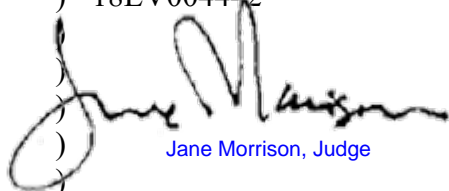


**IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA**

JOHN CHANG and REBECCA ZHU, as )  
surviving parents of JOSHUA CHANG, )  
DECEASED, and REBECCA ZHU as Personal )  
Representative/Administrator of the ESTATE OF )  
JOSHUA CHANG, )

CIVIL ACTION FILE NO.  
18EV004442

Plaintiffs,  
vs.



Jane Morrison, Judge

CITY OF MILTON,  
  
Defendant.

**[PROPOSED] CONSOLIDATED PRETRIAL ORDER**

The following constitutes a Pretrial Order entered in the above-styled case after conference with counsel for the parties:

1. The names, address and phone number of the attorneys who will conduct the trial

are as follows:

**For Plaintiffs:**

Jed D. Manton  
Jeffrey R. Harris  
Madeline E. McNeeley  
Harris Lowry Manton LLP  
1418 Dresden Dr. NE, Unit 250  
Brookhaven, GA 30319  
(404) 961-7650  
jed@hlmlawfirm.com  
jeff@hlmlawfirm.com  
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Naveen Ramachandrappa  
Bondurant, Mixson & Elmore LLP  
1201 W Peachtree St NW, Ste 3900  
Atlanta, GA 30309  
(404) 881-4100  
ramachandrappa@bmelaw.com

**For Defendant:**

Matthew H. Bennett  
Bennett Law Office LLC  
1012 Memorial Dr., Suite 13  
Griffin, GA 30224  
Telephone:(678) 688-3554  
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mhb@bennettlawofficellc.com

2. The estimated time required for trial is:

**By Plaintiffs:** 3-4 days.

**By Defendant:** 4-5 days.

3. There are no motions or other matters pending for consideration by the Court except as follows:

**By Plaintiff:**

Plaintiffs anticipate filing motions in limine prior to trial in compliance with the court's deadline. Plaintiffs may submit trial briefs before, during, or after trial as issues arise so as not to delay trial of this case.

**By Defendant:**

In accordance with the Case Management Order entered by the Court, the parties intend to file Motions in Limine and any other motions before or during trial as the evidence dictates.

4. The jury will be qualified as to relationship with the following:

**By Plaintiff:**

- a. Rebecca Zhu
- b. John Chang
- c. Estate of Joshua Chang
- d. Harris Lowry Manton LLP

- e. Jed D. Manton
- f. Madeline E. McNeeley
- g. Stephen G. Lowry
- h. Jeffrey R. Harris
- i. The Simon Law Firm P.C.
- j. Christopher M. Simon
- k. Tyler H. Bridgers
- l. Harrison Spires
- m. Bondurant, Mixson & Elmore, LLP
- n. Naveen Ramachandrappa
- o. The City of Milton
- p. Officers or employees of the City of Milton
- q. Residents of the City of Milton
- r. Georgia Interlocal Risk Management Agency (GIRMA), its policyholders, shareholders, stockholders, officers, agents, or employees, or those of its parent companies, holding companies, subsidiaries, or affiliates
- s. To the extent not listed above, Plaintiffs request the defendant supply the names of any other insurance companies which may be liable for a judgment for jury qualification and to identify whether each is a mutual company.
- t. Bennett Law Office LLC
- u. Matthew H. Bennett

**By Defendant:**

- 1. Joshua Chang;

2. City of Milton, Georgia;
3. Jed D. Manton;
4. Madeline E. McNeeley;
5. Harris Lowry Manton, LLP;
6. Tyler H. Bridgers;
7. The Simon Law Firm, P.C.
8. Matthew H. Bennett, Esq.;
9. Bennett Law Office, LLC;
10. John Chang;
11. Rebecca Zhu;
12. George Ivey;
13. Little River Farms.

The Defendant objects to the qualification of the jury as to Georgia Interlocal Risk Management Agency as it would imply the City of Milton has insurance coverage.

5. Discovery/Parties.

a. All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

**Plaintiffs:**

Discovery is closed and all discovery depositions have been completed.

**Defendant:**

~~There is no further outstanding discovery in this case. Defendants reserves the right to request depositions of witnesses named for purposes of damages. Defendant reserves the right to file one or more Notices to Produce physical evidence and documents not previously provided by the Defendant during the discovery period.~~

b. Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.

6. The following is the Plaintiffs' brief and succinct outline of the case and contentions:

This case is about a fatal vehicle wreck occurring in Batesville Road in Milton, Georgia on November 19, 2016. The Batesville Road right-of-way is 60 feet wide and includes the 24-foot paved traveled way and a 14-foot shoulder on each side of the paved portion. The north shoulder serves as the north clear zone (or recovery area). The entire right-of-way is owned and controlled by the City of Milton as part of its municipal street system. The City of Milton is responsible for design, maintenance, and inspection of the entirety of the Batesville Road right-of-way, including the surface, shoulders, and sides. This includes a duty to identify and repair defects in the roads, including defects created by the presence of hazards in the Batesville Road shoulder and right-of-way. Furthermore, clear zones are specifically intended to lessen the chance of serious injury by providing a recovery area for motorists who may leave the traveled way, and as such are an integral part of safe road design. Safe road design and maintenance standards and the City of Milton's own ordinances required the city to keep the clear zones—including the north shoulder of Batesville Road—free of hazardous obstructions and to order safety inspections of obstructions such as the planter involved in this case.

For at least eight years, Milton chose not to responsibly address a hazardous fixed object—the “planter” at issue in this case—located in the shoulder of Batesville Road. The City of Milton was, at a minimum, negligent for maintaining this hazard and choosing not to remove, warn, or protect against this hazard.

On November 19, 2016, at approximately 7:25 p.m., Joshua Chang was driving westbound on Batesville Road through the City of Milton. A large ornamental object or planter was located within Batesville Road, in the north shoulder near the entrance to a driveway for Little River Farms. The planter was approximately 3 feet tall and 8.5 feet in diameter, and it was constructed of an agricultural tire, stone, concrete, and packed dirt. As Josh drove on Batesville Road, his vehicle left the paved portion of the road and entered the shoulder. The investigating police officer and corporate representative for the City of Milton testified that the most likely reason for his vehicle’s departure from the paved portion of the road and entrance onto the shoulder was to avoid a deer or oncoming vehicle entering his travel lane. However, due to the presence of the planter obstructing the shoulder, Josh was unable to bring his vehicle safely to a controlled stop, and Josh’s vehicle struck the planter. As a result of the collision with the planter, Josh first suffered serious and painful injuries and then died. At the time of the collision, Josh had not been consuming alcohol or other substances and was not using his mobile phone. He was not speeding and did not fall asleep prior to impact.

The City of Milton had both actual and constructive notice of the existence of the hazardous fixed object in the shoulder of Batesville Road through formal inspections, informal inspections, and the city Transportation Engineer’s review of survey plats depicting the stone planter in Batesville Road’s shoulder and the public right-of-way. The City of Milton was, at a minimum, negligent in its planning, improving, maintaining, and/or inspecting the Batesville

Road right-of-way, including not removing a hazardous fixed object in the north shoulder of Batesville Road, and it breached its ministerial duties by not removing the hazardous planter from Batesville Road. Additionally, the planter constituted a nuisance that was hazardous to the lives and safety of the motoring public, including Josh Chang, and the City of Milton was more than negligent in maintaining the nuisance on property it owns and controls after it had at least eight years' worth of actual and/or constructive knowledge of the existence of the nuisance.

Josh Chang was a 21-year-old Georgia native who had been the salutatorian of his high-school class and was in his final year at Yale University, where he was double-majoring in mechanical engineering and economics. He was attending Yale on a full scholarship, including receiving a stipend for living expenses. He was a member of Yale's cycling team. He once constructed his own bicycle from scratch out of bamboo and carbon fiber, and he designed and built cars for Bulldogs Racing, the university's chapter of the Society of Automotive Engineers. Josh is universally described by his parents, friends, and teachers as loving, generous, thoughtful, enthusiastic, dependable, warm, and cheerful. He was an only child, a first-generation American, and would have been the first in his family to earn a four-year college degree. Instead, at his college's commencement ceremony, one of his friends accepted a posthumous certificate on his behalf that reads, "With greatest joy, we the Guardian and Dean of Saybrook College declare that Joshua Z. Chang was a member of this college in friendship and learning."

This action was filed on September 13, 2018. Defendant has pursued contributory-negligence and comparative-fault affirmative defenses despite admitting in briefing and through corporate-representative admissions that it has no evidence Josh Chang was driving negligently. It also has pursued defenses to Plaintiffs' claims that are directly contradicted by the testimony of its own employees, corporate representative, and expert witness. Plaintiffs are pursuing

damages under O.C.G.A. § 13-6-11, and they anticipate moving for attorney fees and expenses under O.C.G.A. § 9-11-68(e) if and when the jury returns a verdict in their favor.

**Plaintiffs request that the parties' outlines of the case NOT be read to the jury. If the court desires, Plaintiffs will work with Defendant to see whether a joint statement can be prepared.**

7. The following is the Defendant's brief and succinct outline of the case and contentions:

The City of Milton, Georgia (the "City") is a municipality incorporated in the State of Georgia in 2006. The City is a member of the Georgia Interlocal Risk Management Agency risk pool, organized pursuant to the O.C.G.A. 36-85-1 *et seq.*, and has been afforded coverage under Member Agreement MI-6.

On November 19, 2016, at approximately 7:00 p.m., Chang was driving his 1992 Acura Vigor presumably from Fry's Electronics located on Webb Road in Milton, Georgia to his home located on Little Creek Court, Canton, Cherokee County, Georgia 30114. At Approximately, 7:25 p.m., Chang was driving westerly on Batesville Road, approximately 350 feet past Batesville Road's intersection with Taylor Road, continuing his direction toward Cherokee County. While driving on Batesville Road, Chang made a strong steering input to the right which caused his car to enter a yaw and leave the pavement. His car struck an object located on the side of the roadway approximately 6 to 8 feet from the road. The object was a tractor trailer tire which had been turned on its side, filled with dirt and surrounded by stone blocks. The object was located in a driveway leading to the property owner, Little River's Farm. The object preexisted the incorporation of the City of Milton.

There were no eyewitnesses to the accident. It is further undisputed that the only means for Chang to have come into contact with the object was for Chang to leave the paved roadway. The left side of the Chang's vehicle near the driver's door struck the object. There is no evidence to suggest a defect in the paved road caused Chang to have to make a steering input which caused him to leave the pavement.

The City of Milton contends Chang is the proximate cause of any injuries he sustained as a result of leaving the roadway. He was the operator of the vehicle and had the ultimate responsibility for operating the vehicle in a safe manner, which he failed to do so by making the strong right turn and leaving the paved surface of the road. The City contends that Chang is contributorily negligent in the cause of the accident.

The City of Milton further contends that it did not breach its duty to maintain its roads pursuant to O.C.G.A. § 32-1-3 nor any duty owed to Chang as a licensee. There is no evidence suggesting the road was hazardous and no prior accidents or complaints regarding the object Mr. Chang struck. The City of Milton contends that its duty to maintain the road was discretionary and fails to meet the definition of a ministerial duty imposed by law. Lastly, the City of Milton contends there is no waiver of sovereign immunity in excess of its policy limits pursuant to law. To the extent there is any liability imposed on the City of Milton should be reduced to the limits of coverage.

Lastly, the City of Milton contends that based on the lack of prior incidents, complaints, and other issues relating to the object, the object fails to meet the definition of a nuisance. Even if there were a nuisance claim, the claim should fail as the General Assembly has not created a nuisance exception to sovereign immunity, the Court is unable to waive sovereign immunity, and

the General Assembly has set forth the parameters for which a municipality may be held liable for damages. Therefore, a claim of nuisance should not be allowed to be pursued.

8. The issues for determination by the jury are as follows:

**By Plaintiffs:**

- a. Liability of City of Milton
- b. The amount of damages equal to the full value of the life of Joshua Chang
- c. The amount of damages necessary to compensate the Estate of Joshua Chang for his extreme conscious physical and mental pain and suffering prior to death and for funeral and burial expenses
- d. Breach of ministerial duties, O.C.G.A. § 36-33-1(b)
- e. Negligent road maintenance, O.C.G.A. § 32-4-93(a)
- f. Creating, maintaining, or failing to remediate a public nuisance that is a danger to life or health, O.C.G.A. § 41-1-1, *et seq.*
- g. Liability for and amount of attorney fees and expenses under O.C.G.A. § 13-6-11 to be determined in a second phase after the return of a verdict in favor of Plaintiffs
- h. Liability for and amount of attorney fees and expenses under O.C.G.A. § 9-11-68(e) to be determined in a second phase after the return of a verdict in favor of Plaintiffs

Plaintiffs object to any attempt by Defendant to use apportionment of fault to nonparties to reduce its liability in this single-defendant case. *See Alston & Bird, LLP v. Hatcher Management Holdings, LLC*, 312 Ga. 350 (2021); *Ga. CVS Pharmacy, LLC v. Carmichael*, 362 Ga. App. 59 (2021), *cert. granted* (Oct. 4, 2022). Thus, and to be absolutely clear, any *judgment* entered against

Defendant must be entered solely based on Defendant's fault and reduced only by fault, if any, assessed to Joshua Chang. No judgment entered in this single-defendant case should reflect any reduction for non-party fault.

However, if Defendant insists on seeking apportionment of fault to nonparties, and in light of the fact that the defendant in *CVS* has raised arguments in the currently pending Supreme Court appeal about whether dismissed defendants count in determining whether a case is a single-defendant case (though the Supreme Court did not grant certiorari on this issue), Plaintiffs would not object to allowing non-party fault to be considered by the jury on the *verdict* form.

By allowing the jury to consider non-party fault on the verdict form, but not used by the Court to reduce the judgment, this procedure would allow the Court and the parties to follow current binding precedent—which again prohibits reduction of the judgment for non-party fault—while still creating a factual record in the event that the law changed. In other words, if the Supreme Court were to later hold in *CVS* or otherwise that previously dismissed defendants count in determining whether a case is a single-defendant case, then the judgment could simply be amended without the need for any kind of re-trial.

**By Defendant:**

1. Whether the City was the proximate cause of Chang's injury.
2. Whether Chang was contributorily negligent in the accident.
3. Whether the object should be deemed an open and obvious danger which required Chang to use ordinary care.
4. Whether the City provided a reasonably safe road to travel upon.
5. Whether the object constituted a nuisance for which the City of Milton is liable.
6. Whether the Plaintiffs are entitled to recover damages, and, if so, what amount.

7. The apportionment of fault.
9. Specifications of negligence including applicable code sections are as follows:

**By Plaintiffs:**

- a. General negligence principles and O.C.G.A. §§ 51-1-1, 51-1-2, 51-1-6
- b. City's duty to maintain roads free of defects, O.C.G.A. § 32-4-93(a)
- c. City of Milton Code of Ordinances §§ 48-425(b), 48-425(c), 48-585(b), 48-585(b)(1), and/or 48-585(b)(2)
- d. Liability for breach of ministerial duties under O.C.G.A. § 36-33-1(b)
- e. Liability for creating or failing to remediate a public nuisance, O.C.G.A. § 41-1-1 *et seq.*
- f. Waiver of sovereign immunity by purchase of liability coverage, O.C.G.A. § 36-33-1(a)
- g. Wrongful death, O.C.G.A. § 51-4-1 *et seq.*
- h. Bad faith in the underlying transaction, O.C.G.A. § 13-6-11

**By Defendant:**

1. O.C.G.A. § 51-12-33.
2. O.C.G.A. § 32-4-93.
3. O.C.G.A. § 40-6-180.
4. O.C.G.A. § 40-6-48.
5. Contributory negligence.
6. O.C.G.A. § 36-33-1 *et seq.*
7. Wrongful death, O.C.G.A. § 52-4-1 *et seq.*
10. There is no contract that is materially disputed or needed for the jury trial.

11. The types of damage and the applicable measure of those damages are stated as follows:

**Plaintiffs:**

- a. Full value of the life of Joshua Chang as determined by the jury, including but not limited to economic damages of approximately \$4,137,311.00 as established through expert analysis;
- b. Physical, mental, and emotional pain and suffering of Joshua Chang as determined by the jury;
- c. Funeral and burial expenses as determined by the jury;
- d. Damages including attorney fees and expenses under O.C.G.A. § 13-6-11 as determined by the jury in a second phase;
- e. Attorney fees and expenses under O.C.G.A. § 9-11-68(e), as a penalty or sanction for Defendant's frivolous litigation conduct, as determined by the jury in a second phase.

**Defendant:** General damages.

12. This case does not involve divorce.

13. The following facts are stipulated:

The parties are working to reach a stipulation as to the version of Chapter 48 of the City of Milton Code of Ordinances that was in effect on November 19, 2016, which shall be supplemented as Exhibit A.

**Plaintiffs:** Plaintiffs propose the following stipulations:

- a. The subject collision occurred on November 19, 2016.
- b. The subject planter was located in the Batesville Road right-of-way.

- c. The subject planter was located in the shoulder of Batesville Road.
- d. The City of Milton owned the land where the subject planter was located.
- e. Fee simple title to the Batesville Road right-of-way is vested in the City of Milton.
- f. Fee simple title to the land on which the subject planter was located is vested in the City of Milton.
- g. Ownership through fee simple title to the Batesville Road right-of-way, including the land on which the subject planter was located, vested in Fulton County on July 24, 1958, the date on which the deed for that property was executed.
- h. Ownership through fee simple title to the Batesville Road right-of-way, including the land on which the subject planter was located, vested in the City of Milton on December 1, 2006, the date on which the City's incorporation became effective and ownership of the land transferred to it from Fulton County.
- i. Ownership through fee simple title to the adjacent property at 14505 Batesville Road is vested in Joseph Daniel Ivey and Samuel Benjamin Ivey as Co-Trustees of the George Hoyle Ivey, Jr. Dynasty Trust ("the Co-Trustees").
- j. Ownership through fee simple title to the 14505 Batesville Road property vested in the Co-Trustees on May 26, 2016, the date on which the deed for said property was executed.
- k. The Co-Trustees do not own the land on which the subject planter was located or any portion of the Batesville Road right-of-way.

l. LRF Milton, LLC, does not own the land on which the subject planter was located or any portion of the Batesville Road right-of-way.

m. LRF Milton, LLC does not own the 14505 Batesville Road property.

*The following proposed stipulations (n) through (q) are not to be shared with the jury:*

n. The City of Milton holds comprehensive general liability coverage with per-occurrence limits of \$2,000,000.00.

o. The City's policy of comprehensive general liability coverage was in effect on the date of Joshua Chang's death.

p. The City's comprehensive general liability coverage provides coverage to the City for the claims at issue in this case.

q. Under O.C.G.A. § 36-33-1, sovereign immunity is waived at least to the \$2,000,000.00 limits of the comprehensive general liability coverage.

**Defendant:** The Defendant expressly states that it has not yet stipulated any of the Plaintiff's proposed stipulations, but that it will continue to work with Plaintiffs' counsel to identify facts which can be stipulated prior to trial.

14. The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiffs or Defendants. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

The parties are working together to reach an agreed list of joint exhibits and/or stipulations to the authenticity and admissibility of certain exhibits.

- a. By Plaintiffs: See **Exhibit B**. Plaintiffs reserve all objections to Defendant's exhibit lists until they may be reviewed. Plaintiffs reserve the right to use demonstrative exhibits/aids at trial.
- b. By Defendant: See **Exhibit C**. The parties respectfully reserve the right to amend this list of documentary and physical evidence and may do so by giving reasonable notice, not less than five (5) business days prior to trial of any such additional documentary and physical evidence to opposing counsel. The parties reserve the right to object to any proposed documentary and/or physical evidence to be presented until counsel has had the opportunity to examine the same and until it has been properly tendered.

15. Special authorities relied upon by Plaintiffs relating to peculiar evidentiary or other legal questions are:

Defendant does not enjoy sovereign immunity in this case because Plaintiffs' claims arise from: (1) Defendant's breaches of its ministerial duties, O.C.G.A. § 36-33-1(b); (2) a defect in the public roads of Defendant's municipal street system where Defendant was negligent in constructing or maintaining same and had actual or constructive notice of the defect, O.C.G.A. § 32-4-93(a); and/or (3) Defendant's maintenance of a nuisance that constituted a danger to life or health, *e.g.*, *City of Thomasville v. Shank*, 263 Ga. 624 (1993). Georgia law has "recognized for more than a century" that a municipality has a "ministerial duty . . . to maintain city streets in a reasonably safe condition for travel," and in particular, § 32-4-93(a) codifies that "municipalities generally have a ministerial duty to keep their streets in repair, and they are liable for injuries resulting from defects after actual notice, or after the defect has existed for a sufficient length of time for notice to be inferred." *Mayor and Aldermen of City of Savannah v.*

*Herrera*, 343 Ga. App. 424, 428 (2017) (quotation marks omitted). According to O.C.G.A. § 32-1-3(24), (24)(A), the term “public road” used in § 32-4-93 is defined as “a highway, road, street . . . or other way that either is open to the public or has been acquired as right of way, and is intended to be used for enjoyment by the public and for the passage of vehicles . . . , including but not limited to . . . [s]urface, shoulders, and sides.”

Furthermore, even if Defendant would otherwise be entitled to assert sovereign immunity as to any claim in this action, it admits it has waived that immunity up to \$2,000,000.00 by purchasing liability coverage in that amount that covers Plaintiffs’ claims. O.C.G.A. § 36-33-1(a); *Gilbert v. Richardson*, 264 Ga. 744 (1994); *CSX Transp., Inc. v. City of Garden City*, 277 Ga. 248 (2003).

Plaintiffs incorporate by reference the legal authorities upon which they relied in their response to Defendant’s Motion for Summary Judgment.

Finally, Defendant is not entitled to use apportionment of fault to nonparties to reduce its liability in this single-defendant case. *Alston & Bird, LLP v. Hatcher Management Holdings, LLC*, 312 Ga. 350 (2021).

Plaintiffs do not anticipate any additional evidentiary or other legal issues other than those to be addressed in Plaintiffs’ motions in limine. Plaintiffs reserve the right to respond to motions in limine or other arguments or authorities submitted by the Defendants.

16. Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows:

1. O.C.G.A. § 51-12-33. Apportionment of damages in actions against more than one person according to percentage.
2. *Smith v. City of Roswell*, 361 Ga. App. 853 (2021).

3. O.C.G.A. § 34-4-93.
4. *Vidalia v. Brown*, 237 Ga. App. 831 (1999).
5. *Riggins v. City of St. Marys*, 264 Ga. App. 95 (2003).
6. *Kicklighter v. Savannah Transit Authority*, 167 Ga. App. 528 (1983).
7. *City of Atlanta v. Mitcham*, 296 Ga. 576 (2015).

The Defendant contends *Smith v. City of Roswell*, 361 Ga. App. 853 (2021), controls the analysis of this case. In *Smith*, the plaintiffs filed a wrongful death suit against the City of Roswell and other defendants alleging the mailboxes proximately caused the driver's and the passenger's death and that Roswell failed to remove the mailboxes which was a breach of a ministerial function. Roswell filed a motion to dismiss on the grounds the plaintiffs had failed to prove a waiver of the city's sovereign immunity. In addressing the issue, the Court of Appeals noted the two exceptions to sovereign immunity.

The Georgia Court of Appeals held the City of Roswell did not have a ministerial duty to remove two mailboxes where two people died in a crash when their vehicle left the roadway and collided with the mailboxes and that it was not negligent in failing to remove the mailboxes. The Court of Appeals addressed the very same issue at hand which was "whether the mailboxes constitute[d as] defects in the public roads pursuant to O.C.G.A. § 32-4-93(a)." *Id.* at 858.

The Court of Appeals reviewed *Mayor and Aldermen of the City of Savannah v. Herrera*, 343 Ga. App. 424 (2017) and *Kicklighter v. Savannah Transit Auth.*, 167 Ga. App. 528 (1983) for guidance. In *Herrera*, the Court of appeals noted there was an issue of fact as to "whether trees that were adjacent to the street obstructed the view of oncoming traffic such that it was a defect pursuant to O.C.G.A. § 32-4-93." *Id.* at 858. A deeper review of *Herrera* reveals that nearly ten years prior to the accident the director of the City's traffic department reported to the city that

several trees impaired the driver's view of the intersection and recommended the removal of the obstructing trees, that three years before the accident another person was involved in a car accident and the police report indicated the trees blocked the driver's line of sight of intersection, and seven months prior to the accident, an anonymous caller notified the city of the trees and other vegetation obstructing the view of the intersection. *Herrera*, 343 Ga. App. at 431. The Court determined in *Herrera* there was an issue of fact as to the city's notice of the defect.

In *Kicklighter*, the Court discussed whether there was an issue of fact as to "whether a power pole located six inches from the curb line of the street constituted a defect after a bus passenger's arm, which was propped in an open bus window, became wedged between the bus and a power pole as the bus traveled down the road." The Court noted that in *Kicklighter*, "the wheels on the bus never left the paved portion of the road and stayed within the curb, and that the bus was going forward when the accident occurred." *Smith*, 361 Ga. App. at 858 (citing *Kicklighter*, 167 Ga. App. at 529).

In *Smith*, the plaintiffs pled the vehicle "left the roadway" prior to colliding with the mailboxes, but, through their expert witness averred that the mailboxes encroached upon the right-of-way. *Id.* at 858-59. This Court disagreed, holding indisputably the mailboxes were not in or on the road as the vehicle left the roadway prior to the collision and applied analysis for objects that were adjacent to the road. *Id.* at 859.

The Court further disagreed with the plaintiffs' argument that the "rules and regulations from the United States Postal Service, the Georgia Department of Transportation, and the City of Roswell" created a ministerial duty to remove the mailboxes. *Id.* Presumably, the Court reviewed the cited rules, regulations, and city ordinances, and found that they do not impose a ministerial duty on the City to remove the mailboxes. Thus, where a municipal corporation is not required by

statute to perform an act, they may not be held liable for exercising their discretion in failing to perform the act.” *Id.* (citing O.C.G.A. § 36-33-2).

The Court held municipalities do not “have a ministerial duty to keep an area next to a road safe from defects when the defects do not impede travel on the road.” *Smith*, 361 Ga. App. at 859. Furthermore, there was no breach of duty of curing any defects in a roadway when the driver of the vehicle had to leave the roadway to come into contact with the alleged defect. *Id.* (citing *City of Vidalia v. Brown*, 237 Ga. App. 831 (1999) (hole in grassy area, but within road “right-of-way,” was not a defect for which the city was liable)).

The Plaintiffs in this case stand in the exact same position as the plaintiffs in *Smith* and this case should be dismissed. However, to the extent there is GIRMA coverage, any judgment awarded to the Plaintiffs should be reduced to the amount of coverage afforded as the City is entitled to sovereign immunity.

To the extent any duty was owed to the Plaintiff, it was an licensee. The only duty owed to a licensee was a duty to not injure the claimant willfully and wantonly. “Willful conduct is based on an actual intention to do harm or inflict injury[;]” whereas, wanton conduct has been described as that “which is so reckless or so charged with indifference to the consequences as to be the equivalent in spirit to actual intent.” *Id.* (citations omitted). Plaintiffs must

show that the defendant willfully and wantonly injured [her]. As it is said: An owner owes to a licensee no duty as to the condition of the premises save that [it] should not knowingly let [the claimant] run upon a hidden peril or willfully cause [the claimant] harm. To the licensee, as to the trespasser, no duty arises of keeping the usual condition of the premises up to any given standard of safety, except that they must not contain pitfalls, man-traps, and things of that character.

*Francis v. Haygood Contracting*, 199 Ga. App. 74, 75 (1991). An owner does not owe licensee a duty to inspect the premises to discover dangerous conditions of which the owner did not yet have actual knowledge and “where a licensee has equal knowledge of the dangerous condition or the

risks involved, there is no willful or wanton action on the part of the respective premise owner, manager, or tenant, and there is no liability to the licensee.” *Mut. Life Ins. Co. v. Churchwell*, 221 Ga. App. 312, 314 (1996).

There is no evidence to support a finding the City acted willfully or wantonly in wanting to injure Chang. The planter was not a mantrap or pitfall. It was open to see clearly on the approach, assuming the driver was mindful of his surroundings.

17. All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18. The testimony of the following persons may be introduced by depositions:

**By Plaintiffs:**

- a. John Chang
- b. Robert Drewry
- c. Matt Fallstrom
- d. Charles Fannon, individually
- e. The City of Milton, through its O.C.G.A. § 9-11-30(b)(6) representative  
Charles Fannon
- f. Kelly Kennett
- g. Sara Leaders, individually
- h. The City of Milton, through its O.C.G.A. § 9-11-30(b)(6) representative Sara  
Leaders
- i. Carter Lucas
- j. Thomas Lyden
- k. Roddy Motes

- l. Frederick Raffa
- m. Jared Richardson
- n. D. Wayne Smith
- o. Rebecca Zhu

Plaintiffs reserve the right to take depositions of any person(s) for the preservation of evidence at trial. Plaintiffs may introduce the deposition of any witness taken in this case who is not available for trial.

**By Defendant:** The testimony of D. Wayne Smith and Charles Fannon may be introduced through prior deposition due to both being unavailable for trial. In the event either party intends to introduce any testimony by way of deposition at the time of trial, the opposing party and their counsel reserve the right to call any objections to the questions or arguments in the depositions to the attention of the Court prior to the reading of the deposition at the time of trial.

The Defendant incorporates any deposition which the Plaintiffs have identified that may be used at trial.

19. The following are lists of witnesses the
  - a. Plaintiff will have present at trial: **Rebecca Zhu and John Chang.**
  - b. Plaintiff may have present at trial: **See Exhibit D.**
  - c. Defendant will have present at trial: **None.**
  - d. Defendant may have present at trial:
    1. Sara Leaders.
    2. Roddy Motes.
    3. Carter Lucas.

4. Matthew Fallstrom
5. Joseph Daniel Ivey.
6. Samuel Benjamin Ivey.
7. Representative of the George Hoyle Ivey, Jr. Dynasty Trust.
8. Any witness for the purpose of impeachment and/or rebuttal.
9. Any witness for the purpose of authenticating documents.
10. Any person listed in this pretrial order.
11. Any person who was deposed in this litigation.
12. Any person identified in discovery.

Opposing counsel may rely on representation that the designated party will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

**By Plaintiffs:** Plaintiffs object to the supplementation of Defendant's witness list with any individual who was not disclosed in discovery.

**By Defendant:** The parties respectfully reserve the right to supplement this list of witnesses and may do so by giving reasonable written notice, not less than five (5) business days prior to trial, of any such additional witnesses to opposing counsel.

20. The form of all possible verdicts to be considered by the jury are as follows:

**By Plaintiffs:** See Exhibit E.

**By Defendant:**

### **VERDICT**

We, the Jury, in the above styled action find as follows:

1. \_\_\_\_\_ We, the Jury, find in favor of Plaintiff and award the following damages:

\$ \_\_\_\_\_

The jury apportions \_\_\_\_\_ % of the fault to the Plaintiff.

The jury apportions \_\_\_\_\_ % of the fault to the Defendant.

OR

2. \_\_\_\_\_ We, the Jury find in favor of Defendant.

SO SAY WE ALL, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
PRINTED NAME

21. Miscellaneous:

a. The possibilities of settling the case are:

**Plaintiffs:** unlikely.

**Defendant:** negligible.

b. The parties want the case reported.

c. The cost of take-down will be split equally among the parties.

d. Other matters: The parties consent pursuant to USCR 9.1(B) that witnesses may be called to testify live via Zoom or similar videoconferencing technology. Each party bears the risk of a technological failure during their/its witness's videoconferenced testimony.

22. The parties reserve the right to present and argue their objections herein to any and all parts of the Pre-Trial Order.

It is hereby ordered that the foregoing, including the attachments thereto, constitute the CONSOLIDATED PRETRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

This \_\_\_ day of \_\_\_\_\_, 2023.

---

Hon. Jane Morrison  
State Court of Fulton County

Submitted by:

/s/ Jed D. Manton

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*Attorney for Defendant*

EXHIBIT A

TO BE SUPPLEMENTED UPON AGREEMENT OF THE  
PARTIES

## CHANG V. CITY OF MILTON PLAINTIFFS' EXHIBIT LIST

Ex. No.	Description	Bates No.	LTS No.	Offered	Admitted
<b>A. CASE DOCUMENTS</b>					
P001	Alpharetta Police Dept Event Report 11.19.16				
P002	Alpharetta Public Safety E911 Communications 11.19.16				
P003	Andrew Fox 911 call				
P004	Death Certificate				
<b>B. ROADWAY MANUALS</b>					
P005	AASHTO Roadside Design Guide 3rd Ed. 2006				
P006	AASHTO Roadside Design Guide 4th Ed. 2011				
P007	A Policy on Geometric Design of Highways and Streets 6th Ed. 2011				
P008	AASHTO Green Book 2004				
<b>C. O.C.G.A. § 24-8-803(6) MEDICAL RECORDS including all scans/images</b>					
P009	Fulton Co. Medical Examiner Report	JCHANG000042-000049			
P010	Toxicology Report	JCHANG000054-000058			
P011	Scene Photos - full size				
<b>D. PHOTOGRAPHS</b>					
P012	Photos of Joshua				
P013	Josh's Speech at Woodstock High School				
P014	Fishing Video 1				
P015	Fishing Video 2				
P016	Photo at Manuel's Tavern 11.19.16				
P017	Photo of Planter				
P018	Google Earth Photo				
P019	Photo of Planter - Damaged				
P020	Milton Police Department Photos				
P021	Photos of Accident Scene				
P022	Overhead Ortho Rectified from Satellite				
P023	Scene Overhead High Res Ortho				
P024	West Approach Video				
<b>E. MISCELLANEOUS</b>					
P025	Contract The Simon Law Firm - John Chang				

<b>P026</b>	Contract The Simon Law Firm - Rebecca Zhu				
<b>P027</b>	Addendum to Contract For Legal Services				
<b>P028</b>	Cherokee County Letters of Administration and Order Appointing Administrator 6.28.2019				
<b>P029</b>	Case Expenses (to be updated prior to trial)				
<b>P030</b>	Cell phone (physical)				
<b>P031</b>	1949 Mortality Table				
<b>P032</b>	Yale - Degree to Joshua Chang				
<b>P033</b>	Trustee Doc Production				
<b>P034</b>	Little River Farms Records 2				
<b>P035</b>	Little River Farms Records and Legal Description of 14505 Batesville Road				
<b>P036</b>	City Counsel Meeting 10.21.19 (video)				
<b>P037</b>	City Counsel Meeting Minutes 9.22.14				
<b>P038</b>	City of Milton Survey of Little River Farms 4.13.16 with Legal Discription of Little River Farms	JCHANG000010-12			
<b>P039</b>	Joshua Chang Text Message Records	JCHANG000065-000067			
<b>P040</b>	Rebecca Zhu Text Message Screenshot	JCHANG000069			
<b>P041</b>	Verizon Wireless Records Talk Activity				
<b>P042</b>	Verizon Phone Records (Chang)				
<b>P043</b>	Concrete Planter				
<b>P044</b>	Dashcam Video. Click AutoPlay				
<b>P045</b>	Police Report, Supplement Reports & Investigative File				
<b>F. DEFENDANTS PRODUCTION</b>					
<b>P046</b>	Fannon Report	COM000010-000027			
<b>P047</b>	Fry's Receipt	COM000028			
<b>P048</b>	Call Report	COM000036-000044			
<b>P049</b>	Report Fannon	COM000048-000084			
<b>P050</b>	Scene Photos	COM000100-000292			
<b>P051</b>	Insurance Policy	COM000305-000360			
<b>P052</b>	Work Orders	COM000395-000413			
<b>P053</b>	Accident Reports - Deer	COM000873-874, 877-878, 882-887, 920-922			
<b>P054</b>	Work Orders	COM000833-866			
<b>P055</b>	Map	COM000941			
<b>P056</b>	Maps	COM001344-1364			

<b>P057</b>	Executors' Deed	COM001781-1790			
<b>P058</b>	Survey	COM001943-1944			
<b>P059</b>	ROW Permit	COM001948			
<b>P060</b>	COM's Privilege Log				
<b>P061</b>	Batesville Utility 1-3				
<b>P062</b>	Webpage Image Capital Improvement Program 7-2-20				
<b>P063</b>	Webpage Image Roadway Management 12-15-20				
<b>P064</b>	Webpage Image ROW 12-15-20				
<b>P065</b>	Webpage Image Transportation 12-15-20				
<b>P066</b>	Amendment to 48-585 Memo	COM001965-1967			
<b>P067</b>	Draft Amendment 48-585	COM001973-1974			
<b>P068</b>	Mailboxes				
<b>P069</b>	Little River Farms	COM001975-1982			
<b>P070</b>	Survey - High Resolution	COM001983-1984			
<b>P071</b>	14MLT-RBP00117 Permit File				
<b>P072</b>	4611-2014 Permit File				
<b>P073</b>	4612-2014 Permit File				
<b>P074</b>	4878-2014 Permit File				
<b>P075</b>	Ord Continuation of FC Ords				
<b>P076</b>	Ord to Adopt Chapter 1				
<b>P077</b>	Ord to Adopt Chapter 16				
<b>P078</b>	ORDINANCE 19-10-408 (2019)				
<b>P079</b>	ORDINANCE NO 16 07 278 (2016)				
<b>P080</b>	ORDINANCE NO. 07-06-31 (2007)				
<b>P081</b>	ORDINANCE NO. 07-06-32 (2007)				
<b>P082</b>	Redline 2016 - Chapter 48-Streets Sidewalks and Other Public Places				
<b>P083</b>	Redline Sept 2011 Ch. 48 Sec. 5				
<b>P084</b>	U14-02				
<b>P085</b>	DVD Disc from City - Dash Cam video (click AUTOPLAY)				
<b>G. KELLY KENNETT EXPERT FILE - DEPOSITION PRODUCTION</b>					
<b>P086</b>	Aerial Photos				
<b>P087</b>	8757 PhotoModeler				
<b>P088</b>	Fulton County Board of Assessors Photos				
<b>P089</b>	Fulton County GIS Photos				
<b>P090</b>	Historical Aerials				

<b>P091</b>	Historical Street Views				
<b>P092</b>	NHTSA DOT HS 809 547 Rollover Phase 6-7				
<b>P093</b>	8744 Acura Crush Profile				
<b>P094</b>	8744 Acura Energy Analysis				
<b>P095</b>	8744 Crush Energy Analysis				
<b>P096</b>	8744 Deposition Summaries				
<b>P097</b>	8744 Dimensional Data				
<b>P098</b>	8744 Fence-Tree Impact Analysis				
<b>P099</b>	8744 Planter Location Calculations				
<b>P100</b>	8744 Planter Location Measurements				
<b>P101</b>	8744 Site Diagram				
<b>P102</b>	8744 Yaw Analysis				
<b>P103</b>	Chronological Imagery				
<b>P104</b>	Joshua Chang Text Message Records	JCHANG000065-000067			
<b>P105</b>	Rebecca Zhu Text Message Screenshot	JCHANG000069			
<b>P106</b>	Verizon Phone Records (Chang)				
<b>P107</b>	Inspection Photos - Drone				
<b>P108</b>	Inspection Photos - Nikon				
<b>P109</b>	8744 Site Inspection Notes				
<b>P110</b>	M_8744S				
<b>P111</b>	Property records from client				
<b>P112</b>	91HondaAccord-MVM				
<b>P113</b>	92 Honda Accord - side crush stiffness				
<b>P114</b>	1992 Acura Legend side crush stiffness				
<b>P115</b>	1992 Acura Vigor VIN - 01-22-N11B-4075				
<b>P116</b>	Acura_US Full Line_1992				
<b>P117</b>	CVS - 1992 Acura Vigor				
<b>P118</b>	JH4CC2653NC017267 Carfax Report				
<b>P119</b>	JH4CC2653NC017267 VIN Decode				
<b>P120</b>	NHTSA - SSF Trend Final				
<b>P121</b>	S&C - 1992 Acura Vigor				
<b>P122</b>	v01864R001				
<b>P123</b>	v01867R001				
<b>P124</b>	v01921R001				
<b>P125</b>	v01960R001				

<b>P126</b>	v02011R001				
<b>P127</b>	8744 Google Maps Directions				
<b>P128</b>	Docs referenced in depos re Permits				
<b>P129</b>	Trustee Doc Production				
<b>H. DEPOSITION EXHIBITS</b>					
<b>John Chang, Plaintiff 8.27.20</b>					
<b>Rebecca Zhu, Plaintiff 8.27.20</b>					
<b>Carter Lucas 8.28.20</b>					
<b>Robert Drewry 8.28.20</b>					
<b>Matt Fallstrom 1.22.21</b>					
<b>Rodman (Roddy) Motes 1.22.21</b>					
<b>Sara Leaders 1.22.21</b>					
<b>P130</b>	Ex 2 & 52 Memo to Honorable Maypr and City Counsel Members from Robert Drewry, Dir. Public Works re 48-585 Sept. 2019				
<b>Charles Fannon 1.29.21</b>					
<b>P131</b>	Ex 6 - Milton PD Incident Investigation Report w supplement				
<b>P132</b>	Ex 7 - Milton PD Motor Vehicle Crash Investigation Report				
<b>Sgt. Jared Richardson 3.30.21</b>					
<b>P133</b>	Ex 2 - Case Supplemental Report and Photo				
<b>Kelly Kennett, Plaintiffs' Expert 7.28.21</b>					
<b>P134</b>	D3 - CV of Kelly Kennett				
<b>Fred Raffa, Plaintiffs' Expert 8.31.21</b>					
<b>P135</b>	Ex 3 - CV of Fred Raffa				
<b>P136</b>	Ex 4 - Chang Report by Fred Raffa (TO BE UPDATED)				
<b>P137</b>	Ex 5 - Weekly Earnings Compound Growth Rates				
<b>P138</b>	Ex 6 - Employer Costs for Employee Compensation - Dec 2020				
<b>Thomas Lyden, Plaintiffs' Expert 9.3.21</b>					
<b>P139</b>	Ex 2 - Lyden CV				
<b>P140</b>	Ex 5 - Lyden Case Notes				
<b>P141</b>	Ex 7 - Reducing Liability for Local Highway Officials				
<b>P142</b>	Ex 8 - Short Term Responseive Maintenance Systems				
<b>P143</b>	Ex 9 - Functional Requirements of Highway Safety Features				
<b>P144</b>	Ex 10 - Roadside Deisgn Guide				
<b>D. Wayne Smith, Defendant's Expert 10.21.21</b>					
<b>Sara Leaders - 30(b)(6) 12.15.21</b>					

<b>P145</b>	Ex 1 - Ordinance No. 16-07-278				
<b>P146</b>	Ex 2 - 30(b)(6) Depo Notice				
<b>P147</b>	Ex 3 - AASHTO Policy 2004				
<b>P148</b>	Ex 4 - AASHTO Policy 2011				
<b>P149</b>	Ex 5 - Milton Utility Photos				
<b>P150</b>	Ex 6 - Scene Photos				
<b>P151</b>	Ex 7 - Work Orders re Deer and Debris				
<b>P152</b>	Ex 8 - Ordinance No. 07-06-31				
<b>P153</b>	Ex 9 - Ordinance No. 06-11-61				
<b>P154</b>	Ex 10 - Ordinance No. 07-06-32				
<b>P155</b>	Ex 11 - General Coverage Declarations				
<b>P156</b>	Ex 12 - LTS Designation Run Report				
<b>Charles Fannon - 30(b)(6) 2.3.22</b>					
<b>P157</b>	Ex 1 - Notice of Depo				
<b>P158</b>	Ex 2 - Photo of Site				
<b>I. DISCOVERY RESPONSES AND PLEADINGS</b>					
<b>P159</b>	Second Amended Complaint w Letters of Admin and Ante Litem				
<b>P160</b>	COM's Answer				
<b>P161</b>	COM's Response to 1st ROG and RPD				
<b>P162</b>	COM's Response to 1st RFA				
<b>P163</b>	COM's Supp and Restated Response to 1st ROG and RPD				
<b>P164</b>	COM's Response to 2nd RFA				
<b>P165</b>	COM's Responses to Pls.'s 2nd Rog				
<b>P166</b>	COM's Verification of Rogs				
<b>P167</b>	COM's Responses to Pls.'s 2nd RPD				
<b>P168</b>	COM's Response to 3rd Rogs				
<b>P169</b>	COM's Response to 3rd RPD				
<b>P170</b>	Michael Q. Kulla Affidavit				
<b>P171</b>	Corrective Trustees' Deed				
<b>P172</b>	Record Title Vesting & Legal Description Letter				
<b>P173</b>					
<b>P173</b>	FY 12 Reconstruction and Resurfacing				



11. All documents obtained by the Plaintiff or Defendant in response to any Open Records Request.
12. All documents obtained by Plaintiff or Defendant in discovery.
13. Any documents obtained from third parties via subpoena or request for production.
14. Any document produced by any party in this action.
15. Any document attached to any deposition.
16. Any deposition transcript from any deposition.
17. All pleadings.
18. Any video from any deposition.
19. Any demonstrative exhibits and aids.
20. Any document for purpose of impeachment.
21. Any document for purpose of rebuttal.
22. Any document produced or identified in discovery.
23. Any document listed or identified by another party.

Defendant reserves the right to supplement this list and provide Defendant with prompt notice of same. Pursuant to the Court's order, the Defendant will share its exhibits and prenumbered exhibits with Plaintiff's counsel prior to trial and will work to jointly identify exhibits and stipulate authenticity prior to trial.

**EXHIBIT D**  
**PLAINTIFFS' WITNESS LIST**

The Plaintiffs may call the following witnesses at trial:

1. John Chang, Plaintiff
2. Rebecca Zhu, Plaintiff
3. Officer Charles Fannon
4. Sergeant Jared Richardson
5. Andrew Fox, 911 caller
6. Jan Gorniak, D.O., medical examiner
7. Carter Lucas, City of Milton
8. Matt Fallstrom, City of Milton
9. Robert Drewry, City of Milton
10. Roddy Motes, City of Milton
11. Sara Leaders, City of Milton
12. Corporate representative(s) of The City of Milton
13. Kelly Kennett, Plaintiffs' expert
14. Thomas Lyden, Plaintiffs' expert
15. Frederick Raffa, Plaintiffs' expert
16. Joseph Daniel Ivey
17. Samuel Benjamin Ivey
18. Michael Kulla, Esq., title attorney
19. Jeff Gau, friend
20. Loretta Muise (Cameron), Cherokee High School (ret.)
21. Thomas J. Near, Yale University, friend
22. Aidan Kaplan, friend
23. Amanda Crego-Emley, friend
24. Benjamin Klempay, friend
25. Calvin Ebert, friend
26. Charlotte Finegold, friend
27. Layla Treuhaft-Ali, friend
28. Zachary Miller, friend
29. Any witness listed by any other party
30. Any witness identified in any party's discovery responses
31. Any witness needed for impeachment purposes
32. Any witness needed for rebuttal purposes
33. Any witness for the purpose of authenticating documents

**STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA**

JOHN CHANG and REBECCA ZHU, as  
surviving parents of JOSHUA CHANG,  
DECEASED, and REBECCA ZHU as Personal  
Representative/Administrator of the ESTATE  
OF JOSHUA CHANG,

Plaintiffs,

vs.

City of Milton,

Defendant.

CIVIL ACTION  
File No. 18EV004442

JURY TRIAL  
DEMANDED

**Plaintiffs' Proposed Verdict Form**

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*Attorneys for Plaintiffs*

## Preface

Plaintiffs John Chang and Rebecca Zhu submit this proposed verdict form as part of the Consolidated Pre-Trial Order. Consistent with Georgia Code Section 5-5-24 and other law regarding jury instructions and verdict forms, Plaintiffs submit this proposed verdict form without acquiescing to any of this Court's rulings made over Plaintiffs' objections and without waiving such objections; while maintaining their rights to supplement, modify, withdraw, or otherwise alter this proposed jury verdict as needed to address the evidence presented, additional rulings by the Court, and for other good cause; and while intending to further argue the merits of Plaintiffs' and Defendant City of Milton's proposed jury verdict forms at the charge conference and during the time for objections to charges. *See, e.g.*, O.C.G.A. § 5-5-24; *cf.* O.C.G.A. § 24-1-103.

Further, and consistent with Plaintiffs' objection to any attempt by Defendant City of Milton to use apportionment of fault to non-parties to reduce its liability in this single-defendant action, *see Alston & Bird, LLP v. Hatcher Management Holdings, LLC*, 312 Ga. 350 (2021); *Ga. CVS Pharmacy, LLC v. Carmichael*, 362 Ga.App. 59 (2021), *cert. granted* (Oct. 4, 2022), Plaintiffs also submit two proposed verdict forms. Plaintiffs submit one proposed verdict form in the event Defendant does not seek apportionment of fault to non-parties.

Plaintiffs also submit another proposed verdict form, however, in the event Defendant insists on seeking apportionment of fault to non-parties. To be absolutely clear, any *judgment* entered against Defendant must be entered solely based on Defendant's fault and reduced only by fault, if any, assessed to Joshua Chang. No judgment entered in this single-defendant case should reflect any reduction for non-party fault. But if Defendant insists on seeking apportionment of fault to nonparties, and in light of the fact that the defendant in *CVS* has raised arguments in the currently pending Supreme Court appeal about whether dismissed defendants count in determining whether

a case is a single-defendant case (though the Supreme Court did not grant certiorari on this issue), Plaintiffs would not object to allowing non-party fault to be considered by the jury on the *verdict* form.

By allowing the jury to consider non-party fault on the verdict form, but not used by the Court to reduce the judgment, this procedure would allow the Court and the parties to follow current binding precedent—which again prohibits reduction of the judgment for non-party fault—while still creating a factual record in the event the law changed. In other words, if the Supreme Court were to later hold in *CVS* or otherwise that previously dismissed defendants count in determining whether a case is a single-defendant case, then the judgment could simply be amended without the need for any kind of re-trial.

**STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA**

JOHN CHANG and REBECCA ZHU, as  
surviving parents of JOSHUA CHANG,  
DECEASED, and REBECCA ZHU as Personal  
Representative/Administrator of the ESTATE  
OF JOSHUA CHANG,

Plaintiffs,  
vs.

City of Milton,

Defendant.

CIVIL ACTION  
File No. 18EV004442

JURY TRIAL  
DEMANDED

**Jury Verdict**  
**[Without Non-Party Fault]**

1. **Liability**

Defendant City of Milton is liable to Plaintiffs John Chang and Rebecca Zhu.  
Circle your answer.

Yes                      or                      No

If the answer is yes, please complete the rest of the verdict.  
If the answer is no, please stop.

2. **Grounds For Liability**

The grounds for City of Milton's liability are one or more of the following.  
Circle your answers.

- City of Milton maintained a defect in the public roads of its municipal street system:

Yes                      or                      No

- City of Milton maintained a nuisance dangerous to life or health:

Yes                      or                      No

3. **Damages**

Write your answers in the blank lines.

For the full value of Joshua Chang's life:

\$ \_\_\_\_\_

For Joshua Chang's pain and suffering, as well as funeral and burial expenses:

\$ \_\_\_\_\_

4. **Percentages of Fault.**

Determine the fault of the City of Milton and, if any, the fault of Joshua Chang.  
Write your answers in the blank lines.

A. City of Milton

\_\_\_\_\_ %

B. Joshua Chang

\_\_\_\_\_ %

5. **Expenses of Litigation.**

City of Milton is liable for expenses of litigation because it acted in bad faith.  
Circle your answer.

Yes                      or                      No

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Foreperson on Behalf of Jury

**STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA**

JOHN CHANG and REBECCA ZHU, as  
surviving parents of JOSHUA CHANG,  
DECEASED, and REBECCA ZHU as Personal  
Representative/Administrator of the ESTATE  
OF JOSHUA CHANG,

Plaintiffs,  
vs.

City of Milton,

Defendant.

CIVIL ACTION  
File No. 18EV004442

JURY TRIAL  
DEMANDED

**Jury Verdict**

**[With Non-Party Fault And Subject To Plaintiffs' Objection]**

1. **Liability**

Defendant City of Milton is liable to Plaintiffs John Chang and Rebecca Zhu.  
Circle your answer.

Yes                      or                      No

If the answer is yes, please complete the rest of the verdict.  
If the answer is no, please stop.

2. **Grounds For Liability**

The grounds for City of Milton's liability are one or more of the following.  
Circle your answers.

- City of Milton maintained a defect in the public roads of its municipal street system:

Yes                      or                      No

- City of Milton maintained a nuisance dangerous to life or health:

Yes                      or                      No

3. **Damages**

Write your answers in the blank lines.

For the full value of Joshua Chang's life:

\$ \_\_\_\_\_

For Joshua Chang's pain and suffering, as well as funeral and burial expenses:

\$ \_\_\_\_\_

4. **Percentages of Fault.**

Determine the fault of the City of Milton and, if any, the fault of Joshua Chang and non-parties. Write your answers in the blank lines.

A. Defendant City of Milton

\_\_\_\_\_ %

B. Joshua Chang

\_\_\_\_\_ %

C. Non-Party LRF Milton, LLC

\_\_\_\_\_ %

D. Non-Parties Joseph Daniel Ivey & Samuel Benjamin Ivey, as Trustees of The George Hoyle Ivey, Jr. Dynasty Trust

\_\_\_\_\_ %

5. **Expenses of Litigation.**

City of Milton is liable for expenses of litigation because it acted in bad faith.  
Circle your answer.

Yes                      or                      No

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Foreperson on Behalf of Jury