguish prior to his death. Joseph McMullin would have been entitled to bring an action for these injuries if he had lived, including for negligence and gross negligence.

7.3. Defendant's wrongful, negligent and grossly negligent acts and omissions caused Joseph McMullin's injuries and death, as further outlined herein.

7.4. Accordingly, Christopher and Lynn McMullin, as representatives of the Estate of Joseph McMullin, maintain this survival action against Defendant on behalf of the estate and all legal heirs. Plaintiffs seek recovery of the following damages, which were a direct and proximate result of the occurrence made the basis of this lawsuit:

- a. Reasonable medical care and expenses sustained by Joseph McMullin in the past;
- b. Physical pain and suffering sustained by Joseph McMullin in the past;
- c. Mental anguish sustained by Joseph McMullin in the past;
- d. Funeral expenses;
- e. Exemplary damages; *and*,
- f. Any and all other damages to which Plaintiffs are justly entitled as shown through the course of this proceeding.

### **VIII.**

#### **RULE 47 STATEMENT OF MONETARY RELIEF SOUGHT**

8.1. Plaintiffs prefer to have the jury determine the fair amount of compensation for Plaintiffs' damages. It is too early in the case to be assessing the full nature and scope of Plaintiffs' damages, and Plaintiffs place the decision regarding the amount of compensation to be awarded in the jury's hands. Rule 47 of the Texas Rules of Civil Procedure, however, *requires* Plaintiffs to provide a statement regarding the amount of monetary relief sought. Accordingly, Plaintiffs state that monetary relief of over \$1,000,000.00, in amount to be determined by the jury, is being sought.

### **IX.**

#### **RULE 193.7 NOTICE OF INTENT TO USE DISCOVERY AT TRIAL**

9.1. Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiffs hereby give notice that they intend to use all discovery instruments produced in this case at trial. Such discovery instruments include, but are not limited to, all documents produced by all parties and third parties.

### **X.**

#### **NOTICE TO PRESERVE EVIDENCE**

10.1. Plaintiffs hereby demand that Defendant preserve and place a litigation hold on all documents, tangible things, and electronically stored information that arise out of or relate to the

incident made the basis of this suit, further described elsewhere herein. This includes, but is not limited to, the vehicle driven by Kristina Chambers, the electronic and telematics data recorded by devices on the vehicle driven by Kristina Chambers, the cellphone(s) used by Kristina Chambers on the day of the incident, all documents, photos, video, audio, cell phone records, text and SMS messages, drug and alcohol tests and specimens, computers, tablets, and other electronic devices in the vehicle operated by Kristina Chambers at the time of the incident in question, and other electronically stored information.

**XI.  
DUTY TO DISCLOSE**

11.1. Pursuant to Texas Rule of Civil Procedure 194.1, Defendant is required to provide the information or material described in Rule 194.2, 194.3 and 194.4 without awaiting a discovery request from Plaintiffs.

**XII.  
DEMAND FOR JURY TRIAL**

12.1. Plaintiffs hereby demand a jury trial and tenders the appropriate jury fee.

**XIII.  
RESERVATION OF RIGHTS**

13.1. The above allegations against Defendant are made acknowledging that investigation and discovery, although undertaken, are continuing in this matter. As further investigation and discovery are conducted, additional facts may be uncovered that necessitate further, additional, and/or different allegations, including the potential of adding additional parties to the case or dismissing parties from the case. The right to do so, under Texas law, is expressly reserved.

**XIV.  
CONCLUSION & PRAYER**



For the foregoing reasons, Plaintiffs pray that Defendant be cited to appear and answer herein, and, upon a final hearing of the cause, judgment be entered for the Plaintiffs and against Defendant for:

- a. Actual damages above the jurisdictional minimum of the Court, further outlined above;
- b. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- c. All costs of court;
- d. Exemplary damages; *and*,
- e. All other relief to which Plaintiffs are justly entitled.

Respectfully submitted,

**KHERKHER GARCIA, LLP**

By: /s/ Jesus Garcia, Jr.

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**ATTORNEYS FOR PLAINTIFFS**

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jesus Garcia, Jr. on behalf of Jesus Garcia, Jr.

Bar No. 24027389

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Envelope ID: 75050307

Filing Code Description: Petition

Filing Description: PLAINTIFFS&#8217; ORIGINAL PETITION, JURY DEMAND, AND RULE 193.7 NOTICE

Status as of 4/26/2023 3:42 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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