

CAUSE NO. DC-13-08320

DIANE SANCHEZ, INDIVIDUALLY
AND AS REPRESENTATIVE OF
THE ESTATE OF MATTHEW
SANCHEZ, DECEASED AND
ARNOLD SANCHEZ

PLAINTIFF

VS.

CITY OF DALLAS; AT&T MOBILITY
LLC; SOUTHWESTERN
BELL TELEPHONE COMPANY D/B/A
AT&T TEXAS; and APPLE, INC.

DEFENDANTS

§ IN THE DISTRICT COURT OF
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§ J-191ST
§ _____ JUDICIAL DISTRICT
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§ DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff DIANE SANCHEZ, INDIVIDUALLY, AND AS REPRESENTATIVE OF THE ESTATE OF MATTHEW SANCHEZ, and ARNOLD SANCHEZ files this petition complaining of Defendant CITY OF DALLAS, AT&T MOBILITY LLC, SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T TEXAS and APPLE, INC. and would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1.1 Pursuant to the provisions of Texas Rule of Civil Procedure 190.3, Plaintiffs propose to conduct discovery according to Discovery Control Plan Level 3, and therefore requests this Court to enter a scheduling order that includes a discovery deadline date and a designation of expert deadline.

II. PARTIES

2.1 Plaintiffs, DIANE SANCHEZ, individually and as representative of the ESTATE OF MATTHEW SANCHEZ, and Arnold Sanchez bring this wrongful death and survival action. Plaintiffs are residents of Harlingen, Cameron County, Texas. Arnold and Diane Sanchez are the parents of the decedent.

2.2 Defendant City of Dallas is a municipal corporation duly organized and existing under the laws of the State of Texas, with its principal office located at Dallas City Hall, 1500 Marilla, Dallas, Texas 75201 in Dallas County, Texas and can be served with citation by serving its City Attorney, Thomas Perkins, at Dallas City Hall, 1500 Marilla, Rm. 7DN, Dallas, Texas 75201-6622.

2.3 Defendant AT&T Mobility LLC is a foreign limited liability corporation licensed to do business in the state of Texas and may be served by process by serving its registered agent CT Corporation System, 350 N. Saint Paul St., Ste. 2900, Dallas, Texas 75201.

2.4 Defendant Apple, Inc. is a California corporation with its principal place of business in Cupertino, California . Defendant engages in business in the State of Texas but has not designated an agent for service of process. Defendant may be served by certified mail, return receipt requested, directed to the Defendant through the Texas Secretary of State as an agent for service of process at the following address: Service of Process, Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079.

2.5 Defendant Southwestern Bell Telephone d/b/a AT&T Texas is a foreign corporation licensed to do business in the state of Texas and may be

served by process by serving its registered agent CT Corporation System, 350 N. Saint Paul St., Ste. 2900, Dallas, Texas 75201-4234.

III. VENUE

3.1 Venue is proper and required in this county of suit pursuant to Section 15.0151 of the Texas Civil Practice and Remedies Code, because Dallas County is the county in which the political subdivision of Defendant, the City of Dallas, is located.

3.2 The claims against the City of Dallas are brought under the Texas Tort Claims Act, Texas Civil Practice & Remedies Code Section 101.021(1), which waives state sovereign immunity for personal injuries caused by the wrongful act or omission or negligence of an employee acting within his or her scope of employment if the personal injury arises from the misuse of tangible personal property, and the employee would be personally liable to the claimant under Texas law.

3.3 On December 18th, 2012, Plaintiffs gave notice of this claim to Defendant as required by Section 101.101 of the Texas Civil Practice & Remedies Code, and by the Dallas City Charter. A copy of the notice of claim is attached as Exhibit A and is incorporated by reference.

IV. BACKGROUND FACTS AND ALLEGATIONS AS TO DEFENDANT CITY OF DALLAS

4.1 Defendant City of Dallas owns, operates, and maintains a 911-operator system in Dallas, Texas. The general public, including plaintiff, is invited to use this system for the purpose of the City's rescue efforts.

4.2 At approximately 2:55 a.m. on November 16, 2012, Dallas 911 Dispatch received a call from a cell phone asking for assistance in the overdose of Matthew Sanchez. After receiving the address (15935 Bent Tree Forest Circle, , Dallas, TX, 75248), the dispatcher confirmed to the caller that responders were in route and the call was somehow disconnected. However, there were two overdose calls at approximately the same time that came from the same apartment complex. An earlier call had been placed from a different cell phone number from a different apartment number slightly more than 10 minutes before the Mathew Sanchez call. The City of Dallas 911 dispatchers misused their computer system hardware and software property and misused their phone system property both of which should been used in a manner to have ensured their ability to determine that the calls were two separate incidents coming from two different locations. Based upon current information and belief it appears that, the 911 employee negligently misused the phone property in question by hanging up on a pending 911 prior to the arrival of 911 responders and/or a malfunction of the phone system in question caused the caller and the 911 operator to become disconnected. Due to the dispatcher's negligent use of the computer and phone system property and/or the malfunction of the phone system in question and/or subsequent failures in appropriate procedures no responders ever arrived at Matthew Sanchez's apartment and he was found dead in his apartment by his parents Diane Sanchez and Arnold Sanchez at approximately 9:20 a.m. on November 16, 2012. The autopsy of Mathew Sanchez reveals the time of death as approximately 8:40 am.

V. ALLEGATIONS AS TO DEFENDANT AT&T MOBILITY LLC AND/OR

DEFENDANT AT&T TEXAS

5.1 Upon current information and belief, the training of the City of Dallas 911 employees was provided by Defendant AT&T. The 911 dispatchers must be trained under the nationally recognized National Emergency Number Association (NENA) standards and the Standard Operating Procedures. AT&T had the duties and responsibilities of adequately training the city of Dallas employees regarding the appropriate equipment, facilities and personnel as defined by NENA standards. AT&T had the duties and responsibilities of adequately training the city of Dallas employee in the setting and following of the standard operating procedures in: a) Calls from Wireless Devices per NENA 56-001; and b) Handling of Redundant Calls per NENA 56-005. Upon information and belief it appears Defendant AT&T was negligent in providing such training to the city of Dallas 911 and/or to the specific city of Dallas employees in question.

5.2 Defendant AT&T was also the service provider of Mathew Sanchez iPhone in question. AT&T as the 911 service provider was responsible for routing the 911 call to the proper Public Service Answer Point (PSAP) and a) providing the caller's location to an accuracy as stated by the FCC in number CC Docket No. 94-102, Third Report and Order and subsequent revisions; and b) Providing Callback Number per FCC Report and Order. Upon information and belief it appear that adequate location and/or call back number information was not provided to the city of Dallas PSAP and that the PSAP was not able to accurately

determine the location of Mathew Sanchez calling location and/or was not able to accurately and/or timely call back the phone in question when the dispatcher either became disconnected or intentionally hung up with the caller in question.

5.3 Upon information and belief, Defendant AT&T also has available to it technology that allows it to locate the iPhone in question to locations significantly more accurate than the FCC requirements at the time and could in fact isolate the location of the iPhone in question to as close as 30 feet of the calling location. Upon information and belief, Defendant AT&T and/or Defendant Apple have made decisions to not make this technology and information available to PSAP locations such as the City of Dallas and do not allow such technology and information to be used by PSAP locations and 911 services to more specifically identify the calling locations of 911 callers. Failing to provide such technology and information constitutes negligence and gross negligence and Defendant AT&T and/or Defendant Apple should also be strictly liable for the defective design and defective marketing of their 911 locating technology.

VI. ALLEGATIONS AS TO DEFENDANT APPLE, INC.

6.1 Defendant Apple is the manufacture of the iPhone in question. As the manufacturer, Apple is obliged to support FCC mandated 911 including the provision of location reporting for emergency calls in the United States. However, Apple also has the technological capabilities and does in fact offers a wide variety of location based consumer and business services enabled by their device that allows for the accuracy of the location based services to locate an iPhone to an accuracy of at least 30 feet. Apple has made the decision to not

provide this technology to PSAP locations and municipalities for the use of 911 locating services. Failing to provide such technology and information constitutes negligence and gross negligence and Defendant Apple should also be strictly liable for the defective design and defective marketing of their 911 locating technology.

6.2 The iPhone made the basis of this suit was originally designed, manufactured, marketed and sold by Defendant APPLE, INC. At the time of the sale of the iPhone, Defendant APPLE, INC. was in the business of designing, manufacturing and selling phones and other electronics such as the iPhone made the basis of this suit.

6.3 At all times relevant to this suit, Defendant APPLE, INC. was in the business of manufacturing, marketing, selling, and otherwise placing into the stream of commerce phones and electronics, including the iPhone made the basis of this lawsuit by transactions that are essentially commercial in character. Said Defendant APPLE, INC. designed, manufactured, marketed and sold the iPhone as part of such business. Accordingly, Defendant APPLE, INC. is legally responsible in strict products liability for any defects in the subject iPhone including the negligent design.

6.4 As the iPhone was designed, manufactured, marketed and sold, and left the possession of Defendant APPLE, INC., the iPhone was defective and unreasonably dangerous and was not proper for its intended purpose, which defective and unreasonably dangerous condition was a producing cause of the incident in question and of the injuries and damages to the Plaintiffs.

6.5 At the time the iPhone was designed, manufactured, and sold by Defendant APPLE, INC., the same was defective in design and unreasonably dangerous with respect to its improper design which prevented the 911 operators and responders to determine the call's location to the maximum available accuracy, which defective and unreasonably dangerous condition was a producing cause of the incident in question and of the injuries and damages to the Plaintiffs.

6.6 Defendant APPLE, INC. knew or should have known that the iPhone, such as the one involved in the incident made the basis of this lawsuit, was unreasonably dangerous in that such iPhone would be used in conjunction with 911 operators and rescue services without adequate locating technology being provided to such providers, yet continued to manufacture, design, market and sell this product to consumers, which action was a producing cause of the incident in question and of the injuries and damages to the Plaintiffs. At the time of the incident the iPhone in question were in substantially the same condition as they were at the time it was placed into the stream of commerce.

6.7 As a result of the defective and unreasonably dangerous condition of the iPhone in question, Defendant APPLE, INC., in selling the iPhone in question in such condition, breached implied warranties of merchantability and fitness, which breaches of implied warranties were a producing and proximate cause of the incident in question and of the injuries and damages to the Plaintiffs.

Defendant APPLE, INC. committed acts of omission and commission which constituted negligence, which negligence was a proximate cause of the incident in question and of the injuries and damages to the Plaintiffs.

6.8 Defendant APPLE, INC. is also strictly liable for the defective marketing of its iPhone to its customers and distributors and ultimate end users. With Defendant APPLE, INC. 's knowledge that to a certainty, that the iPhone would be utilized in 911 response operations to locate injured or otherwise in-distress parties, Defendant should have and failed to adequately warn of the dangers of using its product without its more accurate locating technology. Defendants should have and failed to adequately warn of the possibility of the iPhone inadequately providing a precise location to the 911 responders and operators.

6.9 Defendant APPLE, INC. should be strictly liable for its defective marketing in failing to adequately warn of the above dangers to its customers and distributors such as The City of Dallas and Matthew Sanchez. Defendant APPLE, INC. should be strictly liable for its defective marketing by failing to send any manuals, pamphlets, letters or advisories to its customers, distributors or end users warning of the possibility of incorrect, inaccurate or insufficiently exact location services.

6.10 Defendant APPLE, INC. knew or should have known that the iPhone, such as the one involved in the incident made the basis of this lawsuit, was unreasonably dangerous that such iPhone would be used in conjunction with 911 operators and rescue services, yet continued to manufacture, design, market

and sell this product to consumers, which action was a producing cause of the incident in question and of the injuries and damages to the Plaintiffs.

VII. DAMAGES

7.1 Plaintiffs seek all damages allowed by law for the wrongful death of MATTHEW SANCHEZ, including reasonable expenses of funeral and burial and the pain and suffering experienced by MATTHEW SANCHEZ before his death, and the value of the loss of MATTHEW SANCHEZ' life caused by the loss of society, guidance, and companionship enjoyed MATTHEW SANCHEZ and his biological parents.

7.2 As a result of the death of MATTHEW SANCHEZ, his mother, Diane Sanchez seeks compensatory damages for her pecuniary loss, loss of companionship, mental anguish.

7.3 As a result of the death of MATTHEW SANCHEZ, his father, Arnold Sanchez seeks compensatory damages for his pecuniary loss, loss of companionship, and mental anguish.

VIII. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

8.1 Plaintiffs seek pre-judgment and post-judgment interest as allowed by law.

IX. AMOUNT OF DAMAGES

9.1 Because of the damages sustained by Plaintiffs in the occurrence made the basis of this suit, this cause is maintained. Plaintiffs will ask a jury to award money damages in this case in an amount that is commensurate with their fair and just damages. Those damages are well in excess of the minimal

jurisdictional limits of this Court. Plaintiffs are content to let a jury and judge, in accordance with the rules and statutes of the state of Texas, set such damages and award such damages as may be just.

X. JURY DEMAND

10.1 Plaintiffs hereby demand a jury trial in this matter.

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be cited to appear and answer herein, and that upon final trial, they have judgment against said Defendant with interest thereon at the legal rate, for costs of court, and for such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

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