

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JEWEL UPSHAW, Individually and on Behalf
of the Estate of ZENA “ZEKE” UPSHAW,
Deceased,

Plaintiff,

v.

NATIONAL BASKETBALL ASSOCIATION,
INC., DETROIT PISTONS BASKETBALL
COMPANY, SSJ GROUP, LLC, and THE
DELTAPLEX ARENA,

Defendants.

No.

COMPLAINT FOR DAMAGES

JURY DEMAND

PLAINTIFF’S ORIGINAL COMPLAINT FOR DAMAGES

NOW COMES Plaintiff Jewel Upshaw (“Plaintiff”), Individually and on Behalf of the Estate of Zena “Zeke” Upshaw (hereinafter “Zeke” or “Zeke Upshaw”), Deceased, through her attorneys and hereby complains of Defendants National Basketball Association, Inc. (“NBA”), Detroit Pistons Basketball Company, SSJ Group, LLC, and The DeltaPlex Arena (collectively “Defendants”), and in support thereof will show the Honorable Court as follows:

INTRODUCTION

1. The NBA is one of the world’s most profitable organizations, raking in billions of dollars annually as a result of the popularity of its teams and their players. In fact, each NBA team enjoys a value of over one billion dollars. The NBA is, at every level, a lucrative business model for the league itself, for the individual teams, for the league’s developmental teams, and for the venues paid to host and manage events. However, there exists a tragic secret inside the NBA: the well-known and serious risk to the league’s young stars suffering Sudden Cardiac Death (“SCD”) during a game. The NBA knows that the risk of player death due to a sudden cardiac event during

any given game is present at every level of its multi-leveled league, from the top level itself (its thirty NBA franchise teams, like the Golden State Warriors and the Cleveland Cavaliers) to the top level development teams (its twenty-six NBA “G League” teams, like the Maine Red Claws (the Boston Celtics’ NBA G League team) and the Rio Grande Valley Vipers (the Houston Rockets’ NBA G League team)). The NBA knows that should one of its players suffer a sudden cardiac event during a game, if that player’s life-threatening condition is not addressed rapidly, accurately and effectively by properly trained medical personnel, death will follow. The NBA is aware that this is a critical medical issue and response must be quick and immediate as this can occur to any NBA player at any level of the NBA’s many leagues. No one is immune, including multiple MVP winner LeBron James with the Cleveland Cavaliers, or Zeke Upshaw, a dedicated, well-loved, rising star enjoying one of his best seasons as a point guard for the Detroit Pistons’ NBA G League team, the Grand Rapids Drive.

2. The NBA has known of the risk of sudden cardiac death in players since at least 1993 (and likely long before) when NBA star Reggie Lewis suffered a sudden cardiac death on the basketball court at an off-season practice at the age of 27 (a year older than the deceased, Zeke Upshaw). The NBA is aware of the many similar and tragic sudden cardiac events resulting in sudden cardiac death suffered by seemingly healthy athletes while playing at all levels of organized basketball (NBA, NCAA, AAU, high school) for decades since—including most recently, the death of 17-year-old high school phenom and AAU standout James Hampton, who collapsed during a basketball game and died shortly thereafter. Yet, the NBA still fails to adequately prepare for and protect its league players from sudden cardiac death. This, despite knowing with absolute certainty that a sudden cardiac event will result in the death of a player if that event is not properly recognized, quickly identified, and aggressively addressed with specific treatment that is both

immediate and appropriate. The NBA's policy is startlingly poor, and its every day preparation and enforcement during the long basketball season, at every level of team play, for every single team and every individual player is dangerous, life-threatening, haphazard and inconsistent.

3. It is upon this iniquitous backdrop that Plaintiff, Jewel Upshaw, brings these present claims with a mother's sad and broken heart. These claims arise and stem from the sudden, tragic, and wholly preventable death of her son, Number "0," Zeke Upshaw, as a direct result of the negligence of the Defendants named in this litigation. It is Ms. Upshaw's hope that through her lawsuit, change will come to the NBA—that going forward, not one NBA son of a proud mother, will ever again suffer sudden cardiac death during a game. Instead, if that son experiences a sudden cardiac event while playing for the NBA, it will be accurately identified and confirmed immediately. That son will be treated and saved by well trained and quick response teams – response teams who are following detailed and robust, lifesaving written policies and procedures that have been practiced and memorized. The NBA's quick and accurate recognition of a life threatening, sudden cardiac event at the moment it occurs during a game, coupled with an immediate and appropriate response, ensures the best outcome and highest likely survival rate.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this claim pursuant to 28 U.S.C. §1331 because the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is a civil action in which the parties are citizens of different states.

5. Pursuant to 28 U.S.C. §1391(b)(1), proper venue for this action is the United States District Court for the Southern District of New York because at least one Defendant, National Basketball Association, Inc., resides in this district and has its principal office located in 645 Fifth Avenue, Olympic Tower, New York, NY 10022.

6. This Court has general personal jurisdiction over Defendants because Defendants conduct continuous and systematic business in New York.

PARTIES

7. Plaintiff, Jewel Upshaw, is an individual residing in Clark County, Nevada, and is the biological mother of the deceased, Zeke Upshaw.

8. Defendant, National Basketball Association, Inc. (hereinafter referred to as “NBA”), is a corporation organized and existing under the laws of the State of New York, and having a principal place of business located at 645 Fifth Avenue, Olympic Tower, New York, NY 10022.

9. Defendant, Detroit Pistons Basketball Company (hereinafter referred to as “Pistons”), is a corporation organized and existing under the laws of the State of Michigan, and has a principal place of business located at 5 Championship Drive, Auburn Hills, MI 48326.

10. Defendant, SSJ Group, LLC (hereinafter referred to as “SSJ”), is a limited liability company organized and existing under the laws of the State of Michigan, and has its principal place of business located at 338 Baldwin Road, Birmingham, MI 48009.

11. Defendant, The DeltaPlex Arena (hereinafter “DeltaPlex”), is a building owned and operated by its president, Joel Langlois, and has its principal place of business located at 2500 Turner Avenue Northwest, Grand Rapids, MI 49544.

FACTS RELEVANT TO ALL CLAIMS

12. Zeke Upshaw was born in Chicago, Illinois, where he grew up playing and loving the game of basketball, becoming one of the city’s best young players and starting for his high school team at University of Chicago Laboratory Schools.

13. After graduating from high school, Zeke went on to play at Illinois State University, earning his bachelor's degree in 2013. Having red-shirted his freshman year, Zeke played his final remaining year of eligibility at Hofstra University as a graduate student, where he took over as the star and captain of the team. Zeke finished at Hofstra with a master's degree in education.

14. Zeke, determined to follow his heart and his love for the game, declared for the 2014 NBA Draft. Undeterred by his undrafted status, he decided not to play in the NBA minor leagues, the D-League (now renamed the NBA G League) and, instead, went to play ball overseas, joining the Helios Suns team of the Premier A Slovenian Basketball League in September 2014. In 2015, he joined and played for Basket Esch's team in the Luxembourg's Total League.

15. Zeke, homesick and ready to bring his improved game to the NBA, returned to the United States and entered the 2016 NBA Development League Draft. Excitement filled the Upshaw home and pride swelled in Jewel Upshaw's heart as her boy, Zeke, was selected in the fourth round by the Grand Rapids Drive team out of Michigan. Zeke excelled with the team, and in the months leading up to his death, Detroit Pistons General Manager, Jeff Bower, professed to Zeke's agent how he "ha[d] been really happy for Zeke and the improvement he has shown . . . This has been a good experience and the results speak to the effort that has been invested [by Zeke]." Bower went on to say that they "will be discussing these things later in the spring," presumably referring to Zeke moving up to the Detroit Pistons. Unfortunately, spring never came for Zeke.

16. On March 24, 2018, Zeke was playing in his second full season for the Drive. Donning the Number "0," point guard Zeke Upshaw was considered a hard-working player with quick moves, a silky three, and strong defensive skills. He was well thought of by his Drive teammates, coaches, and management, and loved by the Grand Rapids' fans. At 26-years-old, Zeke

played his most solid NBA G League season yet, and on this particular Saturday night – the last game of the team’s regular season – the fourth quarter clock was winding down at the DeltaPlex Arena & Conference Center. In the final minute of the game, Zeke had already scored 11 points, and was defending his player man-to-man during a mid-court inbound pass. Zeke broke through a screen and trailed his man to the sideline. While his man stood near the 3-point line and Zeke was guarding him, knees and arms bent in a familiar defensive posture, Zeke, untouched, suddenly collapsed to the floor. He laid where he fell, unmoving, face-down on the court. His arms were twisted in the awkward, unnatural position as occurs when the limbs of an unconscious person fall with the body to the ground. No movement was seen during the fall by the arms or hands to protect or break the fall –indeed, no movement can be seen from that point forward. Zeke’s heart had stopped. He fell to the floor, unconscious as a result. At that moment, with no heartbeat, Zeke Upshaw was dead. If he were to be brought back to life it was imperative that emergency lifesaving treatment begin immediately.

17. After Zeke collapsed, the referee whistled to stop play seconds later. It was immediately clear to all in attendance that Zeke, lying face down on the floor, his arms splayed and unmoving, was unconscious. What was not considered, but what should have been just as clear, was that Zeke was in an extreme and sudden life-threatening medical situation, with no pulse. Though this was certainly a sudden event, happening at the end of the last game of the season, it was not a situation that was surprising or unexpected – as sudden cardiac events and cardiac arrest are on the top of the triage check list of properly trained emergency medical personnel when faced with an unconscious athlete who has not suffered any apparent blow or injury. (Properly trained emergency personnel have long been taught to triage for and attempt to very quickly rule in or rule out the most life-threatening possibilities first, cardiac arrest being at

the top of that list). Upon information and belief, the Drive's team doctor had stepped out before the end of the basketball game and was not present nor available when Zeke collapsed, and he conveyed this information to Ms. Upshaw at the hospital. In any event, for nearly *four minutes*, the team's medical staff and personnel moved around and near Zeke's body as it lay motionless on the court, during which time no sense of urgency can be observed from those kneeling around him, or from those walking towards or away from him; on the contrary, there appeared to be uncertainty, indecisiveness, and a complete and utter lack of appreciation of the severity of the moment as the basketball player's life silently slipped away on the hard wood floor in front of them. Remarkably, for much longer than four full minutes, no cardio-pulmonary resuscitation (CPR) was initiated, no chest compressions were started, no oxygen mask was placed on his nose and mouth, no airway was cleared and secured, and no defibrillator sensors and electric delivery patches were attached and secured to Zeke's chest. (If Zeke had a heart beat the defibrillator sensor's fail safe design would not have delivered a charge—but as Zeke did not have a heartbeat, the defibrillator, if used, may have very well immediately re-started Zeke's heart). In fact, *not a single life-saving measure was administered during the entire four minutes of the tragic event's video recording*. Moreover, the video confirms that desperate courtside team fans were frantically gesturing to medical staff to "hurry-up" after the fans watched for the first minute-and-a-half and observed the casual inaction by those who were in charge of making life-saving decisions.

18. Towards the end of the aforementioned video, a portable stretcher can be seen being slowly and casually wheeled onto the court, where, not seen on the video, Zeke's body is collected and wheeled off.

19. Somehow – *abhorrently* – confirmed by a hospital cardiologist, Zeke's body went without oxygen for another *forty minutes* after the end of the video, leaving his brain completely

oxygen-deprived for a full *forty-four minutes* in toto. At this point, there was no healthy brain left to save.

20. Despite the undeniable dire life or death situation, where every single second mattered and ‘the golden five minutes’ (that first five minutes – the limited time doctors know is critical in delivering effective lifesaving care in a sudden cardiac event, after which brain damage begins) quickly passes. Zeke Upshaw, improperly attended, was left to lie unconscious on the hardwood, in his team’s full uniform, slowly dying as his otherwise healthy heart sat, unbeating in his chest. A heart that likely only needed a compression series, or a charged delivery from a defibrillator, to begin to pound again and to pump blood and life back into Zeke Upshaw. However, according to witnesses, *no one* ever attempted to revive him.

21. Zeke was taken, unresponsive, to the Spectrum Health – Butterworth Campus Emergency Room and placed in the Intensive Care Unit. Doctors determined that he had approximately 20-percent brain functionality left – in other words, he was effectively “brain dead” upon arrival. As a result of Zeke’s continuing unresponsive state and his prognosis of a clear medical “downhill course,” his family instructed that he be placed on “comfort care.” Two days later, Zeke Upshaw was pronounced dead.

22. The Grand Rapids Drive is a Gatorade League (“G League”) team. The NBA G League, formerly known as the “D-League,” is the NBA’s official minor league, preparing players, coaches, officials, trainers, and front-office staff for the NBA while acting as the league’s research and development laboratory.¹ The NBA G League features twenty-six (26) teams – all with one-to-one affiliations with NBA franchises – with games airing on Facebook Live, ELEVEN SPORTS, Twitch, NBA TV, and ESPNU.²

¹ <http://gleague.nba.com/faq/>.

² *Id.*

23. According to the NBA G League website, an all-time high of 265 players with NBA G League experience were on NBA rosters at the end of the 2017-18 regular season, representing 53 percent of the league.³ At least thirty (30) NBA G League prospects have been called up to the NBA in each of the past seven seasons.

24. The NBA G League is made up of teams either owned directly by NBA franchises or individually owned by private companies. Some teams, like the Grand Rapids Drive, are owned in a hybrid structure where an NBA team (here, the Detroit Pistons), as well as a private company, (here, SSJ Group, LLC) own this minor league/development team. In this case, The Grand Rapids Drive was jointly owned, operated, and controlled by both the Detroit Pistons Basketball Company and SSJ Group, LLC. The Grand Rapids Drive play all their home basketball games in the DeltaPlex Arena where Zeke suffered his fatal, sudden, cardiac event.

25. Defendants failed Zeke by not having proper medical staff in the arena to prevent injuries and deaths such as his, and failed to properly train team staff and employees on how to respond to sudden cardiac events like this one.

26. Plaintiff alleges, among other things, that Defendants caused Zeke Upshaw's wrongful death by the negligent hiring and training of staff and employees, by the unnecessary, unreasonable, and grossly negligent delays in providing and administering medical care and treatment to Zeke Upshaw. Defendants also failed to implement and provide the Grand Rapids Drive G League team the resources, policies, and procedures reasonably necessary to prevent, treat, and assist them during this foreseeable medical emergency.

27. As a direct result of the death of Zeke Upshaw on March 26, 2018, which was caused by the negligence, carelessness and recklessness of the Defendants NBA, Pistons, SSJ and

³ *Id.*

DeltaPlex, by its duly authorized agents, servants, and/or employees, Zeke Upshaw sustained serious injuries and great economic loss.

28. Plaintiff and the Estate of Zeke Upshaw, deceased, have sustained various injuries, charges and damages as a result of the negligence, carelessness and recklessness herein which caused Zeke's death, and demand a recovery for their losses and damages.

29. As a consequence, the Estate and Plaintiff have sustained damages in an amount exceeding the jurisdictional limitations of all lower courts which would have jurisdiction over this case.

30. Defendants have witnessed tragedies such as Zeke's time and again over the years, where current and former NBA or NCAA basketball players die prematurely from sudden catastrophic cardiac events, making Zeke's death all the more foreseeable and therefore preventable.

31. For example, in 1990, 23-year-old Hank Gathers collapsed while playing a basketball game at Loyola Marymount University. Teammates described him as "an unbelievable physical specimen," yet he passed well before his time in a massive and sudden cardiac event on the basketball court.⁴

32. In 1993, 27-year-old Boston Celtics player Reggie Lewis died after what doctors referred to as a "heart ailment" caused him to collapse on the court during practice.⁵

⁴ Bill Dwyre, *25 Years After It Happened, Hank Gathers' Death Still Brings a Shudder*, LOS ANGELES TIMES, Mar. 4, 2015, available at <http://www.latimes.com/sports/la-sp-hank-gathers-dwyre-20150304-column.html> (last accessed May 29, 2018).

⁵ See Robert M. Thomas, Jr., *PRO BASKETBALL; Celtics' Lewis Dies After Collapsing in a Gym*, NEW YORK TIMES, Jul. 28, 1993, available at <https://www.nytimes.com/1993/07/28/sports/pro-basketball-celtics-lewis-dies-after-collapsing-in-a-gym.html> (last accessed May 29, 2018).

33. In 2000, 29-year-old Orlando Magic summer league player Conrad McRae experienced sudden cardiac death while running wind sprints during the team's practice and collapsed on the court; he was pronounced dead shortly thereafter.⁶

34. The NBA has seen the sudden cardiac death trend through off-the-court incidents as well. For example, in October 2005, 28-year-old Atlanta Hawks center Jason Collier died of a "sudden heart-rhythm disturbance" while in his home during the off-season.⁷ In 2011, 34-year-old Robert Traylor, a former NBA player described by others as a "gentle giant," died of a massive heart attack while in his home.⁸ In June 2016, 46-year-old Sean Rooks – a 14-year NBA veteran who "was in very good shape"⁹ and had "interviewed for an assistant coach job with the New York Knicks hours before his death and recently had been offered the Charlotte Hornets' D-League head coach job"¹⁰ – passed away from sudden cardiac death, one of many tragedies in a chain of "disturbing" NBA player deaths "[where] guys seem to be healthy and just pass way too soon."¹¹

35. Even with the steps the NBA has taken very recently requiring heart testing each season, that testing has only *further* underscored the magnitude of the problem. For example, according to a December 2017 study published by the Journal of the American Medical Association (JAMA), scientists analyzed heart data from 519 NBA athletes and determined that, using the most recent set of athlete-specific criteria, 81 players had abnormal results, despite the

⁶ Paul McLeod, *No Reason Found for McRae's Death*, LOS ANGELES TIMES, Jul. 12, 2000, available at <http://articles.latimes.com/2000/jul/12/sports/sp-51758> (last accessed May 29, 2018).

⁷ AP, *PRO BASKETBALL; Collier Had Enlarged Heart*, NEW YORK TIMES, Nov. 2, 2005, available at <https://www.nytimes.com/2005/11/02/sports/pro-basketball-collier-had-enlarged-heart.html> (last accessed May 29, 2018).

⁸ AP, *Robert 'Tractor' Traylor Found Dead*, ESPN.COM, May 12, 2011, available at <http://www.espn.com/nba/news/story?id=6527372> (last accessed May 29, 2018).

⁹ Marc J. Spears, *The NBA Seeks to Address a Spiking Problem with Heart Disease*, THEUNDEFEATED.COM, Jun. 9, 2016, available at <https://theundefeated.com/features/the-nba-seeks-to-address-a-spiking-problem-with-heart-disease/> (last accessed May 29, 2018).

¹⁰ *Id.*

¹¹ *Id.* (quoting Golden State Warriors assistant coach and former NBA player Jarron Collins).

players’ “healthy” medical prognoses.¹² Indeed, the study indicates that the echocardiogram testing currently in place needs to be individualized for the sport and that there needs to be research into other kinds of diagnostic criteria, particularly in light of the epidemic of heart-related NBA deaths.¹³

36. According to the 2017 JAMA article, the root of the heart disease problem seems to be the physical training associated with being a basketball player – a problem which doctors in the NBA “have known . . . for a while.”¹⁴ Indeed, “Approximately 20 [percent] of today’s basketball stars have abnormal heart scans . . . [and b]asketball players are 30 times more likely than any other [person] to suffer a sudden cardiac death.”¹⁵

37. The magnitude of the problem spans across multiple sports groups and multiple levels of athletic play. In a study performed by the National Center for Catastrophic Sport Injury Research at the University of North Carolina at Chapel Hill (“NCCSIR”), researchers found that from July 1, 2015 to June 30, 2016, there were a total of 112 catastrophic injuries/illnesses captured by NCCSIR among high school and college organized sport participants, all of them cardiac-related. Of these, 101 events were due to or occurred during sport-related activities. There were also 11 catastrophic events that occurred during non-sport related activity.¹⁶ Notably, basketball

¹² Waase MP, Mutharasan RK, Whang W, *et al.*, *Electrocardiographic Findings in National Basketball Association Athletes*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 2018;3(1):69–74, available at <https://jamanetwork.com/journals/jamacardiology/article-abstract/2665180> (last accessed May 29, 2018).

¹³ See Angela Chen, *Surprisingly High Number of NBA Players Have Abnormal Heart Scans*, THEVERGE.COM, Dec. 6, 2017, available at <https://www.theverge.com/2017/12/6/16741580/national-basketball-association-sports-heart-disease-safety-training> (last accessed May 29, 2018).

¹⁴ Peter Hess, *The NBA’s Heart Disease Problem is a Race Issue, Say Doctors*, INVERSE.COM, Dec. 6, 2017, available at <https://www.inverse.com/article/39070-nba-heart-disease-attack-black-athletes> (last accessed May 29, 2018).

¹⁵ Brent Edward, *Nearly 20% of NBA Players Have Heart Issues, Study Finds*, DIGITALCHEW.COM, Dec. 7, 2017, available at <http://digitalchew.com/2017/12/07/nearly-20-of-nba-players-have-heart-issues-study-finds/> (last accessed May 29, 2018).

¹⁶ Kristen L. Kucera, MSPH, Ph.D., ATC, *et al.*, *Catastrophic Sports Injury Research: Thirty-Fourth Annual Report*, NATIONAL CENTER FOR CATASTROPHIC SPORT INJURY RESEARCH AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, Oct. 5, 2017, at 4.

was second only to football in terms of the sport in which the most such catastrophic events have occurred.¹⁷

38. There is simply no good reason for the Defendants to have been unprepared for sudden cardiac death events such as Zeke's, and for their failure to react quickly to save a life. Had properly trained medical professionals administered expeditious and proper treatment, Zeke would still be alive. Compare, for example, the response of team medical personnel during a NCAA basketball game in Raleigh, North Carolina, where a South Carolina State University player collapsed but was then expeditiously treated and was eventually revived.¹⁸ While there is no perfect process, Ty Solomon, the player who was revived, is alive today likely because of the rapid response that occurred at the PNC arena by the team and medical staff.

COUNT I
CAUSE OF ACTION AGAINST DEFENDANTS PISTONS AND SSJ
(Negligence and Gross Negligence)

39. Plaintiff hereby incorporates the allegations contained in the preceding paragraphs as though fully set forth herein.

40. Defendants Pistons and SSJ were negligent. Defendants Pistons and SSJ were required to exercise the ordinary care, skill and ability which is exercised by NBA teams' staff in the same or similar circumstances, and which is exercised by other major league professional sport teams' staff to ensure that proper response time, treatment, procedures and equipment is used to properly diagnose, treat, and prevent deaths like Zeke Upshaw's.

¹⁷ *Id.*

¹⁸ Steve Wiseman, 'I Love Those Guys.' SC State Player Thankful for Those Who 'Literally Saved My Life', THE NEWS & OBSERVER, Dec. 4, 2017, available at <http://www.newsobserver.com/sports/college/acc/nc-state/state-now/article188015384.html> (last accessed May 29, 2018).

41. Defendants Pistons and SSJ failed to exercise reasonable and ordinary care, skill and ability and were, therefore, negligent and grossly negligent in treating Zeke Upshaw, in the following manner, including but not limited to:

- a. Failing to take a complete and thorough medical history;
- b. Failing to perform a complete and thorough physical examination;
- c. Failing to use a defibrillator to resuscitate Zeke Upshaw;
- d. Failing to perform CPR;
- e. Failing to adequately respond to and treat Zeke Upshaw;
- f. Failing to select, screen, train, and employ only qualified personnel;
- g. Failing to enact and enforce all necessary policies and procedures to ensure player safety;
- h. Failing to provide qualified and trained medical staff;
- i. Any other act or omission determined during discovery.

42. Defendants Pistons and SSJ failed in all respects to comply with the standard of practice; they were, therefore, negligent in their responding to and treatment of Zeke Upshaw, which ultimately led to his untimely death.

43. Defendants Pistons and SSJ are liable for the negligence of their employees, servants, staff and/or hired medical professionals *vis a vis* their actual employment, *respondeat superior*, ostensible agency, and/or other applicable theories.

44. As a direct and proximate result of Defendants Pistons' and SSJ's negligence and gross negligence, unskilled acts or omissions, and those employees of Defendants Pistons and SSJ, Zeke Upshaw suffered severe injuries and death, including but not limited to excruciating pain and suffering and prolonged period of oxygen deprivation before his death.

45. As a direct result of Defendants Pistons' and SSJ's negligence and the negligence of the employees, servants, staff, and/or hired medical professionals, the heirs at law of Zeke Upshaw have sustained injuries and damages, including but not limited to reasonable medical, hospital, funeral, burial expenses, loss of financial support, loss of future gifts, loss of training and guidance, and loss of society and companionship.

46. The joint and several negligence of all the above listed Defendants created a foreseeable risk of injury and death to Zeke Upshaw, as well as others similarly situated.

COUNT II
CAUSE OF ACTION AGAINST DEFENDANT DELTAPLEX
(Negligence and Gross Negligence)

47. Plaintiff hereby incorporates the allegations contained in the preceding paragraphs as though fully set forth herein.

48. Defendant DeltaPlex was negligent. Defendant DeltaPlex was required to exercise the ordinary care, skill and ability which is exercised by pro sports arenas around the country in the same or similar circumstances, and which is exercised by other major league professional sport teams' staff to ensure that proper response time, treatment, procedures and equipment is used to properly diagnose, treat, and prevent deaths like Zeke Upshaw's.

49. Defendant DeltaPlex failed to exercise reasonable and ordinary care, skill and ability and were, therefore, negligent and grossly negligent in treating Zeke Upshaw, in the following manner, including but not limited to:

- a. Failing to use a defibrillator to resuscitate Zeke Upshaw;
- b. Failing to adequately respond to and treat Zeke Upshaw;
- c. Failing to perform CPR;
- d. Failing to select, screen, train, and employ only qualified personnel;

- e. Failing to enact and enforce all necessary policies and procedures to ensure player safety;
- f. Failing to provide qualified and trained medical staff;
- g. Any other act or omission determined during discovery.

50. Defendant DeltaPlex failed in all respects to comply with the standard of practice; they were, therefore, negligent in its responding to and treatment of Zeke Upshaw which ultimately led to his untimely death.

51. Defendant DeltaPlex is liable for the negligence of its employees, servants, staff and/or hired medical professionals *vis a vis* their actual employment, *respondeat superior*, ostensible agency, and/or other applicable theories.

52. As a direct and proximate result of Defendant DeltaPlex's negligence and gross negligence, unskilled acts or omissions, and those employees of Defendant DeltaPlex, Zeke Upshaw suffered severe injuries and death, including but not limited to excruciating pain and suffering and a prolonged period of oxygen deprivation before his death.

53. As a direct result of Defendant DeltaPlex's negligence and the negligence of the employees, servants, staff, and/or hired medical professionals, the heirs at law of Zeke Upshaw have sustained injuries and damages, including but not limited to reasonable medical, hospital, funeral, burial expenses, loss of financial support, loss of future gifts, loss of training and guidance, and loss of society and companionship.

54. The joint and several negligence of Defendant DeltaPlex created a foreseeable risk of injury and death to Zeke Upshaw, as well as other similarly situated.

COUNT III
CAUSE OF ACTION AGAINST DEFENDANT
NATIONAL BASKETBALL ASSOCIATION, INC.
(Negligence and Gross Negligence)

55. Plaintiff hereby incorporates the allegations contained in the preceding paragraphs as though fully set forth herein.

56. Defendant NBA was negligent. Defendant NBA was required to exercise the ordinary care, skill and ability which is exercised by professional sports organizations around the country in the same or similar circumstances, and which is exercised by other major league professional sport teams' staff to ensure that proper response time, treatment, procedures and equipment is used to properly diagnose, treat, and prevent deaths like Zeke Upshaw's.

57. Defendant NBA failed to exercise reasonable and ordinary care, skill and ability and was, therefore, negligent and grossly negligent in the death of Zeke Upshaw, in the following manner, including but not limited to:

- a. Failing to take a complete and thorough medical history;
- b. Failing to perform a complete and thorough physical examination;
- c. Failing to use a defibrillator to resuscitate Zeke Upshaw;
- d. Failing to perform CPR;
- e. Failing to adequately respond to and treat Zeke Upshaw;
- f. Failing to select, screen, train, and employ only qualified personnel;
- g. Failing to enact and enforce all necessary policies and procedures to ensure player safety;
- h. Failing to have proper policies and procedures in place to detect players who could potentially suffer a sudden cardiac event;
- i. Failing to provide qualified and trained medical staff;
- j. Any other act or omission determined during discovery.

58. Defendant NBA failed in all respects to comply with the standard of practice; they were, therefore, negligent in responding to and treatment of Zeke Upshaw which ultimately led to his untimely death.

59. Defendant NBA failed to either implement effective policy and procedures or failed to ensure policies and procedures were being consistently followed and complied with as those policies and procedures relate to responding to a sudden cardiac event during an NBA game.

60. Defendant NBA failed to implement appropriate and adequate training of staff to ensure that a sudden cardiac event during a game would be quickly and accurately recognized and appropriately addressed.

61. Defendant NBA failed to confirm each of its teams, including the NBA G League Grand Rapids Drive, had adequate training, policies, and support to quickly and appropriately respond to a sudden cardiac event during an NBA game.

62. Defendant NBA is liable for the negligence of its employees, servants, staff and/or hired medical professionals *vis a vis* their actual employment, *respondeat superior*, ostensible agency, and/or other applicable theories.

63. As a direct and proximate result of Defendant NBA's negligence and gross negligence, unskilled acts or omissions, and those employees of Defendant NBA, Zeke Upshaw suffered severe injuries and death, including but not limited to excruciating pain and suffering and a prolonged period of oxygen deprivation before his death.

64. As a direct result of Defendant NBA's negligence and the negligence of their employees, servants, staff, and/or hired medical professionals, the heirs at law of Zeke Upshaw have sustained injuries and damages, including but not limited to reasonable medical, hospital,

funeral, burial expenses, loss of financial support, loss of future gifts, loss of training and guidance, and loss of society and companionship.

65. The joint and several negligence of Defendant NBA created a foreseeable risk of injury and death to Zeke Upshaw, as well as other similarly situated.

COUNT IV
CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Wrongful Death and Exemplary Damages)

66. Plaintiff hereby incorporates the allegations contained in the preceding paragraphs as though fully set forth herein.

67. As a direct and proximate result of the willful, reckless and/or malicious acts of the Defendants, Zeke Upshaw died an untimely death. As a result of the breaches of the standard of care and failure to adequately respond, treat and render care as previously set forth, Zeke Upshaw died on March 26, 2018.

68. Plaintiff, Jewel Upshaw, is the mother of decedent Zeke Upshaw and is the Representative for his Estate.

69. The aforesaid negligence, breaches of the standard of care, and failure to adequately respond, treat and care for Zeke Upshaw, have proximately caused damages to the Estate of Zeke Upshaw, Deceased, and the beneficiaries of the Estate of Zeke Upshaw.

70. Plaintiff, Jewel Upshaw, therefore seeks exemplary damages as a result of the Defendants' aforementioned actions and omissions which caused the wrongful death of Zeke Upshaw.

DEMAND FOR JURY TRIAL

71. Plaintiff demands a jury trial for all claims so triable.

PRAYER

72. **WHEREFORE**, Plaintiff, Jewel Upshaw, Individually and on Behalf of the Estate of Zena “Zeke” Upshaw, Deceased, respectfully prays for judgment against all Defendants in an amount to be determined by the trier of fact for her losses as well as the Estate’s losses, damages and harm, economic and noneconomic, for exemplary and statutory damages, and for all costs, attorneys’ fees, expert witness fees, filing fees, pre- and post-judgment interest, and such other further relief as the Court may deem appropriate, just, and proper.

Dated: May 30, 2018

Respectfully Submitted,

HILLIARD MARTINEZ GONZALES, LLP

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