

Colin P. King (Bar No. 1815)  
Lance L. Milne (Bar No. 14879)  
DEWSNUP KING OLSEN WOREL  
HAVAS MORTENSEN  
36 South State Street, Suite 2400  
Salt Lake City, UT 84111  
Telephone: (801) 533-0400  
Facsimile: (801) 363-4218  
[cking@dkowlaw.com](mailto:cking@dkowlaw.com)  
[lmilne@dkowlaw.com](mailto:lmilne@dkowlaw.com)  
*Attorneys for Plaintiff Mitcheal Sellen*

Sarah M. Wade (Bar No. 15477)  
**SMART SCHOFIELD SHORTER, P.C.**  
5320 South 900 East, Suite 120  
Salt Lake City, Utah 84117  
Telephone: (801) 747-0647  
Fax: (801) 747-1049  
[swade@utahlaw-smart.com](mailto:swade@utahlaw-smart.com)  
*Attorney for Schofield Plaintiffs*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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ESTATE OF JOSLYN NICOLE  
SPILSBURY SCHOFIELD, by and through  
its personal representative, and BRAD  
SCHOFIELD by and on behalf of minor child,  
L.S., heir of Joslyn Nicole Spilsbury  
Schofield; and  
MITCHEAL SELLEN,

Plaintiffs,

vs.

STARBUCKS CORPORATION;  
HOLLADAY CORNER, LLC; FIRST CITY  
INVESTORS, INC. d/b/a CHASEBROOK  
COMPANY; HIGH DEFINITIONS, INC.;  
HIGH DEFINITION SALES AND  
LEASING, LLC; 3660 OGDEN AVE,  
LLC; ANNES 1840, LLC; BRIDLE, LLC;  
CROMWELL 13829 SOUTH, LLC;

**AMENDED COMPLAINT  
AND JURY DEMAND**

**(TIER THREE)**

Case No. 200903485

Judge Royal Hansen

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HURRICANE 356 NORTH, LLC; MODENA HOLDINGS, LLC; STATE ROADHOUSE, LLC; WEST L. WALKER; JOHN DOE CORPORATIONS I-X; and JOHN DOES I-X,

Defendants.

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Plaintiffs, by and through counsel, hereby complain against the above-captioned Defendants and allege as follows:

**PARTIES**

1. Brad Schofield is an individual residing in Salt Lake County, state of Utah and is the natural parent and guardian of L.S., a minor child and the sole heir of Joslyn Nicole Spilsbury Schofield, he is also the personal representative of the Estate of Joslyn Nicole Spilsbury Schofield (“Schofield Plaintiffs”).

2. Mitcheal Sellen is an individual residing in Salt Lake County, state of Utah.

3. Brad Schofield, as the natural parent and guardian of L.S., a minor child and the sole heir of Joslyn Nicole Spilsbury Schofield, and as the personal representative of the Estate of Joslyn Nicole Spilsbury Schofield, and Mitcheal Sellen, collectively, shall be referred to as “Plaintiffs.”

4. Defendant Starbucks Corporation (“Starbucks”) is a corporation headquartered in the state of Washington and registered to do and is doing business in Utah as a foreign, for-profit corporation.

5. Defendant Holladay Corner, LLC (“Holladay Corner”) is a Utah limited liability company that is licensed to do and is doing business in the state of Utah, with its principal place of business located in Salt Lake County, Utah.

6. Defendant First City Investors, Inc., doing business as Chasebrook Company (“Chasebrook”) is a Utah corporation licensed to do and doing business in the state of Utah.

7. Defendant High Definitions, Inc. is a Utah corporation licensed to do and is doing business in the state of Utah, with its principal place of business located in Oakley, Utah.

8. Defendant High Definition Sales and Leasing, LLC is a Montana corporation doing business in Utah, with its principal place of business located in Oakley, Utah.

9. Defendant 3660 Ogden Ave, LLC is a limited liability company registered to do and is doing business in the state of Utah.

10. Defendant Annes 1840, LLC is a limited liability company registered to do and is doing business in the state of Utah.

11. Defendant Bridle, LLC is a limited liability company registered to do and is doing business in the state of Utah.

12. Defendant Cromwell 13829 South, LLC is a limited liability company registered to do and is doing business in the state of Utah.

13. Defendant Hurricane 356 North, LLC is a limited liability company registered to do and is doing business in the state of Utah.

14. Defendant Modena Holdings, LLC is a limited liability company registered to do and is doing business in the state of Utah.

15. State Roadhouse, LLC is a limited liability company registered to do and is doing business in the state of Utah.

16. Defendant West L. Walker is an individual who resides and does business in the state of Utah.

17. Defendants John Doe Corporations I-X are entities unknown to Plaintiffs at this time, who may have been involved in the ownership, construction, design, approval,

maintenance, alteration, placement, installation, inspection and/or planning of the subject hazardous outdoor seating and its surroundings or who may have been involved in the ownership or business related to the vehicle driven by Defendant West L. Walker.

18. Defendants John Does I-X are individuals, unknown to Plaintiffs at this time, who may have been involved in the ownership, construction, design, approval, maintenance, alteration, placement, installation, inspection and/or planning of the subject hazardous outdoor seating and its surroundings or who may have been involved in the ownership or business related to the vehicle driven by Defendant West L. Walker.

### **JURISDICTION AND VENUE**

19. The Court has jurisdiction over this matter pursuant to Utah Code Ann. 78B-3-205, 78A-5-101, and 78A-5-102.

20. Venue is properly placed before this Court pursuant to Utah Code Ann. 78B-3-307, in that the incident giving rise to this case occurred in Salt Lake County, state of Utah.

### **GENERAL ALLEGATIONS**

21. Prior to the incident which gives rise to this Complaint, Holladay Corner and/or Chasebrook purchased a commercial property at 4744 South Highland Drive in Millcreek, Utah (“the Property”).

22. The Property is situated as the end unit at the eastern most point of a strip mall, nearest to Highland Drive.

23. Holladay Corner and/or Chasebrook leased the Property to Starbucks for commercial use.

24. Starbucks placed outdoor seating (“Outdoor Seating”) on the sidewalk in front of its storefront on the Property.

25. At all times mentioned herein, Defendants Holladay Corner, Chasebrook, Starbucks, John Doe Corporations I-X, and John Does I-X, and each of them, owned, possessed, maintained, controlled, or managed the Outdoor Seating in front of Starbucks.

26. For years, the Outdoor Seating was maintained in an unsafe and dangerous manner, which created a substantially hazardous condition and foreseeable risk of injury to patrons who used the Outdoor Seating for its intended purpose.

27. No protective barriers existed between the Outdoor Seating and Highland Drive or the parking lot on the Property such that a vehicle could drive unimpeded into the Outdoor Seating area from Highland Drive or the adjacent parking lot, striking business patrons seated there.

28. On or about the morning of June 8, 2018, Joselyn Nicole Spilsbury Schofield (“Joslyn”) was a patron and a business invitee of Starbucks and was seated at a table in the Outdoor Seating area.

29. On the same morning, Defendant West L. Walker (“Mr. Walker”) was driving a Dodge Ram 1500 owned by High Definition Sales and Leasing, LLC near Highland Drive.

30. Upon information and belief, Mr. Walker was traveling that morning on business for one or more of his employers or companies, all named defendants herein: High Definitions, Inc.; High Definition Sales and Leasing, LLC; 3660 Ogden Ave, LLC; Annes 1840, LLC; Bridle, LLC; Cromwell 13829 South, LLC; Hurricane 356 North, LLC; Modena Holdings, LLC; and State Roadhouse, LLC.

31. Mr. Walker crossed all north and southbound lanes of Highland Drive and drove into the Outdoor Seating at Starbucks striking Joselyn and causing her to suffer severe head trauma, multiple fractures, internal bleeding, and ultimately death.

32. Plaintiff Mitcheal Sellen was also a patron and business invitee of the same Starbucks.

33. Mr. Walker's vehicle also struck Mitcheal, causing him to suffer substantial physical, mental, and emotional injuries, including, but not limited to broken bones, fractured vertebrae, fractured sacrum, lacerated organs, acute kidney injury, and internal bleeding, from which he continues to suffer.

34. Prior to June 8, 2018, other drivers had collided into Starbucks' buildings, injuring and killing Starbucks' patrons.

35. However, Starbucks permitted the hazardous Outdoor Seating to remain in use for invitees.

36. As a direct and proximate result of the hazardous Outdoor Seating and collision, Joslyn suffered premorbid fear, terror, pain and suffering before she died.

37. As a direct and proximate result of the hazardous Outdoor Seating and collision, Schofield Plaintiffs suffered economic and non-economic damages as a result of Joslyn's death, including but not limited to loss of love, society, care, and companionship, counsel, and support, extreme mental anguish and emotional pain and suffering, loss of enjoyment of life, loss of economic support, lost wages, loss of household services, loss of inheritance, and past medical, funeral, and burial expenses in amounts to be proven at trial.

38. As a direct and proximate result of the hazardous Outdoor Seating and collision, Plaintiff Mitcheal Sellen sustained serious physical, mental, and emotional injuries. Mitcheal continues to suffer from the effects of these injuries, including but not limited to paralysis, neuropathic pain, chronic pain, radiculopathy, hypotension, nerve injuries, impaired mobility, limitations on activities of daily living, depression, anxiety, and dysphagia. Due to these physical, mental, and emotional injuries, Mitcheal has suffered economic and non-economic damages in amounts to be proven at trial.

39. Whenever it is alleged that defendants were negligent, reckless or committed wrongful acts, such conduct was that of their respective employees, agents, representatives, and/or managers, which was done in the scope and duties of their employment with defendants, for which defendants are vicariously liable.

#### **FIRST CLAIM FOR RELIEF**

(Premises Liability – Starbucks, Holladay Corner, Chasebrook,  
John Doe Corporations I-X, and John Does I-X)

40. Plaintiffs hereby incorporate all paragraphs of this Complaint herein and further allege the following:

41. Defendants were the possessors of the premises on which the Outdoor Seating was located and held the Property open to the public for purposes connected to their businesses.

42. Joslyn and Mitcheal were invitees on the premises.

43. Defendants owned, possessed, created, maintained, controlled, designed, or managed the hazardous Outdoor Seating and knew of or by the exercise of reasonable care would have discovered the serious danger(s) presented by the Outdoor Seating.

44. Defendants realized or should have realized that the Outdoor Seating involved an unreasonable risk of harm to patrons, including to Joslyn and Mitcheal.

45. Defendants should have expected that Joslyn and Mitcheal would not discover or realize the dangerous condition presented by the Outdoor Seating and/or would fail to protect themselves from it.

46. Defendants owed Plaintiffs duties, even contractual and non-delegable duties to maintain a safe premises for business patrons and invitees. Defendants breached these duties and failed to exercise reasonable care to protect Joslyn and Mitcheal from the dangerous Outdoor Seating or to warn them of the danger.

47. Defendants' acts, omissions, and failures, both individually and collectively were a direct and proximate cause of Joselyn's death and Mitcheal's serious and permanent injuries and all economic and non-economic damages sustained by both Plaintiffs.

### **SECOND CLAIM FOR RELIEF**

(Negligence – Starbucks, Holladay Corner, Chasebrook,  
John Doe Corporations I-X, and John Does I-X)

48. Plaintiffs hereby incorporate all paragraphs of this Complaint herein and further allege the following:

49. In affirmatively creating, maintaining, controlling, designing or managing the Outdoor Seating, Defendants had a duty to act with reasonable care.

50. Defendants owed a duty to ensure that the Outdoor Seating was safe, according to building code, and not unreasonably dangerous.

51. Defendants owed contractual and/or non-delegable duties to others, including Joselyn and Mitcheal.

52. Defendants negligently failed to ensure that the Outdoor Seating was properly placed, reasonably protected, and according to building code.



53. Defendant breached their duties and were negligent in the design, creation, set up, management, inspection, and maintenance of the Outdoor Seating.

54. Defendants' acts, omissions, and failures were a direct and proximate cause of Joselyn's death and Plaintiffs' damages.

**THIRD CAUSE OF ACTION**  
(Negligence – West L. Walker)

55. Plaintiffs hereby incorporate all paragraphs of this Complaint herein and further allege the following:

56. Defendant West L. Walker owed a duty of reasonable care as an operator of a motor vehicle to exercise reasonable care while operating the vehicle.

57. Defendant West L. Walker breached this duty of care and acted negligently in the following ways, without limitation:

- a. Operating the motor vehicle without use of prescribed anti-epileptics and other prescribed medications;
- b. Failing to discontinue use and operation of the vehicle at the earliest signs of an oncoming medical episode;
- c. Failing to use reasonable care in the operation and use of the vehicle;
- d. Failing to keep the vehicle under reasonable control so as to avoid danger and injuring others;
- e. Traveling at an unsafe and excessive speed;
- f. Failing to adequately slow his vehicle so as to avoid striking and injuring others;
- g. Driving the vehicle off of a designated roadway for motor traffic and onto a sidewalk;

- h. Any other acts and/or omissions that may later be discovered.
- 58. Defendant West L. Walker's breach of his duty of care constitutes negligence.
- 59. As a direct and proximate result of Defendant West L. Walker's negligent and wrongful conduct, Joselyn was killed and Mitcheal was seriously injured resulting in the damages to both Plaintiffs described herein.

**FOURTH CAUSE OF ACTION**  
(Strict Liability – West L. Walker)

60. Plaintiffs hereby incorporate all paragraphs of this Complaint herein and further allege the following:

61. Defendant West L. Walker is liable to Plaintiffs under a theory of strict liability for suffering from a medical event while driving.

62. As a direct and proximate result of Defendant West L. Walker's conduct, Joselyn was killed and Mitcheal was seriously injured resulting in the damages to both Plaintiffs described herein.

**FIFTH CLAIM FOR RELIEF**

*(Respondeat Superior – High Definitions, Inc., High Definitions Sales and Leasing, LLC, 3660 Ogden Ave, LLC, Annes 1840, LLC, Bridle, LLC, Cromwell 13829 South, LLC, Hurricane 356 North, LLC, Modena Holdings, LLC, State Roadhouse, LLC, John Doe Corporations I-X, and John Does I-X)*

63. Plaintiffs hereby incorporate all paragraphs of this Complaint herein and further allege the following:

64. Defendant West L. Walker was an employee, agent, permissive user, or other individual acting under the direction and control of Defendants and was operating the vehicle he was driving within the course and scope of his employment, agency, permitted use, and/or direction and control of the same.

65. As previously described, Defendant West L. Walker was negligent in the operation of the vehicle, and defendant Walker's negligence was a direct and proximate cause of the death of Joslyn and serious permanent injuries of Mitcheal and all resulting damages of the Plaintiffs.

66. Defendants are vicariously liable for the negligent and wrongful conduct of Defendant West Walker under the doctrine of *respondeat superior* and are therefore also liable for the damages sustained by Joslyn and by Plaintiffs.

#### **SIXTH CLAIM FOR RELIEF**

(Negligence – High Definitions, Inc., High Definitions Sales and Leasing, LLC, 3660 Ogden Ave, LLC, Annes 1840, LLC, Bridle, LLC, Cromwell 13829 South, LLC, Hurricane 356 North, LLC, Modena Holdings, LLC, State Roadhouse, LLC, West L. Walker, John Doe Corporations I-X, and John Does I-X)

67. Plaintiffs hereby incorporate all paragraphs of this Complaint herein and further allege the following:

68. Defendants owed a duty to exercise reasonable care in the hiring, training, retention, monitoring, entrustment of vehicles to, and/or supervision of those individuals operating its vehicles and/or operating vehicles for its business purposes, including Defendant West Walker.

69. Defendants breached their duty of care by acting negligently in the hiring, training, retention, monitoring, retaining, entrustment of vehicles to, and/or supervision of those individuals driving its vehicles, including Defendant West Walker, and for any other acts and/or omissions that may later be discovered.

70. Defendants breached their duty of care and were negligent.

71. As a direct and proximate result of Defendants' negligence, Joselyn suffered an untimely and unfortunate death, Mitcheal sustained serious and permanent injuries, and Plaintiffs sustained damages as described herein.

**SEVENTH CLAIM FOR RELIEF**

(Wrongful Death – Starbucks, Holladay Corner, Chasebrook, High Definitions, Inc., High Definitions Sales and Leasing, LLC, 3660 Ogden Ave, LLC, Annes 1840, LLC, Bridle, LLC, Cromwell 13829 South, LLC, Hurricane 356 North, LLC, Modena Holdings, LLC, State Roadhouse, LLC, West L. Walker, John Doe Corporations I-X, and John Does I-X)

72. Plaintiff Brad Schofield, by and on behalf of minor child, L.S., heir of Joslyn Nicole Spilsbury Schofield hereby incorporates all paragraphs of this Complaint herein and further alleges the following:

73. As a result of Defendants' acts, omissions, and liability as described herein, Joslyn suffered injuries which resulted in her death.

74. Joslyn's death was the proximate cause of Plaintiffs' damages, described herein.

**EIGHTH CLAIM FOR RELIEF**

(Negligence Per Se – West L. Walker)

75. Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as though fully set forth herein.

76. Defendant Walker, operated his vehicle in a negligent, careless and unlawful manner, in violation of applicable statutes, *see e.g.*, Title 41 Chapter 6a of the Utah Code, local ordinances, codes, standards, customs and rules of the road, including without limitation:

- a. Failing to operate a motor vehicle in a proper lane of travel;
- b. Failing to operate a motor vehicle in a safe and prudent manner;
- c. Failing to maintain a safe speed and/or obey the speed limit for the roadway;

- d. In operating a motor vehicle in a designated pedestrian area or other non-roadway area;
- e. In operating a motor vehicle in a careless, wrongful, dangerous and/or reckless manner; and
- f. Other negligent acts specifically prohibited/identified by applicable laws, codes, standards, customs and rules that discovery may reveal.

77. Defendant Walker's negligent and wrongful conduct violated applicable statutes, regulations, ordinances and codes under Utah law.

78. As a direct and proximate result of Defendant Walker's negligent and wrongful conduct in violation of Utah law, Joselyn suffered injuries and untimely and unfortunate death, and Mitcheal suffered serious and permanent injuries, harms, losses, and damages.

### **CAUSATION**

79. Plaintiffs reallege and incorporate all paragraphs of this Complaint herein and further allege the following:

80. The acts, omissions, and liability described above was the direct, cause-in-fact, and proximate cause of severe injury and death to Joslyn.

81. The acts, omissions, and liability described above was the direct, cause-in-fact, and proximate cause of severe and permanent injury to Mitcheal.

### **PRAYER**

WHEREFORE, Plaintiffs pray for a judgment against Defendants in an amount to be determined by the trier of fact for the following damages:

- a. That judgment be entered in favor of Plaintiffs and against Defendants;

- b. That Plaintiffs be awarded all special and general damages to be proven at trial;
- c. That Plaintiff Joselyn Schofield, her estate and her surviving heir be awarded survival and wrongful death damages provided by the laws of the state of Utah and the United States of America in an amount to be alleged and proven at trial;
- d. For past, present, and future economic damages in an amount to be alleged and proven at trial;
- e. For past, present, and future non-economic damages in an amount to be alleged and proven at trial;
- f. For pre-morbid fear, terror, and pain and suffering;
- g. Punitive damages to the extend allowed by law and by the facts determined by the trier of fact;
- h. That Plaintiffs be awarded the costs of suit incurred herein;
- i. For pre-judgment and post-judgment interest, and;
- j. That Plaintiffs be awarded any further legal and/or equitable relief deemed just and proper by the Court.

#### **TIER DESIGNATION**

Pursuant to the Utah Rules of Civil Procedure 8(a) and 26(c)(3), this matter falls under Tier Three and should be permitted discovery pursuant to Tier Three.

#### **JURY DEMAND**

Plaintiffs demanded a trial by jury of all above issues and allegations and previously tendered the applicable jury fee.

DATED this 11th day of June, 2020.

**SMART SCHOFIELD SHORTER, P.C.**

/s/ Sarah M. Wade

Sarah M. Wade

*Attorney for Schofield Plaintiffs*

DEWSNUP KING OLSEN WOREL

HAVAS & MORTENSEN

/s/ Lance L. Milne

Lance L. Milne

Colin P. King

*Attorneys for Plaintiff Mitchael Sellen*

Plaintiff Mitchael Sellen's Address:

c/o DEWSNUP KING OLSEN WOREL  
HAVAS & MORTENSEN  
36 South State Street, Suite 2400  
Salt Lake City, Utah 84111-0024

Schofield Plaintiffs' Addresses:

c/o SMART SCHOFIELD SHORTER, P.C.  
5320 S. 900 E., Suite 120  
Salt Lake City, Utah 84117