

**IN THE SUPERIOR COURT OF PAULDING COUNTY  
STATE OF GEORGIA**

██████████ and ██████████  
██████████, as the legal guardians of  
██████████, a minor,

*Plaintiff,*

v.

██████████ as the legal guardian of and  
on behalf of, ██████████, a minor,

*Defendant.*

Civil Action No.: ██████████

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**PLAINTIFFS' REPLY IN SUPPORT OF THEIR EMERGENCY MOTION TO  
COMPEL A FORENSIC CELL PHONE INSPECTION**

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**1. Summary of Argument**

Plaintiff seeks an “full file system extraction” of ██████████ cell phone because it will show whether she was using her phone in the moments leading up to this collision.

██████████ crashed into ██████████ in broad daylight while ██████████ was more than halfway through a crosswalk. ██████████ Dep., 15:1-12 (Ex. A). Contrary to Defendant’s representations, the evidence shows that ██████████ had been sending and reading text messages in the minutes before the wreck. *See* Adv. Logical Download (Ex. B). ██████████ admitted to the same in her deposition. ██████████ Dep., 48:18-21, 49:4-17, 51:11-24. The download Plaintiff seeks will show whether ██████████ was using the phone at the time of the collision or in the seconds leading up to it. That is discoverable.

**2. The evidence shows that ██████████ had been using her phone on the trip.**

The evidence shows that [REDACTED] was texting while driving during the trip that ended in the subject wreck. The initial cell phone download shows four text messages sent, and three text messages received, while [REDACTED] was driving on that trip. See Adv. Logical Download.

1/11/2022 3:18:57 PM(UTC-5)	From: [REDACTED] (owner) To: [REDACTED] To: [REDACTED] isabella (owner) To: [REDACTED] To: [REDACTED] isabella (owner)	do you know anyone named [REDACTED]
1/11/2022 3:19:10 PM(UTC-5)	From: [REDACTED] (owner) To: [REDACTED] To: [REDACTED] (owner) To: [REDACTED] To: [REDACTED] (owner)	just curious
1/11/2022 3:19:31 PM(UTC-5)	From: [REDACTED] To: [REDACTED] (owner), To: [REDACTED] (owner) To: [REDACTED] (owner), To: [REDACTED] (owner)	Yes she is in my class
1/11/2022 3:19:39 PM(UTC-5)	From: [REDACTED] (owner) To: [REDACTED] To: [REDACTED] [REDACTED] (owner) To: [REDACTED] To: [REDACTED] [REDACTED] (owner)	i love her
1/11/2022 3:19:45 PM(UTC-5)	From: [REDACTED] (owner) To: [REDACTED] To: [REDACTED] [REDACTED] (owner) To: [REDACTED] To: [REDACTED] [REDACTED] (owner)	does she talk a lot
1/11/2022 3:28:16 PM(UTC-5)	From: [REDACTED] To: [REDACTED] (owner), To: [REDACTED] To: [REDACTED] [REDACTED] To: [REDACTED] To: [REDACTED] To: [REDACTED] (owner) To: [REDACTED] (owner), To: [REDACTED] To: [REDACTED] [REDACTED] To: [REDACTED] To: [REDACTED] To: [REDACTED] To: [REDACTED] (owner)	At Sams- do you need anything
1/11/2022 3:29:30 PM(UTC-5)	From: [REDACTED] To: [REDACTED] (owner), To: [REDACTED] To: [REDACTED] [REDACTED] To: [REDACTED] To: [REDACTED] To: [REDACTED] (owner) To: [REDACTED] (owner), To: [REDACTED] To: [REDACTED] [REDACTED] To: [REDACTED] To: [REDACTED] To: [REDACTED] To: [REDACTED] (owner)	Big Doritos bags with Nacho Cool Ranch and purple bag

During her deposition, [REDACTED] admitted to sending and reading text messages in the time leading up to the wreck. [REDACTED] Dep., 48:18-21, 49:4-17, 51:11-24. The only text messages [REDACTED] did *not* remember reading were two text messages that she received within minutes of the wreck.

█████ Dep., 51:25-52:14, 54:4-8. Importantly, the initial download shows when █████ *received* those messages but it does not show when she *read* them.

**3. The “full file system extraction” will provide more detail.**

Unlike the initial download, the full file system extraction will show exactly when █████ opened and read text messages or was otherwise using her phone instead of focusing on driving. For example, the full file system extraction will show exactly when █████ opened text messages that she had already received; when she typed text messages that were never sent; when she used an iPhone app like Instagram; or when she browsed the internet. Those details are important because scrolling through Instagram would have been just as distracting as reading or typing a text message.

The initial download with Sullivan Strickler, unbeknownst to the parties when they agreed to it, did not provide that level of detail. Unless the Court authorizes a full file system extraction, we will never know whether █████ was reading a text message, scrolling Instagram, or shopping on Amazon at the time of this collision.

**4. The full file system extraction is not intrusive.**

This is not an invasion of privacy. Plaintiffs seek only the data from the day of the collision, not a fishing expedition into █████ private life. Moreover, Plaintiffs already have the forensic download to which Defendants already consented. In other words, Defendants have already consented to a download that revealed the *substantive* data on █████ phone. The only additional data that the full file system extraction will reveal is *when* █████ interacted with her phone. There is no good reason for Defendants to permit a download that revealed the *substance*

of the phone's files, but then oppose a download that will show *when* [REDACTED] was using it. The "when" is what really matters.

A full file system extraction will not impose an "undue burden" on [REDACTED]. [REDACTED] will only have to be without her phone for five to seven days. Plaintiffs will pay the entire cost of the full file system extraction, and have offered to purchase a temporary phone so that [REDACTED] is not without a phone during the limited time it takes to perform the download. The hardship placed upon [REDACTED] to go without her phone for that limited period pales in comparison to the burden placed upon the [REDACTED] family, which is that [REDACTED] will have the mental age of a child for the duration of her life.

**5. This is an emergency.**

Plaintiffs ask the Court for permission to conduct a full file system extraction as soon as possible because the cell phone data could be overwritten at any moment, [REDACTED] could lose her phone at any time, or the phone could be inadvertently destroyed by some unforeseen means. Before contacting the Court, Plaintiffs sought Defendants' consent to conduct the full file system extraction, but Defendants refused. As Defendant's brief makes clear, Defendant still refuses. Plaintiffs respectfully ask the Court to decide the issue on an emergency basis before the data is lost forever.

Respectfully submitted this 15<sup>th</sup> day of August 2022.

BUTLER KAHN

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this date, I have served the foregoing ***PLAINTIFFS'***  
***REPLY IN SUPPORT OF THEIR EMERGENCY MOTION TO COMPEL A FORENSIC***  
***CELL PHONE INSPECTION*** upon all parties to this matter via electronic mail as follows:

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This 15<sup>th</sup> day of August 2022.

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