

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Christopher Lui

1 PANISH SHEA & BOYLE LLP
BRIAN J. PANISH, State Bar No. 116060
2 *panish@psblaw.com*
SPENCER R. LUCAS, State Bar No. 232498
3 *lucas@psblaw.com*
MARGUERITE S. SANVICTORES, State Bar No. 299452
4 *sanvictores@psblaw.com*
11111 Santa Monica Boulevard, Suite 700
5 Los Angeles, California 90025
Telephone: 310.477.1700
6 Facsimile: 310.477.1699

7 Attorneys for Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
10

11 THE ESTATE OF NOAH BENARDOUT, by
12 and through its Successors-In-Interest MARC
AND MARIE BENARDOUT; MARC
13 BENARDOUT, a wrongful death beneficiary
of Decedent Noah Benardout; MARIE
14 BENARDOUT, a wrongful death beneficiary
of Decedent Noah Benardout;

15 Plaintiffs,

16 v.

17 VIACOM, INC.. a Delaware Corporation;
18 FREE 90 MEDIA, Inc., a California
Corporation; JACOB D. GRALITZER, an
19 Individual; LAWRENCE M. GOLDSMITH,
an Individual, DOES 1 through 10, and DOES
20 11-20, inclusive,

21 Defendant.

Case No.

**PLAINTIFFS' COMPLAINT FOR
WRONGFUL DEATH;**

- 1. NEGLIGENCE/ NEGLIGENCE PER SE**
- 2. SURVIVAL**

22 COMES NOW Plaintiffs, THE ESTATE OF NOAH BENARDOUT, by and through its
23 Successors-in-Interest, MARC BENARDOUT and MARIE BENARDOUT, MARC
24 BENARDOUT, individually as wrongful death beneficiary of decedent Noah Benardout and as
25 Successor-in-Interest to the ESTATE OF NOAH BENARDOUT, and MARIE BENARDOUT,
26 individually as a wrongful death beneficiary of decedent Noah Benardout and as Successor-in-
27 Interest to the THE ESTATE OF NOAH BENARDOUT, ("PLAINTIFFS"), for Causes of Action
28

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard, Suite 700
Los Angeles, California 90025
310.477.1700 phone • 310.477.1699 fax

1 against Defendant VIACOM INC., a corporation, FREE 90 MEDIA INC., a corporation, JACOB
2 D. GRALITZER, an individual, Defendant LAWRENCE M. GOLDSMITH, an individual; and
3 DOES 1 through 10, and DOES 11 through 20, inclusive ("DEFENDANTS"), who complain and
4 allege as follows:

5 **GENERAL ALLEGATIONS**

6 1. This wrongful death case stems from a drunk driver JACOB D. GRALITZER
7 ("GRALITZER") who became inebriated at a company party and then recklessly drove his 2018
8 silver Infiniti Q60S bearing California license plate No. 8EXG756 (hereafter "INFINITI") at
9 recklessly high speeds through West Hollywood causing a severe vehicular collision which
10 resulted in striking and killing 24 year-old pedestrian Noah Benardout. Noah Benardout is
11 survived by his loving mother and father MARIE BENARDOUT and MARC BENARDOUT.

12 2. Plaintiffs are informed, believe and thereon allege that on August 1, 2019,
13 Defendant GRALITZER was an employee of VIACOM INC. ("VIACOM"), FREE 90 MEDIA,
14 INC. ("FREE 90"), AND DOES 1-10. Plaintiffs are informed, believe, and thereon allege that
15 VIACOM, FREE 90, AND DOES 1-10 are the producers of the Comedy Central television show
16 "Lights Out With David Spade". Plaintiffs are informed, believe, and thereon allege that
17 GRALITZER was working for, and on behalf of, VIACOM, FREE 90, AND DOES 1-10 during
18 the production of "Lights Out With David Spade". Plaintiffs are informed, believe, and thereon
19 allege that on August 1, 2019, VIACOM, FREE 90, AND DOES 1-10 hosted an employee party
20 for the premier of "Lights Out With David Spade" at the Nightingale Plaza nightclub located at
21 643 N. La Cienega Boulevard in Los Angeles ("LIGHTS OUT PARTY"). Plaintiffs are informed,
22 believe, and thereon allege that GRALITZER was invited by his employer VIACOM, FREE 90,
23 AND DOES 1-10 to attend the work function at the Nightingale Plaza. Plaintiffs are informed,
24 believe, and thereon allege that GRALITZER's attendance at the LIGHTS OUT PARTY was
25 within the scope of his employment with VIACOM, FREE 90, AND DOES 1-10.

26 3. Plaintiffs are informed, believe, and thereon allege that VIACOM, FREE 90, and
27 DOES 1-10 provided an open bar serving alcoholic beverages to GRALITZER on the evening of
28 August 1, 2019. Plaintiffs are informed, believe, and thereon allege that VIACOM, FREE 90, and

1 DOES 1-10 provided valet car service at the party in question encouraging their employees to
2 drive their vehicles to and from the party.

3 4. Plaintiffs are informed, believe, and thereon allege that GRALITZER voluntarily
4 drank a multitude of alcoholic beverages while at the LIGHTS OUT PARTY which caused him to
5 be severely intoxicated well above the legal limit. Plaintiffs are informed and believe and thereon
6 allege that Defendant GRALITZER drank at the LIGHTS OUT PARTY with the permission and
7 knowledge of one or more of his supervisors at VIACOM, FREE 90, and DOES 1-10. Plaintiffs
8 are informed and believe and thereon allege that management from VIACOM, FREE 90, and
9 DOES 1-10 knew Defendant GRALITZER was intoxicated. Plaintiffs are informed and believe
10 and thereon allege that Defendant VIACOM and FREE 90 and DOES 1-10 permitted Defendant
11 GRALITZER to get even more intoxicated before leaving the premises. Plaintiffs are informed
12 and believe and thereon allege that this intoxication occurred during the scope of GRALITER's
13 employment with Defendant VIACOM and FREE 90 and DOES 1-10. Plaintiffs are informed and
14 believe and thereon allege Defendants VIACOM, FREE 90, and DOES 1-10 condoned
15 GRALITZER getting severely intoxicated at the LIGHTS OUT PARTY. Plaintiffs are informed
16 and believe and thereon allege Defendants VIACOM, FREE 90, and DOES 1-10 knew that
17 GRALITZER was going to drive his car home from the party but did nothing to stop it.

18 5. Plaintiffs are informed, believe, and thereon allege that GRALITZER is an
19 experienced drinker of alcoholic beverages and that he knew the intoxicating effects that the
20 drinks he was consuming would have on him on the night in question. Plaintiffs are informed,
21 believe, and thereon allege that GRALITZER knowingly ordered and consumed alcoholic drink
22 after alcoholic drink while knowing and understanding the intoxicating effects these drinks were
23 having on his physical and mental faculties. Specifically, Plaintiffs are informed, believe, and
24 thereon allege that GRALITZER knew that he was continuing to get more and more intoxicated
25 with each drink and that he knew he drove his car to the party and was going to drive home.

26 6. Plaintiffs are informed, believe, and thereon allege that GRALITZER parked his
27 car at the Nightingale Plaza in an area that does not have overnight parking and that GRALITZER
28 knew he was going to willingly become intoxicated and then drive his vehicle home from the

1 LIGHTS OUT PARTY. Plaintiffs are informed, believe, and thereon allege that while knowing he
2 was intoxicated, and that he was going to drive home, GRALITZER continued to order and
3 consume more alcoholic drinks while knowing that these drinks were going to further impair and
4 diminish his ability to safely drive his vehicle. Plaintiffs are informed, believe, and thereon allege
5 that at least one person at the LIGHTS OUT PARTY commented to GRALITZER that he should
6 not drive home on the night in question because he was so intoxicated. Plaintiffs are informed,
7 believe, and thereon allege that GRALITZER disregarded this warning from a VIACOM or FREE
8 90 colleague and knowingly made the decision to drive his vehicle despite knowing that he was
9 intoxicated and was not in a physical or mental position to safely drive a vehicle.

10 7. Plaintiffs are informed, believe, and thereon allege that GRALITZER acted in
11 conscious disregard of the rights and safety of others, including Noah Benardout, by continuing to
12 order and consume a multitude of alcoholic beverages after he knew that he was already
13 intoxicated and that these additional drinks would further impair his ability to safely drive a
14 vehicle.

15 8. Plaintiffs are informed, believe, and thereon allege that GRALITZER acted in
16 conscious disregard of the rights and safety of others, including Noah Benardout, by refusing to
17 listen to at least one person at the LIGHTS OUT PARTY who commented that he should not be
18 driving because of how intoxicated he was.

19 9. Plaintiffs are informed, believe, and thereon allege that GRALITZER acted in
20 conscious disregard of the rights and safety of others, including Noah Benardout, by making the
21 conscious decision to drive home from the LIGHTS OUT PARTY in his vehicle while knowing
22 that he was severely intoxicated above the legal limit and was impaired in his physical and mental
23 faculties necessary to drive safely.

24 10. Plaintiffs are informed, believe, and thereon allege that GRALITZER acted in
25 conscious disregard of the rights and safety of others, including Noah Benardout, by knowing his
26 severe level of intoxication and speeding more than 30 miles per hour in excess of the posted
27 speed limit and weaving in and out of traffic as he headed westbound on Melrose Avenue
28 approaching the subject intersection. Plaintiffs are informed, believe, and thereon allege that

1 GRALITZER knew his reaction time would be slower because of how intoxicated he was yet he
2 still continued to speed at a rate of speed more than 30 miles per hour through a busy section of
3 Melrose avenue that had many motorists and pedestrians at night.

4 11. Plaintiffs are informed, believe, and thereon allege that GRALITZER knew that
5 driving at such an excessive rate of speed of more than 30 miles over the posted speed limit while
6 severely impaired would likely cause severe bodily injury or death to either other motorists or one
7 of the many pedestrians in the area. Despite this knowledge, GRALITZER chose to continue to
8 speed and drive erratically weaving in and out of lanes. This conduct was in conscious disregard
9 of the rights and safety of the public including 24 year-old Noah Benardout who was struck and
10 killed in the subject collision.

11 12. Plaintiffs are informed, believe, and thereon allege that Defendant GRALITZER's
12 employment with Defendant VIACOM, FREE 90 and DOES 1-10, inclusive, entailed the regular use
13 of the INFINITI to accomplish his job duties. Plaintiffs are informed, believe, and thereon allege that
14 operating the subject INFINITI was part of his regular job duties and inured a benefit to Defendants
15 VIACOM and FREE 90 and DOES 1-10.

16 13. At approximately 10:30 P.M., Defendant LAWRENCE M. GOLDSMITH
17 (hereafter "GOLDSMITH") was proceeding westbound on Melrose Avenue operating a red 2017
18 Acura MX bearing California license plate No. 7YCH933 (hereafter "ACURA"). At the same
19 time, while heavily intoxicated and under the influence of alcohol, Defendant GRALITZER while
20 acting in the scope of his employment with Defendant VIACOM, FREE 90, and DOES 1-10 was
21 heading eastbound on Melrose Avenue traveling at excessive speed, operating the subject
22 INFINITI. While GOLDSMITH was attempting a left turn on Martel Avenue, GRALITZER
23 violently collided with GOLDSMITH . The collision caused the ACURA to careen onto the
24 sidewalk at the southeast corner of the intersection of Melrose and Martel striking NOAH
25 BENARDOUT while he was standing on the sidewalk (hereafter "SUBJECT INCIDENT"). After
26 interacting with Defendants, witnesses, and performing an extensive investigation of the
27 SUBJECT INCIDENT, the responding Los Angeles Police Department determined that Defendant
28 GRALITZER was driving under the influence of alcohol. As a result of Defendants' malicious,

1 despicable, gross negligence and negligent actions, Decedent NOAH BENARDOUT sustained
2 major blunt force trauma to his head, eventually leading to his death. Decedent is survived by his
3 parents, MARC and MARIE BENARDOUT, who now bring this wrongful death and survival
4 action against Defendants.

5 14. Decedent NOAH BENARDOUT, at all times relevant, was a resident of Los
6 Angeles County, California.

7 15. Plaintiff MARC BENARDOUT, at all times relevant herein, is a resident of Los
8 Angeles County, California, and is the surviving father of the Decedent.

9 16. Plaintiff MARIE BENARDOUT, at all times relevant herein, is a resident of Los
10 Angeles County, California, and is the surviving mother of Decedent.

11 17. Because Decedent NOAH BENARDOUT died with no surviving spouse, domestic
12 partner, children, or issue of deceased children, his surviving parents, MARC BENARDOUT and
13 MARIE BENARDOUT have standing to bring a wrongful death cause of action as wrongful death
14 beneficiaries under CCP §377.60.

15 18. Plaintiff THE ESTATE OF NOAH BENARDOUT (hereinafter "THE ESTATE")
16 is represented through its Successors-in-Interest, Plaintiffs MARC BENARDOUT and MARIE
17 BENARDOUT, who are the surviving parents of Decedent NOAH BENARDOUT. As such,
18 Plaintiffs MARC BENARDOUT and MARIE BENARDOUT are the decedent's Successors-in-
19 Interest, pursuant to Code of Civil Procedure section 377.11. Plaintiffs MARC BENARDOUT and
20 MARIE BENARDOUT have executed and filed with this complaint a declaration under penalty of
21 perjury pursuant to Code of Civil Procedure section 377.32. *See* Exhibit A.

22 19. Plaintiffs are informed and believe, and thereon allege that, at all times herein
23 relevant, Defendant LAWRENCE GOLDSMITH was and is resident of the County of Los
24 Angeles, California.

25 20. Plaintiffs are informed and believe, and thereon allege that, at all times herein
26 relevant, Defendant GRALITZER was and is a resident of the County of Los Angeles, California.

27 21. Plaintiffs are informed and believe, and thereon allege that, at all times herein
28 relevant, Defendant FREE 90 was and is a corporate entity registered in the State of California,

1 with its principle place of business in the County of Los Angeles, California.

2 22. Plaintiffs are informed and believe, and thereon allege that, at all times herein
3 relevant, Defendant VIACOM was and is a corporate entity registered in the State of Delaware.
4 Plaintiffs are further informed and believe, and thereon allege that Defendant VIACOM INC. is
5 authorized to and has systematically conducted business on a regular basis in the County of Los
6 Angeles, under and by virtues of the laws of the State of California.

7 23. Plaintiffs are informed and believe, and thereon alleges that, at all relevant times
8 mentioned herein, Defendant GRALITZER was an agent and employee of VIACOM, FREE 90,
9 and DOES 1-10.

10 24. The true names and capacities, whether individual, plural, corporate, partnership,
11 associate, or otherwise of DOES 1 through 10, inclusive, are unknown to Plaintiffs who therefore
12 sue said Defendants by such fictitious names. Plaintiffs assert said allegations against DOES 1-10
13 as the employers, joint venture partners, agents, or otherwise responsible parties for the conduct of
14 Defendant GRALITZER. The full extent of the facts linking such fictitiously sued Defendants is
15 unknown to Plaintiffs. Plaintiffs are informed and believe, and thereon allege, that each of the
16 Defendants designated herein as a DOE was, and is, negligent, or in some other actionable
17 manner, responsible for the events and happenings hereinafter referred to, and thereby negligently,
18 or in some other actionable manner, legally and proximately caused the hereinafter described
19 injuries and damages to Plaintiffs. Plaintiffs will hereafter seek leave of the Court to amend this
20 Complaint to show the Defendants' true names and capacities after the same have been
21 ascertained.

22 25. The true names and capacities, whether individual, plural, corporate, partnership,
23 associate, or otherwise of DOES 11 through 20, inclusive, are unknown to Plaintiffs who therefore
24 sue said Defendants by such fictitious names. Plaintiffs assert said allegations against DOES 11-
25 20 as the employers, joint venture partners, agents, or otherwise responsible parties for the conduct
26 of Defendant GOLDSMITH. The full extent of the facts linking such fictitiously sued Defendants
27 is unknown to Plaintiffs. Plaintiffs are informed and believe, and thereon allege, that each of the
28 Defendants designated herein as a DOE was, and is, negligent, or in some other actionable

1 manner, responsible for the events and happenings hereinafter referred to, and thereby negligently,
2 or in some other actionable manner, legally and proximately caused the hereinafter described
3 injuries and damages to Plaintiffs. Plaintiffs will hereafter seek leave of the Court to amend this
4 Complaint to show the Defendants' true names and capacities after the same have been
5 ascertained.

6 **FIRST CAUSE OF ACTION**

7 **Wrongful Death- Negligence and Negligence Per Se**

8 **(As to Defendants JACOB GRALITZER, VIACOM INC., FREE 90 MEDIA INC.,**
9 **LAWRENCE GOLDSMITH, and DOES 1 THROUGH 10 and DOES 11 through 20)**

10 26. Plaintiffs hereby re-allege and incorporate herein by reference each and every
11 allegation contained in the previous paragraphs as though fully set forth herein.

12 27. Plaintiffs are informed, believe and thereon allege that at all times mentioned herein,
13 that Defendant GRALITZER and DOES 1 through 10, inclusive, had a duty to reasonably and safely
14 drive, operate, own, entrust, control, and maintain the INFINITI.

15 28. Plaintiffs are informed, believe and thereon allege that at all times mentioned herein,
16 that Defendant GOLDSMITH and DOES 11 through 20, inclusive, had a duty to reasonably and
17 safely drive, operate, own, entrust, control, and maintain the ACURA.

18 29. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
19 herein, Defendant VIACOM, FREE 90 and DOES 1 through 10, inclusive, owed a duty of care to
20 the public, including Decedent NOAH BENARDOUT and Plaintiffs, in the hiring, retention,
21 supervision and training of their agents, employees, servants, and/or independent contractors.

22 30. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
23 herein, Defendant DOES 11 through 20, inclusive, owed a duty of care to the public, including
24 Decedent NOAH BENARDOUT and Plaintiffs, in the hiring, retention, supervision and training
25 of their agents, employees, servants, and/or independent contractors including Defendant
26 GOLDSMITH.

27 31. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
28 herein, Defendant VIACOM, FREE 90 and DOES 1 through 10, inclusive, failed to act reasonably

1 in the hiring, retention, supervision and training of their agents, employees, servants and/or
2 independent contractors, including Defendant GRALITZER.

3 32. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
4 herein, Defendant DOES 11 through 20, inclusive, failed to act reasonably in the hiring, retention,
5 supervision and training of their agents, employees, servants and/or independent contractors,
6 including Defendant GOLDSMITH.

7 33. Plaintiffs are further informed and believe, and thereon allege, that Defendant
8 VIACOM, FREE 90 and DOES 1 through 10, inclusive, were acting in concert with each other by
9 assisting, facilitating, encouraging and otherwise condoning Defendant GRALITZER'S negligent
10 and reckless driving and as such are equally liable for Defendant GRALITZER'S negligent and
11 reckless behavior.

12 34. Plaintiffs are informed and believe, and thereon allege, that the aforementioned
13 negligent hiring, retention, supervision and training of Defendant GRALITZER by Defendant
14 VIACOM, FREE 90 and DOES 1 through 10, inclusive, directly, legally and proximately caused
15 or was a substantial factor in causing the SUBJECT INCIDENT.

16 35. Plaintiffs are informed and believe, and thereon allege, that the aforementioned
17 negligent hiring, retention, supervision and training of Defendant GOLDSMITH by Defendant
18 DOES 11 through 20, inclusive, directly, legally and proximately caused or was a substantial
19 factor in causing the SUBJECT INCIDENT.

20 36. Plaintiffs are informed and believe, and thereupon allege, that at all material times
21 herein, Defendants VIACOM, FREE 90, GRALITZER, and DOES 1 through 10, inclusive, and
22 each of them, owed a duty of care to all reasonably foreseeable people, including Decedent NOAH
23 BENARDOUT, in the supervision of their employees.

24 37. Plaintiffs are informed, believe and thereon allege that Defendant GRALITZER and
25 DOES 1 through 10 breached the aforementioned duties by GRALITZER becoming severely
26 intoxicated at a work event while in the scope of his employment with VIACOM, FREE 90, and
27 DOES 1 through 10, inclusive, followed by GRALITZER'S drunk driving and speeding recklessly at
28 the time of the subject incident. Specifically, that Defendant GRALITZER's actions violated

1 numerous California *Vehicle Code* Sections, including but not limited to California *Vehicle Code*
2 ("CVC") 23152(a) & (b) (driving under the influence of alcohol and driving with a Blood Alcohol
3 Concentration ("BAC") of 0.08 % or greater, respectively), and 23153 (a) & (b) (driving under the
4 influence of alcohol while concurrently violating vehicle code, proximate cause of which is bodily
5 injury to another person; driving with a BAC of 0.08 % or greater while concurrently violating vehicle
6 code, proximate cause of which is bodily injury to another person).

7 38. Plaintiffs allege that said conduct amounted to clear and convincing evidence that
8 Defendant GRALITZER was guilty of malice pursuant to California *Code of Civil Procedure* §3294.

9 39. Plaintiffs are informed, believe and thereon allege that Defendant GRALITZER was
10 per se negligent for driving under the influence and driving recklessly at the time of the subject
11 incident in violation of the aforementioned CVC Sections. Plaintiffs also allege that at all times herein
12 Decedent NOAH BENARDOUT was a person belonging to the class of persons sought to be
13 protected by the vehicle code sections and that the violation of said vehicle codes was a direct, legal
14 and proximate cause of the injuries and damages complained of herein.

15 40. Plaintiffs are informed and believe and thereon allege that Defendant GOLDSMITH,
16 and DOES 11 through 20, inclusive, were a substantial factor of the cause of the subject collision and
17 that the above-mentioned duties were breached by defendant GOLDSMITH and DOES 11 through 20,
18 inclusive, when the ACURA struck decedent NOAH BENARDOUT.

19 41. As a legal, direct and proximate result of the negligence, recklessness, carelessness and
20 violation of the law of Defendants GRALITZER, VIACOM, FREE 90 and DOES 1 through 10,
21 inclusive, Plaintiffs MARC and MARIE BENARDOUT's son, Decedent NOAH BENARDOUT,
22 suffered wrongful death. As a result of their son's wrongful death, Plaintiff MARC and MARIE
23 BENARDOUT suffered economic damages, including but not limited to funeral and burial expenses,
24 loss of Decedent's future financial support, and the loss of decedent's love, care, comfort, and society
25 pursuant to California *Code of Civil Procedure*, Section 425.

26 42. As a legal, direct and proximate result of the negligence, recklessness, carelessness and
27 violation of the law of Defendants GOLDSMITH and DOES 11 through 20, inclusive, Plaintiffs
28 MARC and MARIE BENARDOUT's son, Decedent NOAH BENARDOUT, suffered wrongful death.

1 As a result of their son's wrongful death, Plaintiff MARC and MARIE BENARDOUT suffered
2 economic damages, including but not limited to funeral and burial expenses, loss of Decedent's future
3 financial support, and the loss of decedent's love, care, comfort, and society pursuant to California
4 *Code of Civil Procedure*, Section 425.

5 43. As a direct and proximate result of the aforementioned conduct of Defendants and
6 DOES 1 through 10, and DOES 11 through 20, inclusive, and each of them, Plaintiff THE ESTATE
7 sustained damages when DECEDENT NOAH BENARDOUT was injured in his health, strength, and
8 activity, sustaining injuries to his body, and shock and injury to his nervous systems and person, all of
9 which caused him great physical, mental, and nervous pain and suffering, prior to his death. Plaintiff
10 THE ESTATE sustained further damages when DECEDENT NOAH BENARDOUT was compelled
11 to, and did, employ the services of hospitals, physicians, surgeons, nurses, and the like, to care for and
12 treat him prior to his death and did incur hospital, medical, professional, and incidental expenses.
13 Plaintiff THE ESTATE, by reasons of these injuries, incurred medical expense, the exact amount of
14 which will be stated according to proof, pursuant to Code of Civil Procedure section 425.10.

15 **SECOND CAUSE OF ACTION**

16 **Survival Action**

17 **(SURVIVAL ACTION by MARC and MARIE BENARDOUT as Successors-in-Interest to**
18 **THE ESTATE OF NOAH BENARDOUT, against Defendants JACOB GRALITZER,**
19 **VIACOM INC., FREE 90 MEDIA INC., LAWRENCE GOLDSMITH,**
20 **DOES 1 THROUGH 10, and DOES 11 through 20)**

21 44. Plaintiffs hereby re-allege and incorporate herein by reference each and every
22 allegation and statement contained in the prior paragraphs.

23 45. Plaintiffs are informed and believe, and thereon allege that the negligence described
24 above caused decedent NOAH BENARDOUT to suffer traumatic injuries, which later caused his
25 death.

26 46. The aforementioned SUBJECT INCIDENT giving rise to this wrongful death and
27 survival action caused decedent NOAH BENARDOUT to suffer various traumatic injuries. As a
28 legal, direct and proximate result of the conduct of said Defendants, including DOES 1 through

1 10, and 11 through 20, inclusive, Decedent suffered pre-death physical injuries, mental anguish,
2 terror, anxiety and unconsciousness.

3 47. As a result of the injuries and later the death of decedent Noah Benardout, Plaintiff
4 THE ESTATE by and through its Successors-in-Interest MARC and MARIE BENARDOUT
5 therefore seek all damages accruing to the Decedent in a survival action pursuant to the California
6 Code of Civil Procedure Section 377.34. All of said damages combine to a sum in excess of the
7 jurisdictional minimum of this Court, including any and all damages that the Decedent would have
8 been entitled to had he lived, including punitive damages as against Defendant GRALITZER,
9 which will be stated according to proof, pursuant to Section 425.10 of the California Code of Civil
10 Procedure.

11 48. Defendant GRALITZER acted negligently, recklessly and/or carelessly, while in
12 the scope of his employment for defendants VIACOM, FREE 90 and DOES 1 through 10,
13 inclusive, and each of them, in causing the collision that resulted in the death of NOAH
14 BENARDOUT.

15 49. Defendants GRALITZER, VIACOM, FREE 90 and DOES 1 through 10, inclusive,
16 and each of them, had prior knowledge of the dangers and risks of serious injury or death that such
17 misconduct would and did create to members of the public, such as Decedent NOAH
18 BENARDOUT. Despite such knowledge, Defendants GRALITZER, VIACOM, FREE 90 and
19 DOES 1 through 10, inclusive, engaged in such misconduct. Said misconduct by Defendants
20 GRALITZER, VIACOM, FREE 90 and DOES 1 through 10, inclusive, in recklessly creating said
21 substantial risk and high probability of injury or death to members of the public, was irresponsible
22 and done in disregard for the rights and safety of the public, including Decedent NOAH
23 BENARDOUT.

24 50. Plaintiffs are informed, believe, and thereon allege that, at all times relevant and
25 mentioned herein, Defendant GRALITZER acted with "malice" in that he engaged in despicable
26 conduct in conscious disregard of the rights, safety, and welfare of others, including the Decedent,
27 thereby entitling Plaintiffs to an award of punitive damages pursuant to California Civil Code
28 Section 3294.

1 51. Specifically, Defendant GRALITZER acted with malice in that he engaged in
2 despicable conduct and in conscious disregard of the rights, safety, and welfare of decedent
3 NOAH BENARDOUT by conduct that included, but is not limited to, the following:

4 i. On the date of the SUBJECT INCIDENT, Defendant GRALITZER drove
5 to Nightingale nightclub where he intended to consume alcohol and thereafter operate the
6 INFINITI.

7 ii. At this location, Defendant GRALITZER consumed no less than six (6)
8 alcoholic drinks as defined by the California Department of motor vehicles, prior to and within
9 close temporal proximity to the SUBJECT INCIDENT. The amount of alcohol Defendant
10 GRALITZER consumed rose to a point of appreciable impairment of his nervous system, brain,
11 and/or muscles.

12 iii. Defendant GRALITZER consumed alcohol with knowledge that he would
13 thereafter have to operate a motor vehicle on public street.

14 iv. Defendant GRALITZER voluntarily commenced and thereafter continued
15 to consume alcoholic beverages to the point of intoxication, knowing from the outset that he must
16 thereafter operate a motor vehicle.

17 v. Defendant GRALITZER thereafter operated the INFINITI vehicle on
18 August 1, 2019, while under the influence of alcohol in conscious disregard of the health and
19 safety of other motorists and pedestrians, including decedent NOAH BENARDOUT and the
20 Plaintiffs in violation of California Vehicle Code Section 23153(a).

21 vi. Defendant GRALITZER operated a vehicle on public streets while
22 intoxicated with a conscious indifference to the fact that others would probably be harmed by his
23 actions.

24 vii. Defendant GRALITZER operated the vehicle in such a grossly reckless and
25 despicable manner, by driving at a high rate of speed, at least in excess of 40 miles per hour, for an
26 appreciable amount of time, in violation of California Vehicle Code Section 21460(a), that it was
27 extremely likely if not certain that he would cause injury and/or death to others.

28 viii. As a result of his impaired state, Defendant GRALITZER operated the

1 vehicle in such a grossly reckless and despicable manner by driving at a high rate of speed for an
2 appreciable amount of time, without any effort to correct his path placing himself directly into the
3 path to cause the subject motor vehicle collision which ultimately resulted in NOAH
4 BENARDOUT's death.

5 ix. As a legal, direct, and proximate result of the conduct of Defendants, and
6 DOES 1 through 20, inclusive, and of them, as aforesaid, Decedent NOAH BENARDOUT was
7 injured in his person by the SUBJECT INCIDENT and survived for a period of time after the
8 initial impact and/or initial injury.

9 x. Decedent NOAH BENARDOUT sustained severe injuries to his body and
10 head that ultimately resulted in his death.

11 xi. Officers responding to the scene noted that when GRALITZER was first
12 approached there was a strong odor of alcohol.

13 xii. Officers responding to the scene determined that GRALITZER had been
14 driving under the influence of an alcoholic beverage and arrested GRALITZER for a DUI.

15 52. Plaintiffs are further informed and believe, and thereon allege, that because
16 Defendant GRALITZER had actual knowledge of his impaired state and his inability to safely
17 operate a motor vehicle, Defendant GRALITZER intentionally chose to sit behind the wheel of a
18 motor vehicle and drive the vehicle through city streets.

19 53. Because the acts and/or omissions of Defendant JACOB GRALITZER were
20 committed with a willful and conscious disregard of the rights, safety, and welfare of others, as
21 fully set forth above, causing injury and damage to Plaintiff THE ESTATE, by and through its
22 Successors-In-Interest MARC and MARIE BENARDOUT, Plaintiffs request the assessment of
23 punitive damages against Defendant GRALITZER in an amount appropriate to punish or set an
24 example pursuant to California Civil Code Section 3294.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs THE ESTATE, MARC BENARDOUT and MARIE
27 BENARDOUT collectively, pray for judgment against Defendants JACOB D. GRALITZER,
28 VIACOM INC., FREE 90 MEDIA, INC., LAWRENCE M. GOLDSMITH and DOES 1 through

1 10, and DOES 11 through 20, and each of them, as follows:

2 1. For non-economic damages suffered by Plaintiffs, including, but not limited to, loss
3 of love, affection, care, society, service, comfort, support, right to support, companionship, solace
4 or moral support, expectations of future support and counseling, other benefits and assistance of
5 Decedent NOAH BENARDOUT, in an amount in excess of the jurisdictional minimum,
6 according to proof;

7 2. For economic damages suffered by Plaintiffs, related to loss of earnings and loss of
8 financial support from Decedent NOAH BENARDOUT, according to proof;

9 3. For funeral and burial expenses suffered by Plaintiffs, according to proof;

10 4. For hospital, medical, professional and incidental expenses suffered by Plaintiffs,
11 according to proof;

12 5. For loss of personal property and income suffered by Plaintiffs, according to proof;

13 6. For prejudgment interest, according to proof;

14 7. For costs of suit, according to proof;

15 8. For damages for Plaintiff's other economic losses, according to proof;

16 9. For such other and further relief as this Court may deem just and proper.

17 Plaintiffs additionally seek the following damages as against Defendant JACOB D.

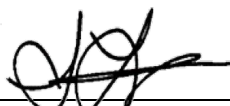
18 GRALITZER only:

19 10. For punitive damages in an amount necessary to punish and/or set an example of
20 Defendant JACOB D. GRALITZER, according to proof.

21
22 DATED: September 10, 2019

PANISH SHEA & BOYLE LLP

23
24 By:



25 Brian J. Panish
26 Spencer R. Lucas
27 Attorneys for Plaintiffs
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR TRIAL BY JURY

THE ESTATE OF NOAH BENARDOUT, by and through its Successors-In-Interest
MARC BENARDOUT and MARIE BENARDOUT; MARC BENARDOUT, a wrongful death
beneficiary of Decedent Noah Benardout and Successor-in-interest to the ESTATE OF NOAH
BENARDOUT; MARIE BENARDOUT, a wrongful death beneficiary of Decedent Noah
Benardout and Successor-in-interest to the ESTATE OF NOAH BENARDOUT; hereby demand a
trial by jury as to all causes of action.

DATED: September 10, 2019 PANISH SHEA & BOYLE LLP

By: 

Brian J. Panish
Spencer R. Lucas
Attorneys for Plaintiffs