SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 8, Honorable Maureen A. Folan, Presiding
Lorna Delacruz, Courtroom Clerk
Court Reporter: SEE NOTE BELOW
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2180

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

LAW AND MOTION TENTATIVE RULINGS
DATE: AUGUST 24, 2017 TIME: 9 A.M.

PLEASE NOTE: ***EFFECTIVE 7-24-17, THE COURT WILL NO LONGER BE PROVIDING COURT REPORTERS. IF YOU WANT A COURT REPORTER AT YOUR HEARING, ALL PARTIES MUST JOINTLY AGREE AND A STIPULATION AND APPOINTMENT MUST BE COMPLETED, SEE FORM CIV-5063***

THE COURT WILL PREPARE THE ORDER UNLESS STATED OTHERWISE BELOW

TROUBLESHOOTING TENTATIVE RULINGS
If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. If you fail to do either of these, your browser will pull up old information from old cookies even after the tentative rulings have been posted.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20151CV278929	L. Fong vs. Y. Cao	Order of Examination of Lisa Fong. Proof of Service Needed.
LINE 2	16CV303900	David Hernandez vs. Dynamic Integrated Solutions, LLC, et al	Click Control Line 2 for Tentative Ruling
LINE 3	17CV308219	Craig Riggs vs. Apple Inc.	Click Control Line 3 for Tentative Ruling
LINE 4	17CV308219	Craig Riggs vs. Apple Inc.	Click Control Line 3 for Tentative Ruling

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	20151CV279544	EMDO Group, LLC vs. S. Ahmed	The Court needs a valid proof of service reflecting the subject motion was timely and properly served. There is an email dated July 13, 2017 indicating that Ahmed's counsel wanted the motion to be served on Ahmed personally as they no longer would accept service on his behalf. That same counsel did not formally substitute out of the case until August 16, 2017. Upon submitting a valid proof of service, the Court shall grant the unopposed motion. The Court orders Salman Ahmed to provide code-compliant supplemental responses to Special Interrogatories 1-13 and 15-21 (Set One) within 15 days of service of notice of entry of this order. Salman Ahmed is ordered to pay EMDO GROUP, LLC monetary sanctions in the amount of $2,365 pursuant to CCP 2030.300 (d).
LINE 6	16CV300030	Nicole Joerger vs. San Jose House of Tandoor, Inc.	Plaintiff's counsel's Motion to Withdraw as Counsel of Record for Plaintiff is UNOPPOSED and GRANTED. The Court finds the proof of service valid. The Court will sign the order submitted.
LINE 7	20081CV109347	Ford Motor Credit Company, LLC vs. R. Javier	Judgment Debtor's Claim of Exemption is GRANTED, in part. The Court feels R. Javier can pay $150 a month towards the subject judgment. Judgment creditor's rights are superior to the unsecured creditors R. Javier is currently paying and take precedence over the $200 entertainment budget R. Javier currently has. If R. Javier contests this ruling he must appear and provide 2016 tax returns, last 3 months of savings, checking and investment account statements and evidence of all expenses claimed.

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	20121CV226862	L. Trevillion vs. FCI Lender Services, Inc.	Plaintiff's Motion to Restore Case to Civil Active List is DENIED. This matter was filed on 6/19/2012. After a series of demurrers were sustained without leave to amend, only defendant First Federal remained. The matter was referred to an ESC on 8-25-15. Plaintiff did not appear at an OSC hearing on July 8, 2016 and her case was dismissed. She has not established any legal or factual basis to restore the matter or set aside the dismissal and her time for moving for relief under CCP 473 has expired. Lastly, plaintiff was required to bring her matter to trial within 5 years of the complaint being filed. CCP 583.310. Even if the Court did restore her matter, dismissal would be mandatory under CCP 583.360.
LINE 9	16CV296441	Xiao Mu vs. Petites Confettis, Inc., et al	Minor's Compromise. Appearance by GAL and counsel only. The Court does not require the minor to be present and simply wants to voir dire the GAL to make sure she understands the settlement terms and agrees the settlement is in the best interests of the minor. Also, the Court will seek a return date to show proof of deposit of settlement funds.

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LAW AND MOTION TENTATIVE RULINGS

LINE 10	16CV295732	Charlene Lee v. Chiwe Chang	Plaintiff's Motion to Objection to Judge's Demurrer and Motion to Have Court Order to Request Milpitas Police Department to Provide New Evidence is DENIED. This Court sustained defendant's demurrer without leave to amend on September 22, 2016. Since that time plaintiff filed a motion on October 5, 2016 essentially asking the Court to revisit its previous order. The Court denied that motion "for reconsideration" on January 10, 2017. Plaintiff filed the instant motion on February 28, 2017 (after the appellate court dismissed plaintiff's appeal on February 2, 2017). Plaintiff has provided no legal or factual basis to grant her motion and is seeking her second motion for reconsideration. This is improper, untimely and not based on new facts or law. CCP Section 1008. Plaintiff is welcome to seek appellate relief of any trial court order on which she disagrees. However, it is improper to continue to file repeated motions addressing issues the Court has already considered and denied.
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LAW AND MOTION TENTATIVE RULINGS

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LINE 29			
LINE 30			

Calendar line 1

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Calendar Line 2
Case Name: *David Hernandez v. Dynamic Integrated Solutions, LLC, et al.*
Case No.: 16CV303900

Motion for Judgment on the Pleadings

On or about April 19, 2016, plaintiff David Hernandez ("Hernandez"), while in the course and scope of his employment with defendant Dynamic Integrated Solutions, LLC ("Dynamic"), was told to perform demolition work which involved the removal of HVAC equipment and insulation from a ceiling area 22 feet above ground. (Complaint, ¶Prem.L-1(d). Defendant David Diep ("Diep") provided plaintiff Hernandez a scissor lift, but the lift was not able to elevate to the 22 foot height. (*Id.*) Defendant Diep instructed plaintiff Hernandez to place a ladder on top of the scissor lift in order to reach the work area. (*Id.*) While attempting to remove insulation material from the ceiling area, the ladder shifted and plaintiff Hernandez fell approximately 22 feet to the ground below. (*Id.*) Defendants Dynamic; LD Odyssey, LLC ("Odyssey"); and its employee defendant Diep negligently and carelessly failed to exercise and retain control of the manner, means, and methods of the demolition work and created an unreasonable risk of harm to plaintiff Hernandez. (Complaint, ¶Prem.L-1(e).) Defendants Dynamic and Odyssey do not have workers' compensation insurance. (Complaint, ¶Prem.L-1(f).)

On December 12, 2016, plaintiff Hernandez filed a Judicial Council form complaint against defendants Dynamic, Odyssey, and Diep asserting causes of action for: (1) Premises Liability; and (2) General Negligence.

On January 27, 2017, defendants Dynamic, Odyssey, and Diep jointly filed an answer to plaintiff Hernandez's complaint.

On July 26, 2017, defendants Dynamic, Odyssey, and Diep filed the motion now before the court, a motion for judgment on the pleadings.

I. Defendants' motion for judgment on the pleadings is DENIED.

Defendants Dynamic, Odyssey, and Diep argue plaintiff Hernandez's claims for premises liability and negligence are barred by the exclusive remedy under the California Workers' Compensation Act ("CWCA"). "With certain statutory and judicial exceptions, a compensation claim under the CWCA provides the exclusive remedy against an employer for a work-related injury or death." (*Lenane v. Continental Maritime of San Diego, Inc.* (1998) 61 Cal.App.4th 1073, 1081 (*Lenane*).)

> The legal theory supporting this exclusive remedy provision is a presumed "compensation bargain," pursuant to which the employer assumes liability for the work-related personal injuries or death without regard to fault in exchange for limitations on the amount of that liability, while the employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of work-related injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort. According to this legislative "quid pro quo," the exclusive compensation law remedy supersedes

> common law and statutory remedies in the employment field and creates a different standard of rights and obligations in place of all prior rights and duties.

(*Lenane*, *supra*, 61 Cal.App.4th at pp. 1081 – 1082.)

This CWCA exclusive remedy rule is codified in Labor Code section 3602, subdivision (a), which provides in part: "Where the conditions of compensation set forth in Section 3600 concur, the right to recover such compensation is, ***except as specifically provided in*** this section and ***Sections 3706*** and 4558, the sole and exclusive remedy of the employee." (Emphasis added.)

The complaint alleges, however, that defendants Dynamic and Odyssey do not have Workers' Compensation insurance and are therefore uninsured employers pursuant to Labor Code section 3706. Labor Code section 3706 states, "If any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division did not apply."

As defendants themselves recognize, "A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired. The rules governing demurrers apply. [Citation.] ***The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice.*** [Citations.]" (*Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 548; emphasis added.)

Yet, in spite of this acknowledgment, defendants challenge the allegation that Dynamic and Odyssey do not have workers' compensation insurance by proffering a declaration and a request for judicial notice of defendants' certified workers' compensation insurance policy with Zenith Insurance Company for the period of April 25, 2015 to April 25, 2016. Defendants rely on Evidence Code section 452, subdivision (h) and *Empire Fire & Marine Ins. Co. v. Bell* (1997) 55 Cal.App.4th 1410, 1424, fn. 24, where the court granted judicial notice pursuant to Evidence Code section 452, subdivision (c) that a certificate of insurance was issued by Empire and submitted to the county. Here, defendants' request for judicial notice is defective. Initially, defendants fail to comply with California Rules of Court, rule 3.1306, subdivision (c) which requires a copy of the material to be provided to the court. No such copy has been provided to the court. The requested insurance policy is purportedly attached as exhibit C to the declaration of Adnan Shaikh. However, exhibit C is a letter from Zenith Insurance Company to defendant Dynamic, not an insurance policy. Moreover, the legal authority submitted by defendants does not stand for the proposition that the court can take judicial notice of an insurance policy. Accordingly, the request for judicial notice of defendants' certified workers' compensation insurance policy with Zenith Insurance Company for the period of April 25, 2015 to April 25, 2016 is DENIED. Defendants' request for judicial notice is otherwise DENIED as irrelevant. "We deny the request for judicial notice because the materials in question are either irrelevant or unnecessary to our resolution of the issues." (*Coastside Fishing Club v. California Fish & Game Com.* (2013) 215 Cal.App.4th 397, 429.)

There is nothing on the face of the pleading or any judicially noticed fact to overcome plaintiff Hernandez's allegation that defendants do not have workers' compensation insurance. Accordingly, defendants Dynamic, Odyssey, and Diep's motion for judgment on the pleadings is DENIED.

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Calendar Line 3 – 4

Case Name: *Craig Riggs, et al. v. Apple Inc., et al.*

Case No.: 17CV308219

(1) Defendant Apple Inc.'s Demurrers to Plaintiff's Complaint
(2) Defendant Apple Inc.'s Motion to Strike Portions of Plaintiff's Complaint

On August 13, 2013, David Riggs ("Decedent"), a 20 year old college student living in Oakdale, Minnesota, was struck and killed by an 18 year old who was texting and driving. (Complaint, ¶¶5, 14, and 15.) Plaintiff Craig Riggs ("Riggs"), Decedent's father, was appointed as trustee for Decedent's next of kin. (Complaint, ¶¶6 and 16 and Exh. A.)

The phone used by the distracted driver who killed Decedent was designed, engineered, manufactured, assembled, inspected, tested, marketed, advertised, distributed, sold, and maintained by defendant Apple Inc. ("Apple"). (Complaint, ¶¶8 and 18.)

Defendant Apple is aware of the dangers associated with the risk of texting and driving. (Complaint, ¶¶24 – 25.) In 2008, defendant Apple filed a patent seeking to protect its design for a "lock-out mechanism" to disable the ability of its smartphone to perform certain functions, like texting, while someone is driving. (*Id.*) Defendant Apple's patent application was granted in 2014. (*Id.*)

Among other things, plaintiff Riggs alleges defendant Apple engaged in an unfair business practice by providing advanced smartphone technology to driving consumers, without providing a lock-out device for the product when being used by engaged motorists, while knowing the extreme dangers caused [by] its product, and while having patented the technology for such a lock-out device. (Complaint, ¶33.)

On April 5, 2017, plaintiff Riggs filed a complaint against defendant Apple asserting claims for:

(1) Unlawful, Unfair, and Fraudulent Business Acts and Practices – Violation of Business and Professions Code §17200, et seq.
(2) Negligence
(3) Gross Negligence
(4) Products Liability – Design Defect
(5) Violation of Minnesota's Prevention and Consumer Fraud Act (Minn. Stat. §325F.69, §325D.44)

On June 19, 2017, defendant Apple filed the two motions now before the court, a demurrer and motion to strike portions of plaintiff Riggs' complaint.

On July 19, 2017, plaintiff Riggs filed a brief in opposition.

On August 9, 2017, defendant Apple filed a reply brief.

II. Defendant Apple's demurrer to plaintiff Riggs' complaint is SUSTAINED.

Initially, defendant Apple demurs to each and every cause of action asserted in plaintiff Riggs' complaint by arguing that plaintiff cannot plead causation. Causation is an element for each of the five causes of action being asserted in plaintiff Riggs' complaint. (See *Hall v. Time Inc.* (2008) 158 Cal.App.4th 847, 855—affirming dismissal of UCL claim due to lack of "causal connection" between the challenged conduct and plaintiff's injury; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 62—" To state a cause of action for negligence, a plaintiff must allege (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, and (3) the breach proximately caused the plaintiff's damages or injuries;" *Bigbee v. Pacific Tel. & Tel. Co.* (1983) 34 Cal.3d 49, 54, fn. 4—"Proximate cause is a necessary element of both negligence and strict products liability actions;" *Group Health Plan, Inc. v. Philip Morris Inc.* (Minn. 2001) 621 N.W.2d 2, 13—"Causation is, therefore, a necessary element of an action to recover damages under [Minnesota's Consumer Fraud Act.]")

"The first element of legal cause is cause in fact: i.e., it is necessary to show that the defendant's negligence contributed in some way to the plaintiff's injury, so that 'but for' the defendant's negligence the injury would not have been sustained. If the accident would have happened anyway, whether the defendant was negligent or not, then his or her negligence was not a cause in fact, and of course cannot be the legal or responsible cause." (6 Witkin, Summary of California Law (10th ed. 2005) Torts, §1185, p. 552.) "The doctrine of proximate cause limits liability; i.e., in certain situations where the defendant's conduct is an actual cause of the harm, the defendant will nevertheless be absolved because of the manner in which the injury occurred. Thus, where there is an independent intervening act that is not reasonably foreseeable, the defendant's conduct is not deemed the 'legal' or proximate cause." (*Id.* at §1186, p. 553.)

Defendant Apple directs the court to Plaintiff Riggs' complaint which alleges, in relevant part, "Decedent David Riggs suffered and died from fatal injuries caused by an 18 year old who was texting on his iPhone while driving." (Complaint, ¶42.) Defendant Apple contends the driver is the legal or proximate cause of Decedent's death, not any actions or omissions by defendant Apple.

In opposition, plaintiff Riggs acknowledges the third party driver's role in the collision, but focuses instead on Apple's role in the causal chain. Plaintiff Riggs cites *Richardson v. Ham* (1955) 44 Cal.2d 772, 777, where the court wrote, "It is settled, however, that 'If the realizable likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious or criminal does not prevent the actor from being liable for harm caused thereby.' [Citations.]" (See also 6 Witkin, Summary of California Law (10th ed. 2005) Torts, §1197—"Where, subsequent to the defendant's negligent act, an independent intervening force actively operates to produce the injury, the chain of causation may be broken. It is usually said that if the risk of injury might have been reasonably foreseen, the defendant is liable, but that if the independent intervening act is highly unusual or extraordinary, not reasonably likely to happen and hence not foreseeable, it is a superseding cause, and the defendant is not liable.")

Plaintiff Riggs contends defendant Apple cannot escape liability here because the complaint alleges defendant Apple has known of the dangers of texting and driving and how widespread that danger has become (reasonable likelihood that third persons may act in a particular manner), but did not employ technology already in its possession to protect against that known hazard. In other words, plaintiff contends it was reasonably foreseeable that third parties would misuse defendant Apple's phone by texting and driving, thereby causing injury, as evidenced by defendant Apple's application and receipt of a patent for a lock-out mechanism which would disable such features as texting while driving.

Plaintiff Riggs argues additionally that the issue of causation is a question of fact. Causation is a usually a question of fact for the jury, and it ordinarily may not be resolved on demurrer unless there is no room for a reasonable difference of opinion. (*Weissich v. County of Marin* (1990) 224 Cal.App.3d 1069, 1084 ["Ordinarily proximate cause is a question of fact which cannot be decided as a matter of law from the allegations of a complaint. … Nevertheless, where the facts are such that the only reasonable conclusion is an absence of causation, the question is one of law, not of fact."]; *Rosh v. Cave Imaging Systems, Inc.* (1994) 26 Cal.App.4th 1225, 1235 ["The question of causation is one of fact; it becomes a question of law only where reasonable people do not dispute the absence of causation."].)

Although it is not binding authority here, the court finds persuasive the reasoning and finding of the United States District Court in *Meador v. Apple, Inc.* (E.D. Tex., Aug. 16, 2016, No. 6:15-CV-715) 2016 WL 7665863. There, the District Court rejected at the pleading stage similar theories of liability alleged against Apple. The following discussion is instructive:

> …the supreme court found a comment to Section 431 of the Restatement (Second) of Torts instructive on the issue of legal causation:
>
> In order to be a legal cause of another's harm, it is not enough that the harm would not have occurred had the actor not been negligent.... The negligence must also be a substantial factor in bringing about the plaintiff's harm. The word "substantial" is used to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called "philosophic sense," which includes every one of the great number of events without which any happening would not have occurred.
> Restatement (Second) of Torts § 431 cmt. a (1965); see *Union Pump*, 898 S.W.2d at 776; *Lear Siegler*, 819 S.W.2d at 472.
>
> Plaintiffs' claims here do not clear the attenuation hurdle set forth in *Lear Siegler* and *Union Pump*. In Plaintiffs' own words:
>
> The natural sequence of events alleged by Plaintiffs can be summarized as follows: (1) Apple fails to implement its own patented technology to provide a "lock-out" mechanism for the iPhone to prevent texting and driving at highway speeds; (2) Kubiak's iPhone delivers a message to her while driving at highway speeds; (3) Kubiak's attention is drawn away from the roadway by the iPhone to check said message; (4) Kubiak fails to see Plaintiffs' vehicle slowing to make a

> left-hand turn; and (5) Kubiak's vehicle collides with Plaintiffs vehicle and thereafter injury results.
>
> Doc. No. 11 at 23. Even taking these factual allegations as true, the forces generated by the iPhone's alleged defect and by Apple's conduct in designing and marketing the iPhone came to rest after the incoming message was delivered to Kubiak's iPhone. See *Union Pump*, 898 S.W.2d at 776. At that point, " 'no one was in any real or apparent danger' " based simply on the delivery of the message. *Id.* (quoting *Bell v. Campbell*, 434 S.W.2d 117, 122 (Tex. 1968)). Instead, a real risk of injury did not materialize until Kubiak neglected her duty to safely operate her vehicle by diverting her attention from the roadway. In that sense, Apple's failure to configure the iPhone to automatically disable did nothing more than create the condition that made Plaintiffs' injuries possible. Because the circumstances here are not "such that reasonable jurors would identify [the iPhone or Apple's conduct] as being actually responsible for the ultimate harm" to Plaintiffs, the iPhone and Apple's conduct are too remotely connected with Plaintiffs' injuries to constitute their legal cause. See *Crump*, 330 S.W.3d at 224. Accordingly, Plaintiffs have failed to state a plausible products liability claim under either a strict liability or negligence theory. See *Twombly*, 550 U.S. at 570. Plaintiffs' claims should, therefore, be dismissed with prejudice.

(*Meador v. Apple, Inc.* (E.D. Tex., Aug. 16, 2016, No. 6:15-CV-715) 2016 WL 7665863, at *4.)

This court agrees. The chain of causation alleged by plaintiffs in this case is far too attenuated for a reasonable person to conclude that Apple's conduct is or was a substantial factor in causing plaintiffs' harm. (See CACI 430.) Accordingly, defendant Apple's demurrer to plaintiff Riggs' complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] is SUSTAINED WITHOUT LEAVE TO AMEND.

Additionally, the court will sustain, without leave to amend, defendant Apple's demurrer to the second and third causes of action on the ground that defendant Apple does not owe a duty of care to plaintiff. The court hereby adopts the same reasoning cited by Judge Zayner in his May 8, 2017 order sustaining defendant Apple's demurrer in *Modisette, et al. v. Apple, Inc.*, Santa Clara County Superior Court case number 16CV304364 which stated, in relevant part:

> Plaintiffs' first and second causes of action are for general negligence and gross negligence, respectively. "To state a cause of action for negligence, a plaintiff must allege (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, and (3) the breach proximately caused the plaintiff's damages or injuries." (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 62.)
>
> With respect to the issue of duty, it is well-established that the existence of a legal duty to use reasonable care in a particular factual situation is a question of law for courts to decide. (*Vasquez v. Residential Investments, Inc.* (2004) 118

Cal.App.4th 269, 278.) Thus, the Court may properly resolve the issue of duty on this demurrer.

"As a general rule, each person has a duty to use ordinary care and 'is liable for injuries caused by his failure to exercise reasonable care in the circumstances ....' [Citation.] ' 'Courts, however, have invoked the concept of duty to limit generally 'the otherwise potentially infinite liability which would follow from every negligent act ....' ' ' [Citation.] As noted, whether a legal duty of care exists ' 'is a question of law to be determined on a case-by-case basis.' ' [Citation.] This determination calls for a balancing of the so-called '*Rowland* factors,' which include the ' 'foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.' ' [Citations.] The court's task in determining whether a duty exists 'is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party.' [Citation.]" (*Elsheref v. Applied Materials, Inc.* (2014) 223 Cal.App.4th 451, 459–60 ("*Elsheref*"), italics in original.)

Here, some of those factors weigh in favor of finding a duty on the part of Apple. Plaintiffs' allegations establish that the iPhone 6 Plus came installed with the FaceTime application; operation of the FaceTime application requires cognitive, manual, audio, and visual efforts on the part of the user; such efforts distract drivers from paying attention to the road; distracted driving is a well-documented cause of car accidents; distracted driving has led to a rise in traffic fatalities; Apple knew or should have known that use of the FaceTime application while operating a car posed risks to human life and safety; Apple submitted a patent application, that was approved in early 2014, for a lock-out mechanism configured to disable iPhone functions, such as the FaceTime application, while the user was driving at highway speeds; and, in its patent application, Apple acknowledged that distracted driving due to the use of a cellphone was a widespread practice and a major public concern. (FAC, ¶¶ 14, 16-23, 26-27, 29-32, 38-40, 49, 52, 54.) Based on these allegations, the Court concludes that there was a low to moderate degree of foreseeability that Apple's alleged conduct would result in an accident. Next, the degree of certainty that Plaintiffs' suffered injury is indisputably high. Furthermore, the policy of preventing future harm and the "moral blame" factor favor the imposition of a legal duty, given Plaintiffs' allegations that Apple had actual or constructive knowledge of the harmful consequences of its conduct. (See *Rotolo v. San Jose Sports & Entertainment, LLC* (2007) 151 Cal.App.4th 307, 337–338 disapproved on other grounds in *Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 328.)

But the remaining factors weigh more strongly against a finding of duty here. First, the Court concludes there is not a sufficiently "close" connection between Apple's conduct and Plaintiffs' injuries to warrant the imposition of a legal duty. As Apple persuasively argues, Plaintiffs' injuries are more closely connected to Wilhelm's failure to exercise due care while driving and his inattention to the road. The Court finds it particularly persuasive that in negligence cases based on premises liability there is "no legal duty to provide a distraction barrier to prevent passing motorists from seeing or hearing what is occurring upon the land." (*Lompoc Unified School Dist. v. Superior Court* (1993) 20 Cal.App.4th 1688, 1694.) The defendant in such a case "has no liability for injuries caused by the motorist who is not paying attention to where he or she is going" because "it is the motorist who has the duty to exercise reasonable care at all times, to be alert to potential dangers, and to not permit his or her attention to be so distracted by an interesting sight that such would interfere with the safe operation of a motor vehicle." (*Ibid.*) The Court sees no reason why a legal duty should be imposed on Apple to erect a "distraction barrier" simply because the alleged distraction occurs inside the motor vehicle as opposed to outside of it.

Second, the burden on Apple and the consequences to the community would be substantial if the Court were to impose a legal duty here. Moreover, the imposition of such a duty would be contrary to public policy. As other courts have found, "many items may be used by a person while driving, thus making the person less attentive to driving. It is foreseeable to some extent that there will be drivers who eat, apply makeup, or look at a map while driving and that some of those drivers will be involved in car accidents because of the resulting distraction. However, it would be unreasonable to find it sound public policy to impose a duty on the restaurant or cosmetic manufacturer or map designer to prevent such accidents." (*Williams v. Cingular Wireless* (Ind. Ct. App. 2004) 809 N.E.2d 473, 478 ("*Williams*").) This is because, as previously stated, it is the driver's responsibility to drive with due care. (*Ibid.*) Apple cannot control what people do with the phones after they purchase them. (*Ibid.*) To place a duty on Apple to develop and install additional software, or issue warnings to users, because the phone might be involved in a car accident would be akin to making a car manufacturer install software that caps a vehicle's speed, or warn car buyers against driving above the speed limit, because the car might be negligently used in such a way that it causes an accident. (*Ibid.;* see *Durkee v. C.H. Robinson Worldwide, Inc.* (W.D.N.C. 2011) 765 F.Supp.2d 742, 749 ["If manufacturers or designers of products had a legal duty to third parties to anticipate improper use of their products then no product that would potentially distract a driver could be marketed. Cellular telephones, GPS devices and even car radios would be the subject of suits such as this one"].)

"Cellular phones are safely used in many different contexts every day. Indeed, many drivers use cellular phones safely for personal and business calls, as well as to report traffic emergencies. Encouraging drivers to report accidents, dangerous road conditions, or other similar threats to authorities on their cellular phones is in the public's interest." (*Williams, supra,* 809 N.E.2d at p. 478.) Imposing a duty on Apple and similar companies to prevent car accidents

caused by distracted driving would place a higher burden on those companies than on other types of manufacturers or sellers of products that might be distracting to drivers. (*Ibid.*) "Ultimately, sound public policy dictates that the responsibility for negligent driving should fall on the driver." (*Ibid.*)

In view of all of the *Rowland* factors discussed above and the overwhelming need to keep liability within reasonable bounds, the Court concludes a common law duty of care should not be imposed on Apple in the circumstances of this case. (See *Hegyes v. Unjian Enterprises, Inc.* (1991) 234 Cal.App.3d 1103, 1114 ["in any negligence case, there is an overwhelming need to keep liability within reasonable bounds and to limit the areas of actionable causation by applying the concept of duty"].)

III. Defendant Apple's motion to strike is MOOT.

In view of the court's ruling above sustaining defendant Apple's demurrer to plaintiff Riggs' complaint, defendant Apple's motion to strike portions of the complaint is deemed MOOT.

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C**alendar line 13**

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Calendar line 14

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Calendar line 15

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