



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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CROSS COMPLAINT

WILLIAM K. FLINT et al VS. STRAVA, INC.

001C03786602

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**
13

14 WILLIAM K. FLINT I and
KATHLEEN B. FLINT
15 Plaintiffs,
16

17 v.

18 STRAVA, INC.; and DOES 1 through
19 20, inclusive,
Defendant.

20 STRAVA, INC., a corporation,
21 Cross-
22 Complainant,
23

24 v.

24 WILLIAM K. FLINT I AS
ADMINISTRATOR FOR THE
25 ESTATE OF WILLIAM K. FLINT II,
26 Cross-Defendant.
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FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO
OCT 01 2012
CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

Case No. CGC-12-521659

**CROSS-COMPLAINT OF STRAVA,
INC. FOR:**

- (1) Contractual Indemnification
- (2) Equitable Indemnification
- (3) Apportionment of Fault
- (4) Declaratory Relief

1 Defendant/Cross-Complainant Strava, Inc. (“Strava”), for its causes of action
2 against Cross-Defendant William K. Flint I as the Administrator of the Estate of William
3 K. Flint II (the “Estate”) alleges as follows:

4 **THE PARTIES**

5 1. Cross-Complainant Strava, Inc. is a Delaware corporation with its principal
6 place of business in San Francisco, California.

7 2. Cross-Defendant Estate of William K. Flint II is an estate existing in the
8 State of California. William K. Flint I is the Administrator of the Estate.

9 **JURISDICTION**

10 3. This court is the proper court because Cross-Defendant resides in its
11 jurisdictional area. This action is an unlimited civil case. It is not reclassified as
12 unlimited by this cross-complaint.

13 4. Strava is excused from complying with a clams statute because it did not
14 have a cause of action against the Estate until after Plaintiffs William K. Flint I and
15 Kathleen B. Flint (the intestate heirs to the Estate) filed their complaint against Strava on
16 June 18, 2012 (the “principal action”). Thus, Strava did not have a cause of action when
17 William K. Flint II died on June 19, 2010, nor when the probate court issued its order
18 approving final distribution of the Estate on March 9, 2012.

19 **FACTUAL ALLEGATIONS**

20 5. Strava makes web and mobile applications (“apps”) for cyclists, runners
21 and other athletes. These apps allow users to record their personal fitness data and, if they
22 chose to do so, share and compare each other’s personal fitness data. They also serve as a
23 training tool that allows users to record routes, examine their performances, and track
24 milestones. Strava is free to use but also offers a premium membership that provides
25 additional tools to users who pay either a monthly or yearly subscription.

26 6. William K. Flint II became a member of Strava on October 7, 2009. In
27 order to become a user, he electronically signed and agreed to Strava’s Terms and
28

1 Conditions (the “Terms and Conditions”), a true and correct copy of the Terms and
2 Conditions in effect at the time Mr. Flint joined Strava is attached hereto as Exhibit A.

3 7. Among other provisions, the Terms and Conditions contain a section titled
4 “Indemnity” under which William K. Flint II agreed as follows: “You agree to indemnify
5 and hold Strava and its subsidiaries, affiliates, officers, agents, employees, partners, and
6 licensors harmless from any claim or demand, including reasonable attorneys’ fees made
7 by any third party due to or arising out of Content you submit, post, transmit or otherwise
8 make available through the Site, your use of the Site, your connection to the Site, your
9 violation of the Terms, or your violation of any rights of another person or entity.”

10 8. On June 19, 2010, William K. Flint II died in an accident with an
11 automobile while recklessly riding his bicycle over the posted speed limit, in violation of
12 Section 22350 of the California Vehicle Code, and on the wrong side of the road, in
13 violation of Section 21650 of the California Vehicle Code, on a route in Tilden Park in
14 Orinda, California.

15 9. On June 18, 2012, William K. Flint II’s parents brought this wrongful death
16 and personal injury action seeking compensatory damages for Strava’s alleged negligence.

17 **FIRST CAUSE OF ACTION**

18 (Contractual Indemnification)

19 10. Strava realleges and incorporates herein by this reference each and all of the
20 allegations contained in Paragraphs 1 through 9, inclusive, as if set forth in full.

21 11. On October 7, 2009, William K. Flint II agreed to indemnify Strava from
22 any claim or demand, including reasonable attorneys’ fees, made by any third party due to
23 his use or connection with the Strava website pursuant to the Terms and Conditions.

24 12. Strava is entitled to reimbursement of any and all defense payments,
25 including reasonable attorneys’ fees, that it has paid or will pay in connection with the
26 principal action, in an amount to be proven at trial.

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1 **SECOND CAUSE OF ACTION**

2 (Equitable Indemnification)

3 13. Strava realleges and incorporates herein by this reference each and all of the
4 allegations contained in Paragraphs 1 through 12, inclusive, as if set forth in full.

5 14. The principal action alleges, among other things, negligent conduct entitling
6 Plaintiffs to compensatory damages against Strava. Strava contends that it is not liable for
7 the damages alleged in the principal action because these damages were not the result of
8 negligent conduct or of a negligent failure to act by Strava, but rather by the acts and
9 negligence of William K. Flint II.

10 15. If Strava is found in some manner responsible to Plaintiffs or to anyone else
11 as a result of William K. Flint II's use of the Strava website and/or applications, Strava's
12 liability would be based solely upon a derivative form of liability not resulting from
13 Strava's conduct, but only from an obligation imposed upon it by law; therefore, Strava
14 would be entitled to complete indemnity from Cross-Defendant.

15 **THIRD CAUSE OF ACTION**

16 (Apportionment of Fault)

17 16. Strava realleges and incorporates herein by this reference each and all of the
18 allegations contained in Paragraphs 1 through 15, inclusive, as if set forth in full.

19 17. Cross-Defendant was responsible, in whole or in part, for the injuries, if any,
20 suffered by William K. Flint II and for Plaintiffs' alleged losses and damages.

21 18. If Strava is held liable to Plaintiffs, Cross-Defendant should be required to
22 pay a share of Plaintiffs' judgment which is in proportion to the comparative negligence
23 of Cross-Defendant in causing Plaintiffs' damages.

24 **FOURTH CAUSE OF ACTION**

25 (Declaratory Relief on Duty to Indemnify)

26 19. Strava realleges and incorporates herein by this reference each and all of the
27 allegations contained in Paragraphs 1 through 18, inclusive, as if set forth in full.

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1 20. An actual controversy has arisen and now exists between Strava and the
2 Estate concerning whether the Estate was the legal cause of any injuries and damages
3 sustained by Plaintiffs such that the Estate must indemnify Strava against the claims, and
4 each of them, alleged in the principal action.

5 21. An actual controversy has arisen and now exists between Strava and the
6 Estate concerning whether the Estate is obligated under the Terms and Conditions to
7 indemnify Strava against the claims, and each of them, alleged in the principal action.

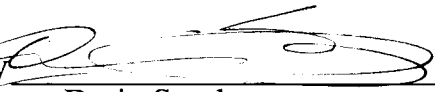
8 **WHEREFORE**, Strava prays for judgment in its favor and against the Estate as
9 follows:

- 10 a. For total and complete indemnity for any judgments rendered against
11 Strava;
- 12 b. For judgment in a proportionate share from the Estate;
- 13 c. For a judicial determination that the decedent, and thereby his Estate,
14 was the legal cause of any injuries and damages sustained by
15 Plaintiffs and that the Estate indemnify Strava, completely;
- 16 d. For a judicial determination that the decedent, and thereby his Estate,
17 is obligated under the Terms and Conditions to indemnify Strava
18 against the claims alleged in the principal action and to pay any
19 attorneys' fees and costs of Strava relating to such claims;
- 20 e. For such other relief as is fair, just, and equitable.
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1 Dated: October 1, 2012

2 Respectfully submitted,

3 O'MELVENY & MYERS LLP
4 DARIN SNYDER
5 SCOTT VOELZ
6 MEGHANN HISCOCKS

7 By 

8 Darin Snyder
9 Attorneys for Defendant and Cross-
10 Complaint Strava, Inc.

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EXHIBIT A

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If you choose to become a member of Strava, you must designate and provide information about your preferred payment method (e.g., credit card, online payment service or any other payment method made available by Strava) ("Payment Method"). You may switch to a different Payment Method or update your information by visiting the "Modify Membership" page under your main account page or by contacting us by email at membership@strava.com. You will immediately be charged for your membership fees after you click "Submit" on the confirmation page and your account will be activated to "Strava Member" status. You agree to pay all membership fees and other charges incurred in connection with your username and password for your Strava account.

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Copyright Agent

c/o Strava, Inc.

PO Box 32

Hanover, NH 03755

E-mail: support@strava.com

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