

Case No. 78701

**In the Supreme Court of Nevada**

MOTOR COACH INDUSTRIES, INC.,

Appellant,

vs.

KEON KHIABANI; ARIA KHIABANI, MINORS, by  
and through their Guardian MARIE-CLAUDE  
RIGAUD; SIAMAK BARIN, as Executor of the  
Estate of KAYVAN KHIABANI, M.D.; the Estate of  
KAYVAN KHIABANI; SIAMAK BARIN, as  
Executor of the Estate of KATAYOUN BARIN,  
DDS; and the Estate of KATAYOUN BARIN, DDS,

Respondents.

Electronically Filed  
Dec 04 2019 05:16 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable ADRIANA ESCOBAR, District Judge  
District Court Case No. A-17-755977-C

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| 38  | Appendix of Exhibits to Plaintiffs' Joint Opposition to MCI Motion for Summary Judgment on All Claims Alleging a Product Defect and to MCI Motion for Summary Judgment on Punitive Damages | 12/21/17 | 9<br>10<br>11 | 2176–2250<br>2251–2500<br>2501–2523 |
| 119 | Appendix of Exhibits to: Motor Coach Industries, Inc.'s Motion for New Trial   | 05/07/18 | 48            | 11770–11962                         |
| 76  | Bench Brief in Support of Preinstructing the Jury that Contributory Negligence is Not a Defense in a Product Liability Action  | 02/22/18 | 22            | 5321–5327                           |
| 67  | Bench Brief on Contributory Negligence   | 02/15/18 | 18            | 4309–4314                           |
| 51  | Calendar Call Transcript   | 01/18/18 | 11<br>12      | 2748–2750<br>2751–2752              |
| 125 | Case Appeal Statement  | 05/18/18 | 49            | 12098–12103                         |
| 140 | Case Appeal Statement  | 04/24/19 | 50            | 12462–12479                         |
| 21  | Civil Order to Statistically Close Case  | 10/24/17 | 3             | 587–588                             |
| 127 | Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim   | 06/08/18 | 49<br>50      | 12113–12250<br>12251–12268          |
| 1   | Complaint with Jury Demand   | 05/25/17 | 1             | 1–16                                |
| 10  | Defendant Bell Sports, Inc.'s Answer to Plaintiff's Amended Complaint  | 07/03/17 | 1             | 140–153                             |
| 11  | Defendant Bell Sports, Inc.'s Demand for Jury Trial  | 07/03/17 | 1             | 154–157                             |
| 48  | Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on Order Shortening Time   | 01/17/18 | 11            | 2720–2734                           |
| 7   | Defendant Motor Coach Industries, Inc.'s Answer to Plaintiffs' Amended Complaint   | 06/30/17 | 1             | 101–116                             |
| 8   | Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery's Answer to Plaintiffs' Amended Complaint   | 06/30/17 | 1             | 117–136                             |

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| 9  | Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery's Demand for Jury Trial   | 06/30/17 | 1        | 137–139                |
| 19 | Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement   | 09/22/17 | 2        | 313–323                |
| 31 | Defendant's Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts"  | 12/07/17 | 7        | 1572–1583              |
| 20 | Defendant's Notice of Filing Notice of Removal   | 10/17/17 | 2<br>3   | 324–500<br>501–586     |
| 55 | Defendant's Reply in Support of Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes   | 01/22/18 | 12       | 2794–2814              |
| 53 | Defendant's Reply in Support of Motion in Limine No. 7 to Exclude Any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts"  | 01/22/18 | 12       | 2778–2787              |
| 71 | Defendant's Trial Brief in Support of Level Playing Field  | 02/20/18 | 19<br>20 | 4748–4750<br>4751–4808 |
| 5  | Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Answer to Plaintiffs' Amended Complaint   | 06/28/17 | 1        | 81–97                  |
| 56 | Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Joinder to Plaintiffs' Motion for Determination of Good Faith Settlement with Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard | 01/22/18 | 12       | 2815–2817              |
| 33 | Defendants' Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness  | 12/07/17 | 8        | 1802–1816              |

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|     | Robert Cunitz, Ph.d., or in the Alternative, to Limit His Testimony  |          |          |                            |
| 36  | Defendants' Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes                                       | 12/08/17 | 9        | 2106–2128                  |
| 54  | Defendants' Reply in Support of Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D., or in the Alternative to Limit His Testimony | 01/22/18 | 12       | 2788–2793                  |
| 6   | Demand for Jury Trial  | 06/28/17 | 1        | 98–100                     |
| 147 | Exhibits G–L and O to: Appendix of Exhibits to: Motor Coach Industries, Inc.'s Motion for a Limited New Trial (FILED UNDER SEAL)                                 | 05/08/18 | 51<br>52 | 12705–12739<br>12740–12754 |
| 142 | Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement (FILED UNDER SEAL)  | 03/14/18 | 51       | 12490–12494                |
| 75  | Findings of Fact, Conclusions of Law, and Order  | 02/22/18 | 22       | 5315–5320                  |
| 108 | Jury Instructions  | 03/23/18 | 41<br>42 | 10242–10250<br>10251–10297 |
| 110 | Jury Instructions Reviewed with the Court on March 21, 2018  | 03/30/18 | 42       | 10303–10364                |
| 64  | Jury Trial Transcript  | 02/12/18 | 15<br>16 | 3537–3750<br>3751–3817     |
| 85  | Jury Trial Transcript  | 03/06/18 | 28<br>29 | 6883–7000<br>7001–7044     |
| 87  | Jury Trial Transcript  | 03/08/18 | 30       | 7266–7423                  |
| 92  | Jury Trial Transcript  | 03/13/18 | 33       | 8026–8170                  |
| 93  | Jury Trial Transcript  | 03/14/18 | 33<br>34 | 8171–8250<br>8251–8427     |
| 94  | Jury Trial Transcript  | 03/15/18 | 34<br>35 | 8428–8500<br>8501–8636     |
| 95  | Jury Trial Transcript  | 03/16/18 | 35       | 8637–8750                  |

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|     |  |          | 36       | 8751–8822                  |
| 98  | Jury Trial Transcript  | 03/19/18 | 36<br>37 | 8842–9000<br>9001–9075     |
| 35  | Motion for Determination of Good Faith Settlement Transcript   | 12/07/17 | 9        | 2101–2105                  |
| 22  | Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)              | 10/27/17 | 3        | 589–597                    |
| 26  | Motion for Summary Judgment on Punitive Damages  | 12/01/17 | 3        | 642–664                    |
| 117 | Motion to Retax Costs  | 04/30/18 | 47<br>48 | 11743–11750<br>11751–11760 |
| 58  | Motions in Limine Transcript   | 01/29/18 | 12<br>13 | 2998–3000<br>3001–3212     |
| 61  | Motor Coach Industries, Inc.’s Answer to Second Amended Complaint  | 02/06/18 | 14       | 3474–3491                  |
| 90  | Motor Coach Industries, Inc.’s Brief in Support of Oral Motion for Judgment as a Matter of Law (NRCP 50(a))                                      | 03/12/18 | 32<br>33 | 7994–8000<br>8001–8017     |
| 146 | Motor Coach Industries, Inc.’s Motion for a Limited New Trial (FILED UNDER SEAL)   | 05/07/18 | 51       | 12673–12704                |
| 30  | Motor Coach Industries, Inc.’s Motion for Summary Judgment on All Claims Alleging a Product Defect   | 12/04/17 | 6<br>7   | 1491–1500<br>1501–1571     |
| 145 | Motor Coach Industries, Inc.’s Motion to Alter or Amend Judgment to Offset Settlement Proceed Paid by Other Defendants (FILED UNDER SEAL)        | 05/07/18 | 51       | 12647–12672                |
| 96  | Motor Coach Industries, Inc.’s Opposition to Plaintiff’s Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income | 03/18/18 | 36       | 8823–8838                  |
| 52  | Motor Coach Industries, Inc.’s Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)  | 01/19/18 | 12       | 2753–2777                  |

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| 120 | Motor Coach Industries, Inc.'s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim  | 05/07/18 | 48<br>49 | 11963–12000<br>12001–12012 |
| 47  | Motor Coach Industries, Inc.'s Reply in Support of Its Motion for Summary Judgment on All Claims Alleging a Product Defect   | 01/17/18 | 11       | 2705–2719                  |
| 149 | Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (FILED UNDER SEAL)                     | 07/02/18 | 52       | 12865–12916                |
| 129 | Motor Coach Industries, Inc.'s Reply in Support of Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim  | 06/29/18 | 50       | 12282–12309                |
| 70  | Motor Coach Industries, Inc.'s Response to “Bench Brief on Contributory Negligence”  | 02/16/18 | 19       | 4728–4747                  |
| 131 | Motor Coach Industries, Inc.'s Response to “Plaintiffs’ Supplemental Opposition to MCI’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid to Other Defendants” | 09/24/18 | 50       | 12322–12332                |
| 124 | Notice of Appeal   | 05/18/18 | 49       | 12086–12097                |
| 139 | Notice of Appeal   | 04/24/19 | 50       | 12412–12461                |
| 138 | Notice of Entry of “Findings of Fact and Conclusions of Law on Defendant’s Motion to Retax”  | 04/24/19 | 50       | 12396–12411                |
| 136 | Notice of Entry of Combined Order (1) Denying Motion for Judgment as a Matter of Law and (2) Denying Motion for Limited New Trial  | 02/01/19 | 50       | 12373–12384                |
| 141 | Notice of Entry of Court’s Order Denying Defendant’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other   | 05/03/19 | 50       | 12480–12489                |

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|     | Defendants Filed Under Seal on March 26, 2019  |          |    |             |
| 40  | Notice of Entry of Findings of Fact Conclusions of Law and Order on Motion for Determination of Good Faith Settlement  | 01/08/18 | 11 | 2581–2590   |
| 137 | Notice of Entry of Findings of Fact, Conclusions of Law and Order on Motion for Good Faith Settlement  | 02/01/19 | 50 | 12385–12395 |
| 111 | Notice of Entry of Judgment  | 04/18/18 | 42 | 10365–10371 |
| 12  | Notice of Entry of Order   | 07/11/17 | 1  | 158–165     |
| 16  | Notice of Entry of Order   | 08/23/17 | 1  | 223–227     |
| 63  | Notice of Entry of Order   | 02/09/18 | 15 | 3511–3536   |
| 97  | Notice of Entry of Order   | 03/19/18 | 36 | 8839–8841   |
| 15  | Notice of Entry of Order (CMO)   | 08/18/17 | 1  | 214–222     |
| 4   | Notice of Entry of Order Denying Without Prejudice Plaintiffs’ Ex Parte Motion for Order Requiring Bus Company and Bus Driver to Preserve an Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone | 06/22/17 | 1  | 77–80       |
| 13  | Notice of Entry of Order Granting Plaintiffs’ Motion for Preferential Trial Setting  | 07/20/17 | 1  | 166–171     |
| 133 | Notice of Entry of Stipulation and Order Dismissing Plaintiffs’ Claims Against Defendant SevenPlus Bicycles, Inc. Only   | 10/17/18 | 50 | 12361–12365 |
| 134 | Notice of Entry of Stipulation and Order Dismissing Plaintiffs’ Claims Against Bell Sports, Inc. Only  | 10/17/18 | 50 | 12366–12370 |
| 143 | Objection to Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of the Custodian of Records of the Board of Regents NSHE and, Alternatively, Motion for Limited Post-Trial                                   | 05/03/18 | 51 | 12495–12602 |



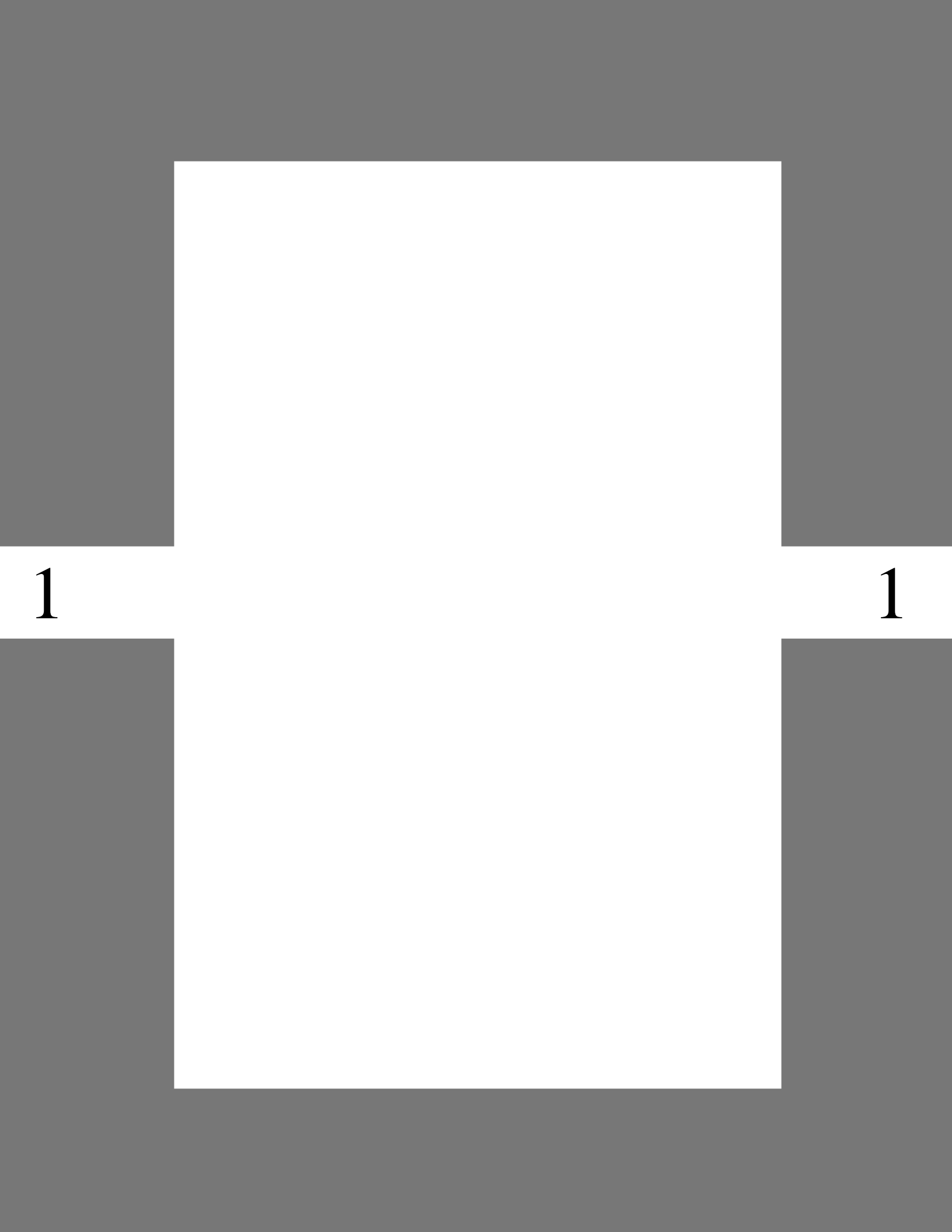
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|     | Discovery on Order Shortening Time (FILED UNDER SEAL)  |          |    |             |
| 39  | Opposition to “Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians of Bicyclists (Including Sudden Bicycle Movement)”  | 12/27/17 | 11 | 2524–2580   |
| 123 | Opposition to Defendant’s Motion to Retax Costs  | 05/14/18 | 49 | 12039–12085 |
| 118 | Opposition to Motion for Limited Post-Trial Discovery  | 05/03/18 | 48 | 11761–11769 |
| 151 | Order (FILED UNDER SEAL)   | 03/26/19 | 52 | 12931–12937 |
| 135 | Order Granting Motion to Dismiss Wrongful Death Claim  | 01/31/19 | 50 | 12371–12372 |
| 25  | Order Regarding “Plaintiffs’ Motion to Amend Complaint to Substitute Parties” and “Countermotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting”  | 11/17/17 | 3  | 638–641     |
| 45  | Plaintiffs’ Addendum to Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)”  | 01/17/18 | 11 | 2654–2663   |
| 49  | Plaintiffs’ Joinder to Defendant Bell Sports, Inc.’s Motion for Determination of Good Faith Settlement on Order Shortening Time  | 01/18/18 | 11 | 2735–2737   |
| 41  | Plaintiffs’ Joint Opposition to Defendant’s Motion in Limine No. 3 to Preclude Plaintiffs from Making Reference to a “Bullet Train” and to Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Motor Coach was Defective Based on Alleged Dangerous “Air Blasts” | 01/08/18 | 11 | 2591–2611   |

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| 37  | Plaintiffs' Joint Opposition to MCI Motion for Summary Judgment on All Claims Alleging a Product Defect and to MCI Motion for Summary Judgment on Punitive Damages            | 12/21/17 | 9  | 2129–2175   |
| 50  | Plaintiffs' Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard Only on Order Shortening Time | 01/18/18 | 11 | 2738–2747   |
| 42  | Plaintiffs' Opposition to Defendant's Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D. or in the Alternative to Limit His Testimony         | 01/08/18 | 11 | 2612–2629   |
| 43  | Plaintiffs' Opposition to Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes                          | 01/08/18 | 11 | 2630–2637   |
| 126 | Plaintiffs' Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants  | 06/06/18 | 49 | 12104–12112 |
| 130 | Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants   | 09/18/18 | 50 | 12310–12321 |
| 150 | Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (FILED UNDER SEAL)                      | 09/18/18 | 52 | 12917–12930 |
| 122 | Plaintiffs' Supplemental Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110  | 05/09/18 | 49 | 12019–12038 |

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|-----|---|----------|----------|------------------------|
| 91  | Plaintiffs' Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income   | 03/12/18 | 33       | 8018–8025              |
| 113 | Plaintiffs' Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110   | 04/24/18 | 42       | 10375–10381            |
| 105 | Proposed Jury Instructions Not Given  | 03/23/18 | 41       | 10207–10235            |
| 109 | Proposed Jury Verdict Form Not Used at Trial  | 03/26/18 | 42       | 10298–10302            |
| 57  | Recorder's Transcript of Hearing on Defendant's Motion for Summary Judgment on All Claims Alleging a Product Defect   | 01/23/18 | 12       | 2818–2997              |
| 148 | Reply in Support of Motion for a Limited New Trial (FILED UNDER SEAL)   | 07/02/18 | 52       | 12755–12864            |
| 128 | Reply on Motion to Retax Costs  | 06/29/18 | 50       | 12269–12281            |
| 44  | Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)" | 01/16/18 | 11       | 2638–2653              |
| 46  | Reply to Plaintiffs' Opposition to Motion for Summary Judgment on Punitive Damages  | 01/17/18 | 11       | 2664–2704              |
| 3   | Reporter's Transcript of Motion for Temporary Restraining Order   | 06/15/17 | 1        | 34–76                  |
| 144 | Reporter's Transcript of Proceedings (FILED UNDER SEAL)   | 05/04/18 | 51       | 12603–12646            |
| 14  | Reporter's Transcription of Motion for Preferential Trial Setting   | 07/20/17 | 1        | 172–213                |
| 18  | Reporter's Transcription of Motion of Status Check and Motion for Reconsideration with Joinder  | 09/21/17 | 1<br>2   | 237–250<br>251–312     |
| 65  | Reporter's Transcription of Proceedings   | 02/13/18 | 16<br>17 | 3818–4000<br>4001–4037 |
| 66  | Reporter's Transcription of Proceedings   | 02/14/18 | 17<br>18 | 4038–4250<br>4251–4308 |

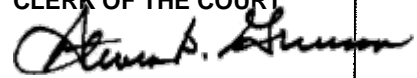
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| 68  | Reporter's Transcription of Proceedings | 02/15/18 | 18       | 4315–4500              |
| 69  | Reporter's Transcription of Proceedings | 02/16/18 | 19       | 4501–4727              |
| 72  | Reporter's Transcription of Proceedings | 02/20/18 | 20<br>21 | 4809–5000<br>5001–5039 |
| 73  | Reporter's Transcription of Proceedings | 02/21/18 | 21       | 5040–5159              |
| 74  | Reporter's Transcription of Proceedings | 02/22/18 | 21<br>22 | 5160–5250<br>5251–5314 |
| 77  | Reporter's Transcription of Proceedings | 02/23/18 | 22<br>23 | 5328–5500<br>5501–5580 |
| 78  | Reporter's Transcription of Proceedings | 02/26/18 | 23<br>24 | 5581–5750<br>5751–5834 |
| 79  | Reporter's Transcription of Proceedings | 02/27/18 | 24<br>25 | 5835–6000<br>6001–6006 |
| 80  | Reporter's Transcription of Proceedings | 02/28/18 | 25       | 6007–6194              |
| 81  | Reporter's Transcription of Proceedings | 03/01/18 | 25<br>26 | 6195–6250<br>6251–6448 |
| 82  | Reporter's Transcription of Proceedings | 03/02/18 | 26<br>27 | 6449–6500<br>6501–6623 |
| 83  | Reporter's Transcription of Proceedings | 03/05/18 | 27<br>28 | 6624–6750<br>6751–6878 |
| 86  | Reporter's Transcription of Proceedings | 03/07/18 | 29<br>30 | 7045–7250<br>7251–7265 |
| 88  | Reporter's Transcription of Proceedings | 03/09/18 | 30<br>31 | 7424–7500<br>7501–7728 |
| 89  | Reporter's Transcription of Proceedings | 03/12/18 | 31<br>32 | 7729–7750<br>7751–7993 |
| 99  | Reporter's Transcription of Proceedings | 03/20/18 | 37<br>38 | 9076–9250<br>9251–9297 |
| 100 | Reporter's Transcription of Proceedings | 03/21/18 | 38<br>39 | 9298–9500<br>9501–9716 |
| 101 | Reporter's Transcription of Proceedings | 03/21/18 | 39<br>40 | 9717–9750<br>9751–9799 |

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| 102 | Reporter's Transcription of Proceedings   | 03/21/18 | 40       | 9800–9880                 |
| 103 | Reporter's Transcription of Proceedings   | 03/22/18 | 40<br>41 | 9881–10000<br>10001–10195 |
| 104 | Reporter's Transcription of Proceedings   | 03/23/18 | 41       | 10196–10206               |
| 24  | Second Amended Complaint and Demand for Jury Trial  | 11/17/17 | 3        | 619–637                   |
| 107 | Special Jury Verdict  | 03/23/18 | 41       | 10237–10241               |
| 112 | Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of the Custodian of Records of the Board of Regents NSHE | 04/24/18 | 42       | 10372–10374               |
| 62  | Status Check Transcript   | 02/09/18 | 14<br>15 | 3492–3500<br>3501–3510    |
| 17  | Stipulated Protective Order   | 08/24/17 | 1        | 228–236                   |
| 121 | Supplement to Motor Coach Industries, Inc.'s Motion for a Limited New Trial   | 05/08/18 | 49       | 12013–12018               |
| 60  | Supplemental Findings of Fact, Conclusions of Law, and Order  | 02/05/18 | 14       | 3470–3473                 |
| 132 | Transcript  | 09/25/18 | 50       | 12333–12360               |
| 23  | Transcript of Proceedings   | 11/02/17 | 3        | 598–618                   |
| 27  | Volume 1: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages   | 12/01/17 | 3<br>4   | 665–750<br>751–989        |
| 28  | Volume 2: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages   | 12/01/17 | 4<br>5   | 990–1000<br>1001–1225     |
| 29  | Volume 3: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages   | 12/01/17 | 5<br>6   | 1226–1250<br>1251–1490    |



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18 *Attorneys for Plaintiffs*

19 DISTRICT COURT  
20 CLARK COUNTY, NEVADA

21 KEON KHIABANI and ARIA KHIABANI,  
22 minors by and through their natural mother,  
23 KATAYOUN BARIN; and KATAYOUN  
24 BARIN, individually,

25 Plaintiffs,

26 vs.

27 MOTOR COACH INDUSTRIES, INC.,  
28 a Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS,  
an Arizona corporation; EDWARD  
HUBBARD, a Nevada resident; VISTA  
OUTDOOR INC. d/b/a GIRO SPORT  
DESIGN, a Delaware corporation;  
DOES 1 through 20; and ROE  
CORPORATIONS 1 through 20.

Defendants.

Case No.: A-17-755977-C

Dept. No.: Department 31

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

ARBITRATION EXEMPTION CLAIMED  
Damages Exceed \$50,000.00

COME NOW Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors by and through their natural mother, KATAYOUN ("KATY") BARIN and KATY BARIN, individually, by and through their attorneys, Will Kemp, Esq. and Eric Pepperman, Esq. of the law firm KEMP, JONES & COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendelee

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1 L. Works, Esq. of CHRISTIANSEN LAW OFFICES, and for their claims against the  
2 Defendants, and each of them, complain and allege as follows:

3 **THE PARTIES**

4 1. At all relevant times, Plaintiff minors KEON KHIABANI and ARIA KHIABANI  
5 ("Plaintiff minors") were and are residents of Clark County, Nevada. Plaintiff minors are the  
6 natural children of Dr. Kayvan Khiabani (Decedent) and Plaintiff Katy Barin.

7 2. At all relevant times, Plaintiff KATY BARIN was and is a resident of Clark County,  
8 Nevada. At the time of the incident described herein, Decedent and Plaintiff Katy Barin were  
9 husband and wife and resided with the Plaintiff minors in Clark County, Nevada.

10 3. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
11 Defendant MOTOR COACH INDUSTRIES, INC. ("MCI") was and is a corporation organized  
12 and existing under the laws of the State of Delaware and authorized to do business in the State  
13 of Nevada, including Clark County. MCI designs, manufacturers, markets, and sells  
14 commercial tour buses (aka Motor Coaches). Defendant MCI designed, manufactured, and sold  
15 the 2008, full-size Motor Coach involved in the incident described herein.

16 4. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
17 Defendant MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS ("Ryan's Express")  
18 was and is a corporation organized and existing under the laws of the State of Arizona and  
19 authorized to do business in the State of Nevada. Ryan's Express is a ground transportation  
20 company that provides charter bus services for group transportation. Defendant Ryan's Express  
21 owned and operated the MCI bus involved in the incident described herein.

22 5. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
23 Defendant EDWARD HUBBARD was and is a resident of Clark County, Nevada. Edward  
24 Hubbard is employed by Ryan's Express as a bus driver. As part of his duties and  
25 responsibilities, Hubbard operates full-size Motor Coaches and was operating the MCI bus at  
26 the time of the incident described herein.

27 6. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
28 Defendant VISTA OUTDOOR, INC. d/b/a GIRO SPORT DESIGN ("Giro") was and is a



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1 corporation organized and existing under the laws of the State of Delaware and authorized to do  
2 business in the State of Nevada, including Clark County. GIRO designs, manufactures,  
3 markets, and sells protective gear and accessories for sport activities, including cycling helmets.  
4 Defendant Giro designed, manufactured, and sold the helmet that Dr. Kayvan Khiabani was  
5 wearing at the time of the incident described herein.

6 7. The true names and capacities, whether individual, corporate, association or otherwise of  
7 the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1 through 20, inclusive,  
8 are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs  
9 are informed and believe, and thereupon allege, that each of the Defendants designated herein as  
10 DOES and/or ROE CORPORATIONS is responsible in some manner for the events and  
11 happenings herein referred to, and in some manner caused the injuries and damages to Plaintiffs  
12 alleged herein. Plaintiffs will ask leave of the court to amend this Complaint to insert the true  
13 names and capacities of said Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1  
14 through 20, inclusive when the same have been ascertained by Plaintiffs, together with the  
15 appropriate charging allegations, and to join such Defendants in this action.

16 8. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is  
17 meant that such Defendant's officers, agents, servants, employees, or representatives did such  
18 act or thing and at the time such act or thing was done, it was done with full authorization or  
19 ratification of such Defendant or was done in the normal and routine course and scope of  
20 business, or with the actual, apparent and/or implied authority of such Defendant's officers,  
21 agents, servants, employees, or representatives. Specifically, Defendants are liable for the  
22 actions of its officers, agents, servants, employees, and representatives.

23 9. All of the Defendants as named herein are jointly and severally liable to Plaintiffs for  
24 Plaintiffs' damages.

25 10. Plaintiffs are informed and believe, and thereupon allege, that Defendants, and each of  
26 them, jointly and in concert undertook to perform the acts as alleged herein, that Defendants and  
27  
28

1 each of them had full knowledge of the acts of each co-Defendant as alleged herein, and that  
2 each Defendant authorized or subsequently ratified the acts of each co-Defendant as alleged  
3 herein, making each co-Defendant an agent of the other Defendants and making each Defendant  
4 jointly responsible and liable for the acts and omissions of each co-Defendant as alleged herein.  
5

#### 6 JURISDICTION AND VENUE

7 11. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00),  
8 exclusive of costs, interest, and attorneys' fees.

9 12. Venue is proper in this Court because the incident giving rise to this lawsuit occurred in  
10 Clark County, Nevada.

#### 11 GENERAL ALLEGATIONS

12 13. On or about April 18, 2017, Dr. Kayvan Khiabani was riding his Scott Solace 10 Disc  
13 road bicycle southbound in a designated bicycle lane on S. Pavilion Center Drive near the Red  
14 Rock Resort and Casino in Las Vegas, Nevada. At the time, Dr. Khiabani was wearing a  
15 bicycle helmet designed, manufactured, and sold by Giro.

16 14. Upon information and belief, at approximately 10:34 AM, as he approached the  
17 intersection of S. Pavilion Center Drive and Griffith Peak Drive, Dr. Khiabani was overtaken by  
18 a large tour bus on his left side.

19 15. The bus was a 2008, full-size Motor Coach that was designed, manufactured, and sold  
20 by Defendant MCI. Upon information and belief, the subject bus was designed and  
21 manufactured without proximity sensors to alert the driver of adjacent pedestrians and/or  
22 bicyclists that may be difficult to see or to alert such pedestrians and/or bicyclists.

23 16. At the time, the bus was owned and operated by Defendant Ryan's Express and being  
24 driven by Defendant Edward Hubbard, an employee of Ryan's Express.

25 17. Upon information and belief, at the time that it overtook Dr. Khiabani, the bus was  
26 traveling in excess of the posted speed limit and traversing out of the right-hand turn lane and  
27 crossing over the designated bicycle lane from the right side of Dr. Khiabani to the left side of  
28 Dr. Khiabani.

18. As it crossed over the designated bicycle lane to overtake Dr. Khiabani on the left, the bus and Decedent's bicycle collided.

19. As a direct and proximate result of this collision, Dr. Khiabani suffered catastrophic internal and external injuries, including to his head, severe shock to his nervous system, and great pain and suffering. Dr. Khiabani was transported from the scene of the accident and ultimately died from his injuries.

**FIRST CLAIM FOR RELIEF**

**(STRICT LIABILITY: DEFECTIVE CONDITION OR  
FAILURE TO WARN AGAINST DEFENDANT MCI)**

20. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

21. Defendant MCI, or its predecessors and/or affiliates, were responsible for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject bus.

22. At the time of the above-described incident, the subject bus was being used in a manner foreseeable by Defendant MCI.

23. As so used, and from the time the bus left the hands of Defendant MCI, the subject bus was defective, unfit, and unreasonably dangerous for its foreseeable use.

24. The subject bus was further defective and unreasonably dangerous in that Defendant MCI failed to provide adequate warnings about dangers that were known or should have been known by MCI and/or failed to provide adequate instructions for the bus' safe and proper use.

25. The aforementioned incident was a direct and proximate result of a defect or defects in the bus and/or the failure of Defendant MCI to warn of defects that were either known or should have been known or to instruct in the safe and proper use of the bus. As a result, Defendant MCI should be held strictly liable in tort to Plaintiffs.

26. As a direct and proximate result of the defective nature of the subject bus, Decedent Dr. Kayvan Khiabani suffered catastrophic personal injuries and died.

1 27. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent  
2 sustained past, present, and future lost wages, which would otherwise have been gained in his  
3 employment if not for his death proximately caused by this accident, far in excess of Fifteen  
4 Thousand Dollars (\$15,000.00).

5 28. As a direct and proximate result of the acts and omissions of Defendant MCI, the  
6 Plaintiff minors each have been deprived of their father's comfort, support, companionship,  
7 society, and consortium, and further, each has suffered great grief, sorrow, and extreme  
8 emotional distress as a result of the death of their father, to each for general damages far in  
9 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen  
10 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,  
11 and disfigurement of their father.

12 29. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiff  
13 Katy Barin has been deprived of her husband's comfort, support, companionship, society, and  
14 consortium, and further, has suffered great grief, sorrow, and extreme emotional distress as a  
15 result of the death of her husband, for general damages far in excess of Fifteen Thousand  
16 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars  
17 (\$15,000.00). Plaintiff Katy Barin also seeks to recover for the pain, suffering, and  
18 disfigurement of her husband.

19 30. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiffs  
20 have suffered general and special damages in an amount far in excess of Fifteen Thousand  
21 Dollars (\$15,000.00).

22 31. In carrying out its responsibilities for the design, manufacture, construction, assembly,  
23 testing, labeling, distribution, marketing, and sale of the subject bus, Defendant MCI acted with  
24 fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others.  
25  
26  
27  
28

1 As a direct and proximate result of the conduct of Defendant MCI, Plaintiffs are entitled to  
2 punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

3 32. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
4 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

5 **SECOND CLAIM FOR RELIEF**

6 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**  
7 **AND EDWARD HUBBARD)**

8 33. Plaintiffs incorporate by this reference each and every allegation previously made in this  
9 Complaint, as if fully set forth herein.

10 34. Defendant Ryan's Express is vicariously liable for the wrongful acts or omissions of its  
11 employee, Defendant Hubbard, in connection with the subject accident because: (i) at the time  
12 of the subject accident, Defendant Hubbard was under the control of Defendant Ryan's Express,  
13 and (ii) at the time of the subject accident, Defendant Hubbard was acting within the scope of  
14 his employment with Ryan's Express.

15 35. Defendants Ryan's Express and Edward Hubbard owed a duty of care to Dr. Khiabani  
16 and Plaintiffs to exercise due care in the operation of the 2008, full-size commercial tour bus.

17 36. Defendants were negligent and breached this duty of care, *inter alia*: (i) by overtaking  
18 Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted  
19 speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr.  
20 Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to  
21 ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing  
22 to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the  
23 time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr.  
24 Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane  
25 while Dr. Khiabani was traveling therein.

26 37. As a direct and proximate result of these negligent acts and omissions, Decedent Dr.  
27 Kayvan Khiabani suffered catastrophic personal injuries and died.  
28

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1 38. As a direct and proximate result of the negligent acts and omissions of Defendants  
2 Ryan's Express and Edward Hubbard, Decedent sustained past, present, and future lost wages,  
3 which would otherwise have been gained in his employment if not for his death proximately  
4 caused by this accident, far in excess of Fifteen Thousand Dollars (\$15,000.00).

5 39. As a direct and proximate result of the negligent acts and omissions of Defendants  
6 Ryan's Express and Edward Hubbard, the Plaintiff minors each have been deprived of their  
7 father's comfort, support, companionship, society, and consortium, and further, each has  
8 suffered great grief, sorrow, and extreme emotional distress as a result of the death of their  
9 father, to each for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and  
10 economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00). The minor children  
11 also seek to recover for the pain, suffering, and disfigurement of their father.

12 40. As a direct and proximate result of the negligent acts and omissions of Defendants  
13 Ryan's Express and Edward Hubbard, Plaintiff Katy Barin has been deprived of her husband's  
14 comfort, support, companionship, society, and consortium, and further, has suffered great grief,  
15 sorrow, and extreme emotional distress as a result of the death of her husband, for general  
16 damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in  
17 excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff Katy Barin also seeks to recover for  
18 the pain, suffering, and disfigurement of her husband.

19 41. As a direct and proximate result of the negligent acts and omissions of Defendants  
20 Ryan's Express and Edward Hubbard, Plaintiffs have suffered general and special damages in  
21 an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

22 42. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
23 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

24 ///

25 ///

**THIRD CLAIM FOR RELIEF**

**(NEGLIGENCE PER SE AGAINST DEFENDANTS**

**RYAN'S EXPRESS AND EDWARD HUBBARD)**

43. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

44. When the subject bus overtook Dr. Khiabani at the time of the incident, Defendants Ryan's Express and Edward Hubbard violated Nev. Rev. Stat. § 484B.270, *inter alia*: (i) by overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr. Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane while Dr. Khiabani was traveling therein.

45. These violations, and each of them, were a legal cause of the incident and Plaintiffs' resulting injuries.

46. Plaintiffs belong to the class of persons that the safety requirements in NRS 484B.270 are intended to protect.

47. As a direct and proximate cause of Defendants violations of NRS 484B.270, and each of them, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

48. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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**FOURTH CLAIM FOR RELIEF**

**(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

49. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

50. Defendant Ryan's Express owed a duty of care to Dr. Khiabani and Plaintiffs to adequately train its drivers, including Defendant Edward Hubbard, to safely operate its commercial tour busses, including the bus involved in the subject incident.

51. Defendant Ryan's Express was negligent and breached this duty of care by failing to adequately train its drivers, including Edward Hubbard, to safely operate its commercial tour busses, including the bus involved in the subject incident. Defendant Ryan's Express further breached this duty of care by entrusting the subject tour bus to an inadequately trained person (i.e., Defendant Hubbard).

52. These negligent acts and omissions, and each of them, were a legal cause of the incident and Plaintiffs' resulting injuries.

53. As a direct and proximate result of these negligent acts and omissions, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

54. In carrying out its responsibility to adequately train its drivers, Defendant Ryan's Express acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Ryan's Express, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

55. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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**FIFTH CLAIM FOR RELIEF**  
**(STRICT LIABILITY: DEFECTIVE CONDITION OR  
 FAILURE TO WARN AGAINST DEFENDANT GIRO)**

56. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

57. Defendant Giro, or its predecessors and/or affiliates, were responsible for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the helmet that Dr. Khiabani was wearing at the time of the above-described accident.

58. At the time of the subject accident, and at all other times material hereto, the helmet was being used in a manner foreseeable by Defendant Giro.

59. As so used, the subject helmet was defective, unfit, and unreasonably dangerous for its foreseeable use in that there was inadequate protection of the head by the helmet, which caused or contributed to the death of Dr. Khiabani.

60. The subject helmet was further defective and unreasonably dangerous in that Defendant Giro failed to provide adequate warnings about dangers that were either known or should have been known by Giro and/or failed to provide adequate instructions regarding the helmet's safe and proper use.

61. The aforementioned death of Dr. Khiabani was a direct and proximate result of a defect or defects in the helmet and/or the failure of Defendant Giro to warn of defects that were either known or should have been known or to instruct in the safe and proper use of the helmet. As a result, Defendant Giro should be held strictly liable in tort to Plaintiffs.

62. As a direct and proximate result of the defective nature of the helmet and said deficiencies in warnings and/or instructions, Decedent Dr. Kayvan Khiabani suffered a catastrophic head injury and ultimately died.

63. As a direct and proximate result of the acts and omissions of Defendant Giro, Decedent sustained past, present, and future lost wages, which would otherwise have been gained in his employment if not for his death, far in excess of Fifteen Thousand Dollars (\$15,000.00).

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1 64. As a direct and proximate result of the acts and omissions of Defendant Giro, the  
2 Plaintiff minors each have been deprived of their father's comfort, support, companionship,  
3 society, and consortium, and further, each has suffered great grief, sorrow, and extreme  
4 emotional distress as a result of the death of their father, to each for general damages far in  
5 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen  
6 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,  
7 and disfigurement of their father.  
8

9 65. As a direct and proximate result of the acts and omissions of Defendant Giro, Plaintiff  
10 Katy Barin has been deprived of her husband's comfort, support, companionship, society, and  
11 consortium, and further, has suffered great grief, sorrow, and extreme emotional distress as a  
12 result of the death of her husband, for general damages far in excess of Fifteen Thousand  
13 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars  
14 (\$15,000.00). Plaintiff Katy Barin also seeks to recover for the pain, suffering, and  
15 disfigurement of her husband.  
16

17 66. As a direct and proximate result of the acts and omissions of Defendant Giro, Plaintiffs  
18 have suffered general and special damages in an amount far in excess of Fifteen Thousand  
19 Dollars (\$15,000.00).  
20

21 67. In carrying out its responsibilities for the design, manufacture, construction, assembly,  
22 testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted  
23 with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of  
24 others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled  
25 to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).  
26

27 68. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
28 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

**SIXTH CLAIM FOR RELIEF**  
**(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A  
 PARTICULAR PURPOSE AGAINST DEFENDANT GIRO)**

69. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

70. Giro and Decedent, Dr. Khiabani, entered into a contract for the sale of goods (i.e., the Giro helmet).

71. Defendant Giro had reason to know of the particular purpose for which the helmet was required by Dr. Khiabani (i.e., to wear while riding his road bicycle).

72. Dr. Khiabani relied on Defendant Giro's skill or judgment to furnish suitable goods for this purpose.

73. The helmet sold by Defendant Giro to Dr. Khiabani was not fit for said purpose and, as a direct and proximate result, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

74. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

75. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

**SEVENTH CLAIM FOR RELIEF**  
**(WRONGFUL DEATH AGAINST ALL DEFENDANTS)**

76. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

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1 77. Plaintiff minors and Plaintiff Katy Barin are the heirs of Decedent and are entitled to  
2 maintain an action for damages against the Defendants for the wrongful death of Dr. Kayvan  
3 Khiabani.

4 78. As a result of the injuries to and death of Dr. Khiabani, Plaintiffs are entitled to  
5 damages, including, but not limited to: pecuniary damages for their grief and sorrow, loss of  
6 probable support, companionship, society, comfort and consortium, and damages for pain,  
7 suffering and disfigurement of the Decedent.  
8

9 79. As a direct and proximate result of the wrongful death of Dr. Khiabani, Plaintiffs have  
10 been damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

11 80. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
12 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.  
13

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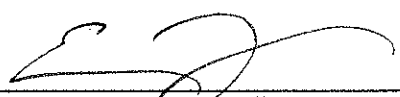
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment of this Court as follows:

1. Past and future general damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
2. Past and future special damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
3. Past and future damages for the wrongful death of Dr. Kayvan Khiabani, as set forth in NRS 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
4. Punitive damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
5. Prejudgment and post-judgment interest, as allowed by law;
6. Costs of suit and reasonable attorneys' fees, as allowed by law, in an amount to be determined; and
7. For such other and further relief that the Court may deem just and proper.

DATED this 25 day of May, 2017.

KEMP, JONES & COULTHARD, LLP

  
 WILL KEMP, ESQ. (#1205)  
 ERIC PEPPERMAN, ESQ. (#11679)  
 3800 Howard Hughes Parkway, 17th Floor  
 Las Vegas, Nevada 89169

-and-

PETER S. CHRISTIANSEN, ESQ. (#5254)  
 KENDELEE L. WORKS, ESQ. (#9611)  
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*Attorneys for Plaintiffs*

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**DEMAND FOR JURY TRIAL**

Plaintiffs by and through their attorneys of record, KEMP, JONES & COULTHARD, LLP and CHRISTIANSEN LAW OFFICES, hereby demand a jury trial of all of the issues in the above matter.

DATED this 25 day of May, 2017.

KEMP, JONES & COULTHARD, LLP



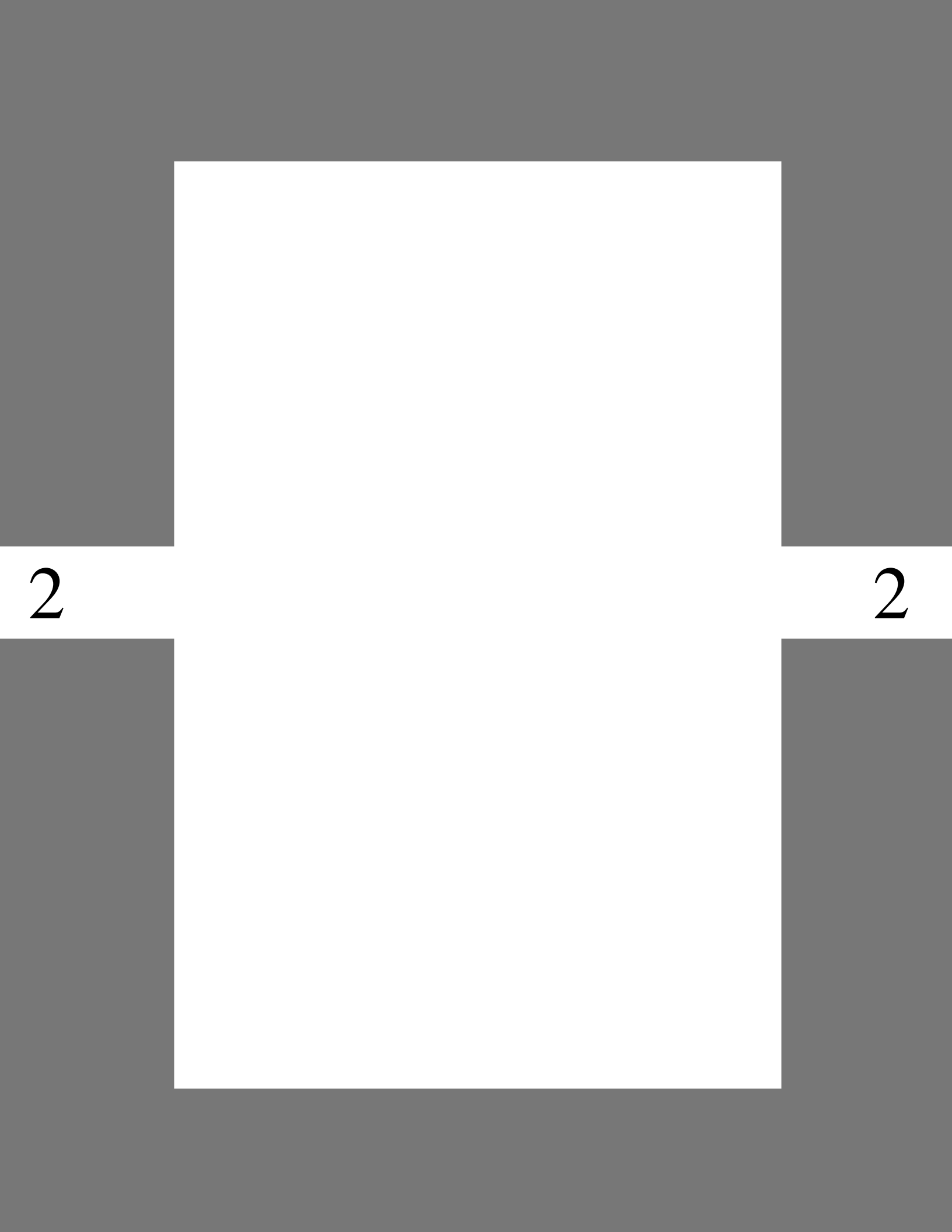
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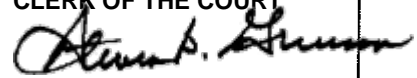
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18 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

19 KEON KHIABANI and ARIA KHIABANI,  
20 minors by and through their natural mother,  
21 KATAYOUN BARIN; KATAYOUN  
22 BARIN, individually; KATAYOUN BARIN  
23 as Executrix of the Estate of Kayvan  
24 Khiabani, M.D. (Decedent), and the Estate of  
25 Kayvan Khiabani, M.D. (Decedent),

Plaintiffs,

vs.

26 MOTOR COACH INDUSTRIES, INC.,  
27 a Delaware corporation; MICHELANGELO  
28 LEASING INC. d/b/a RYAN'S EXPRESS,  
an Arizona corporation; EDWARD  
HUBBARD, a Nevada resident; BELL  
SPORTS, INC. d/b/a GIRO SPORT  
DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**AMENDED COMPLAINT AND  
DEMAND FOR JURY TRIAL**

ARBITRATION EXEMPTION CLAIMED  
Damages Exceed \$50,000.00

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COME NOW Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors by and through their natural mother, KATAYOUN ("KATY") BARIN, KATY BARIN, individually, KATY BARIN as Executrix of the Estate of Kayvan Khiabani, M.D. (Decedent), and the Estate of Kayvan Khiabani, M.D. (Decedent), by and through their attorneys, Will Kemp, Esq. and Eric Pepperman, Esq. of the law firm KEMP, JONES & COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendele L. Works, Esq. of CHRISTIANSEN LAW OFFICES, and for their claims against the Defendants, and each of them, complain and allege as follows:

### THE PARTIES

1. At all relevant times, Plaintiff minors KEON KHIABANI and ARIA KHIABANI ("Plaintiff minors") were and are residents of Clark County, Nevada. Plaintiff minors are the natural children of Dr. Kayvan Khiabani (Decedent) and Plaintiff Katy Barin.

2. At all relevant times, Plaintiff KATY BARIN was and is a resident of Clark County, Nevada. At the time of the incident described herein, Decedent and Plaintiff Katy Barin were husband and wife and resided with the Plaintiff minors in Clark County, Nevada.

3. Plaintiff KATY BARIN is a duly authorized Executrix of the Estate of Kayvan Khiabani, M.D. (Decedent). As Executrix, Katy Barin is authorized to bring this action on behalf of Plaintiff the Estate of Kayvan Khiabani, M.D. (Decedent).

4. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MOTOR COACH INDUSTRIES, INC. ("MCI") was and is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Nevada, including Clark County. MCI designs, manufacturers, markets, and sells commercial tour buses (aka Motor Coaches). Defendant MCI designed, manufactured, and sold the 2008, full-size Motor Coach involved in the incident described herein.

5. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS ("Ryan's Express") was and is a corporation organized and existing under the laws of the State of Arizona and authorized to do business in the State of Nevada. Ryan's Express is a ground transportation

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1 company that provides charter bus services for group transportation. Defendant Ryan's Express  
2 owned and operated the MCI bus involved in the incident described herein.

3 6. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
4 Defendant EDWARD HUBBARD was and is a resident of Clark County, Nevada. Edward  
5 Hubbard is employed by Ryan's Express as a bus driver. As part of his duties and  
6 responsibilities, Hubbard operates full-size Motor Coaches and was operating the MCI bus at  
7 the time of the incident described herein.

8 7. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
9 Defendant BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN ("Giro") was and is a  
10 corporation organized and existing under the laws of the State of California and authorized to  
11 do business in the State of Nevada, including Clark County. GIRO designs, manufactures,  
12 markets, and sells protective gear and accessories for sport activities, including cycling helmets.  
13 Defendant Giro designed, manufactured, and sold the helmet that Dr. Kayvan Khiabani was  
14 wearing at the time of the incident described herein.

15 8. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
16 Defendant SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY ("Pro Cyclery") was and is  
17 a corporation organized and existing under the laws of the State of Nevada and authorized to do  
18 business in the State of Nevada, including Clark County. Pro Cyclery is engaged in the retail  
19 sale of bicycles and cycling accessories, including cycling helmets. Upon information and  
20 belief, Defendant Pro Cyclery sold to Dr. Kayvan Khiabani the helmet that Dr. Khiabani was  
21 wearing at the time of the incident described herein.

22 9. The true names and capacities, whether individual, corporate, association or otherwise of  
23 the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1 through 20, inclusive,  
24 are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs  
25 are informed and believe, and thereupon allege, that each of the Defendants designated herein as  
26 DOES and/or ROE CORPORATIONS is responsible in some manner for the events and  
27 happenings herein referred to, and in some manner caused the injuries and damages to Plaintiffs  
28 alleged herein. Plaintiffs will ask leave of the court to amend this Complaint to insert the true

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1 names and capacities of said Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1  
 2 through 20, inclusive when the same have been ascertained by Plaintiffs, together with the  
 3 appropriate charging allegations, and to join such Defendants in this action.

4 10. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is  
 5 meant that such Defendant's officers, agents, servants, employees, or representatives did such  
 6 act or thing and at the time such act or thing was done, it was done with full authorization or  
 7 ratification of such Defendant or was done in the normal and routine course and scope of  
 8 business, or with the actual, apparent and/or implied authority of such Defendant's officers,  
 9 agents, servants, employees, or representatives. Specifically, Defendants are liable for the  
 10 actions of its officers, agents, servants, employees, and representatives.

11 11. All of the Defendants as named herein are jointly and severally liable to Plaintiffs for  
 12 Plaintiffs' damages.

13 12. Plaintiffs are informed and believe, and thereupon allege, that Defendants, and each of  
 14 them, jointly and in concert undertook to perform the acts as alleged herein, that Defendants and  
 15 each of them had full knowledge of the acts of each co-Defendant as alleged herein, and that  
 16 each Defendant authorized or subsequently ratified the acts of each co-Defendant as alleged  
 17 herein, making each co-Defendant an agent of the other Defendants and making each Defendant  
 18 jointly responsible and liable for the acts and omissions of each co-Defendant as alleged herein.

### 19 JURISDICTION AND VENUE

20 13. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00),  
 21 exclusive of costs, interest, and attorneys' fees.

22 14. Venue is proper in this Court because the incident giving rise to this lawsuit occurred in  
 23 Clark County, Nevada.

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**GENERAL ALLEGATIONS**

15. On or about April 18, 2017, Dr. Kayvan Khiabani was riding his Scott Solace 10 Disc road bicycle southbound in a designated bicycle lane on S. Pavilion Center Drive near the Red Rock Resort and Casino in Las Vegas, Nevada. At the time, Dr. Khiabani was wearing a bicycle helmet designed, manufactured, and sold by Giro. Upon information and belief, Dr. Khiabani purchased the Giro helmet at the retail level from Defendant Pro Cyclery.

16. Upon information and belief, at approximately 10:34 AM, as he approached the intersection of S. Pavilion Center Drive and Griffith Peak Drive, Dr. Khiabani was overtaken by a large tour bus on his left side.

17. The bus was a 2008, full-size Motor Coach that was designed, manufactured, and sold by Defendant MCI and further identified by Vehicle Identification No. 2M93JMHA28W064555 and Utah License Plate No. Z044712. Upon information and belief, the subject bus was designed and manufactured without proximity sensors to alert the driver of adjacent pedestrians and/or bicyclists that may be difficult to see or to alert such pedestrians and/or bicyclists.

18. At the time, the bus was owned and operated by Defendant Ryan's Express and being driven by Defendant Edward Hubbard, an employee of Ryan's Express.

19. Upon information and belief, at the time that it overtook Dr. Khiabani, the bus was traveling in excess of the posted speed limit and traversing out of the right-hand turn lane and crossing over the designated bicycle lane from the right side of Dr. Khiabani to the left side of Dr. Khiabani.

20. As it crossed over the designated bicycle lane to overtake Dr. Khiabani on the left, the bus and Decedent's bicycle collided.

21. As a direct and proximate result of this collision, Dr. Khiabani suffered catastrophic internal and external injuries, including to his head, severe shock to his nervous system, and great pain and suffering. Dr. Khiabani was transported from the scene of the accident and ultimately died from his injuries.

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**FIRST CLAIM FOR RELIEF**  
**(STRICT LIABILITY: DEFECTIVE CONDITION OR  
 FAILURE TO WARN AGAINST DEFENDANT MCI)**

22. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

23. Defendant MCI, or its predecessors and/or affiliates, were responsible for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject bus.

24. At the time of the above-described incident, the subject bus was being used in a manner foreseeable by Defendant MCI.

25. As so used, and from the time the bus left the hands of Defendant MCI, the subject bus was defective, unfit, and unreasonably dangerous for its foreseeable use.

26. The subject bus was further defective and unreasonably dangerous in that Defendant MCI failed to provide adequate warnings about dangers that were known or should have been known by MCI and/or failed to provide adequate instructions for the bus' safe and proper use.

27. The aforementioned incident was a direct and proximate result of a defect or defects in the bus and/or the failure of Defendant MCI to warn of defects that were either known or should have been known or to instruct in the safe and proper use of the bus. As a result, Defendant MCI should be held strictly liable in tort to Plaintiffs.

28. As a direct and proximate result of the defective nature of the subject bus, Decedent Dr. Kayvan Khiabani suffered catastrophic personal injuries and died.

29. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent sustained past, present, and future lost wages, which would otherwise have been gained in his employment if not for his death proximately caused by this accident, far in excess of Fifteen Thousand Dollars (\$15,000.00).

30. As a direct and proximate result of the acts and omissions of Defendant MCI, the Plaintiff minors each have been deprived of their father's comfort, support, companionship,

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1 society, and consortium, and further, each has suffered great grief, sorrow, and extreme  
2 emotional distress as a result of the death of their father, to each for general damages far in  
3 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen  
4 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,  
5 and disfigurement of their father.

6  
7 31. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiff  
8 Katy Barin has been deprived of her husband's comfort, support, companionship, society, and  
9 consortium, and further, has suffered great grief, sorrow, and extreme emotional distress as a  
10 result of the death of her husband, for general damages far in excess of Fifteen Thousand  
11 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars  
12 (\$15,000.00). Plaintiff Katy Barin also seeks to recover for the pain, suffering, and  
13 disfigurement of her husband.

14  
15 32. As a direct and proximate result of the acts and omissions of Defendant MCI,  
16 Decedent's Estate and/or Executrix Katy Barin has incurred medical, funeral and burial  
17 expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars  
18 (\$15,000.00).

19 33. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiffs  
20 have suffered general and special damages in an amount far in excess of Fifteen Thousand  
21 Dollars (\$15,000.00).

22 34. In carrying out its responsibilities for the design, manufacture, construction, assembly,  
23 testing, labeling, distribution, marketing, and sale of the subject bus, Defendant MCI acted with  
24 fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others.  
25 As a direct and proximate result of the conduct of Defendant MCI, Plaintiffs are entitled to  
26 punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).  
27  
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35. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## **SECOND CLAIM FOR RELIEF**

### **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS AND EDWARD HUBBARD)**

36. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

37. Defendant Ryan's Express is vicariously liable for the wrongful acts or omissions of its employee, Defendant Hubbard, in connection with the subject accident because: (i) at the time of the subject accident, Defendant Hubbard was under the control of Defendant Ryan's Express, and (ii) at the time of the subject accident, Defendant Hubbard was acting within the scope of his employment with Ryan's Express.

38. Defendants Ryan's Express and Edward Hubbard owed a duty of care to Dr. Khiabani and Plaintiffs to exercise due care in the operation of the 2008, full-size commercial tour bus.

39. Defendants were negligent and breached this duty of care, *inter alia*: (i) by overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr. Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane while Dr. Khiabani was traveling therein.

40. As a direct and proximate result of these negligent acts and omissions, Decedent Dr. Kayvan Khiabani suffered catastrophic personal injuries and died.

41. As a direct and proximate result of the negligent acts and omissions of Defendants Ryan's Express and Edward Hubbard, Decedent sustained past, present, and future lost wages,

1 which would otherwise have been gained in his employment if not for his death proximately  
2 caused by this accident, far in excess of Fifteen Thousand Dollars (\$15,000.00).

3 42. As a direct and proximate result of the negligent acts and omissions of Defendants  
4 Ryan's Express and Edward Hubbard, the Plaintiff minors each have been deprived of their  
5 father's comfort, support, companionship, society, and consortium, and further, each has  
6 suffered great grief, sorrow, and extreme emotional distress as a result of the death of their  
7 father, to each for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and  
8 economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00). The minor children  
9 also seek to recover for the pain, suffering, and disfigurement of their father.  
10

11 43. As a direct and proximate result of the negligent acts and omissions of Defendants  
12 Ryan's Express and Edward Hubbard, Plaintiff Katy Barin has been deprived of her husband's  
13 comfort, support, companionship, society, and consortium, and further, has suffered great grief,  
14 sorrow, and extreme emotional distress as a result of the death of her husband, for general  
15 damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in  
16 excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff Katy Barin also seeks to recover for  
17 the pain, suffering, and disfigurement of her husband.  
18

19 44. As a direct and proximate result of the negligent acts and omissions of Defendants  
20 Ryan's Express and Edward Hubbard, Decedent's Estate and/or Executrix Katy Barin has  
21 incurred medical, funeral and burial expenses, and other expenses relating thereto, far in excess  
22 of Fifteen Thousand Dollars (\$15,000.00).

23 45. As a direct and proximate result of the negligent acts and omissions of Defendants  
24 Ryan's Express and Edward Hubbard, Plaintiffs have suffered general and special damages in  
25 an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).  
26

27 46. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
28 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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**THIRD CLAIM FOR RELIEF**

**(NEGLIGENCE PER SE AGAINST DEFENDANTS**

**RYAN'S EXPRESS AND EDWARD HUBBARD)**

47. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

48. When the subject bus overtook Dr. Khiabani at the time of the incident, Defendants Ryan's Express and Edward Hubbard violated Nev. Rev. Stat. § 484B.270, *inter alia*: (i) by overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr. Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane while Dr. Khiabani was traveling therein.

49. These violations, and each of them, were a legal cause of the incident and Plaintiffs' resulting injuries.

50. Plaintiffs belong to the class of persons that the safety requirements in NRS 484B.270 are intended to protect.

51. As a direct and proximate cause of Defendants violations of NRS 484B.270, and each of them, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

52. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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**FOURTH CLAIM FOR RELIEF**

**(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

53. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

54. Defendant Ryan's Express owed a duty of care to Dr. Khiabani and Plaintiffs to adequately train its drivers, including Defendant Edward Hubbard, to safely operate its commercial tour busses, including the bus involved in the subject incident.

55. Defendant Ryan's Express was negligent and breached this duty of care by failing to adequately train its drivers, including Edward Hubbard, to safely operate its commercial tour busses, including the bus involved in the subject incident. Defendant Ryan's Express further breached this duty of care by entrusting the subject tour bus to an inadequately trained person (i.e., Defendant Hubbard).

56. These negligent acts and omissions, and each of them, were a legal cause of the incident and Plaintiffs' resulting injuries.

57. As a direct and proximate result of these negligent acts and omissions, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

58. In carrying out its responsibility to adequately train its drivers, Defendant Ryan's Express acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Ryan's Express, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

59. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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**FIFTH CLAIM FOR RELIEF**

**(STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE  
TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

60. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

61. Defendant Giro, or its predecessors and/or affiliates, were responsible for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the helmet that Dr. Khiabani was wearing at the time of the above-described accident.

62. Upon information and belief, Defendant Pro Cyclery, or its predecessors and/or affiliates, were part of the subject helmet's chain of distribution and sold to Dr. Khiabani at the retail level the helmet that Dr. Khiabani was wearing at the time of the above-described accident.

63. At the time of the subject accident, and at all other times material hereto, the helmet was being used in a manner foreseeable by Defendants Giro and Pro Cyclery.

64. As so used, the subject helmet was defective, unfit, and unreasonably dangerous for its foreseeable use in that there was inadequate protection of the head by the helmet, which caused or contributed to the death of Dr. Khiabani.

65. The subject helmet was further defective and unreasonably dangerous in that Defendants Giro and Pro Cyclery failed to provide adequate warnings about dangers that were either known or should have been known by Giro and Pro Cyclery and/or failed to provide adequate instructions regarding the helmet's safe and proper use.

66. The aforementioned death of Dr. Khiabani was a direct and proximate result of a defect or defects in the helmet and/or the failure of Defendants Giro and Pro Cyclery to warn of defects that were either known or should have been known or to instruct in the safe and proper use of the helmet. As a result, Defendants Giro and Pro Cyclery should be held strictly liable in tort to Plaintiffs.

1 67. As a direct and proximate result of the defective nature of the helmet and said  
2 deficiencies in warnings and/or instructions, Decedent Dr. Kayvan Khiabani suffered a  
3 catastrophic head injury and ultimately died.

4 68. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro  
5 Cyclery, Decedent sustained past, present, and future lost wages, which would otherwise have  
6 been gained in his employment if not for his death, far in excess of Fifteen Thousand Dollars  
7 (\$15,000.00).

8 69. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro  
9 Cyclery, the Plaintiff minors each have been deprived of their father's comfort, support,  
10 companionship, society, and consortium, and further, each has suffered great grief, sorrow, and  
11 extreme emotional distress as a result of the death of their father, to each for general damages  
12 far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of  
13 Fifteen Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain,  
14 suffering, and disfigurement of their father.

15 70. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro  
16 Cyclery, Plaintiff Katy Barin has been deprived of her husband's comfort, support,  
17 companionship, society, and consortium, and further, has suffered great grief, sorrow, and  
18 extreme emotional distress as a result of the death of her husband, for general damages far in  
19 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen  
20 Thousand Dollars (\$15,000.00). Plaintiff Katy Barin also seeks to recover for the pain,  
21 suffering, and disfigurement of her husband.

22 71. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro  
23 Cyclery, Decedent's Estate and/or Executrix Katy Barin has incurred medical, funeral, and  
24 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars  
25 (\$15,000.00).  
26  
27  
28

72. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Plaintiffs have suffered general and special damages in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

73. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

74. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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

#### **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

75. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

76. Giro/Pro Cyclery and Decedent, Dr. Khiabani, entered into a contract for the sale of goods (i.e., the Giro helmet).

77. Defendants Giro/Pro Cyclery had reason to know of the particular purpose for which the helmet was required by Dr. Khiabani (i.e., to wear while riding his road bicycle).

78. Dr. Khiabani relied on the skill or judgment of Defendants Giro/Pro Cyclery to furnish suitable goods for this purpose.

79. The helmet sold by Defendants Giro/Pro Cyclery to Dr. Khiabani was not fit for said purpose and, as a direct and proximate result, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

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80. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

81. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

### **SEVENTH CLAIM FOR RELIEF**

#### **(WRONGFUL DEATH AGAINST ALL DEFENDANTS)**

82. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

83. Plaintiff minors and Plaintiff Katy Barin are the heirs of Decedent and are entitled to maintain an action for damages against the Defendants for the wrongful death of Dr. Kayvan Khiabani.

84. Pursuant to NRS 41.085, Katy Barin is the Executrix of the Estates of the Decedent and may also maintain an action for damages against the Defendants for special damages and penalties, including but not limited to exemplary or punitive damages as set forth in NRS 41.085(5).

85. As a result of the injuries to and death of Dr. Khiabani, Plaintiffs are entitled to damages, including, but not limited to: pecuniary damages for their grief and sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering and disfigurement of the Decedent.

86. As a direct and proximate result of the wrongful death of Dr. Khiabani, Plaintiffs have been damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

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87. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

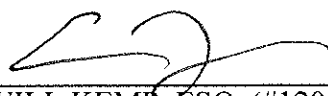
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment of this Court as follows:

1. Past and future general damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
2. Past and future special damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
3. Past and future damages for the wrongful death of Dr. Kayvan Khiabani, as set forth in NRS 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
4. Punitive damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
5. Prejudgment and post-judgment interest, as allowed by law;
6. Costs of suit and reasonable attorneys' fees, as allowed by law, in an amount to be determined; and
7. For such other and further relief that the Court may deem just and proper.

DATED this 6th day of June, 2017.

KEMP, JONES & COULTHARD, LLP

  
 WILL KEMP, ESQ. (#1205)  
 ERIC PEPPERMAN, ESQ. (#11679)  
 3800 Howard Hughes Parkway, 17th Floor  
 Las Vegas, Nevada 89169

-and-

PETER S. CHRISTIANSEN, ESQ. (#5254)  
 KENDELEE L. WORKS, ESQ. (#9611)  
 CHRISTIANSEN LAW OFFICES  
 810 South Casino Center Blvd.  
 Las Vegas, Nevada 89101

*Attorneys for Plaintiffs*

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DEMAND FOR JURY TRIAL

Plaintiffs by and through their attorneys of record, KEMP, JONES & COULTHARD, LLP and CHRISTIANSEN LAW OFFICES, hereby demand a jury trial of all of the issues in the above matter.

DATED this 6th day of June, 2017.

KEMP, JONES & COULTHARD, LLP



WILL KEMP, ESQ. (#1205)  
ERIC PEPPERMAN, ESQ. (#11679)  
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Las Vegas, Nevada 89169

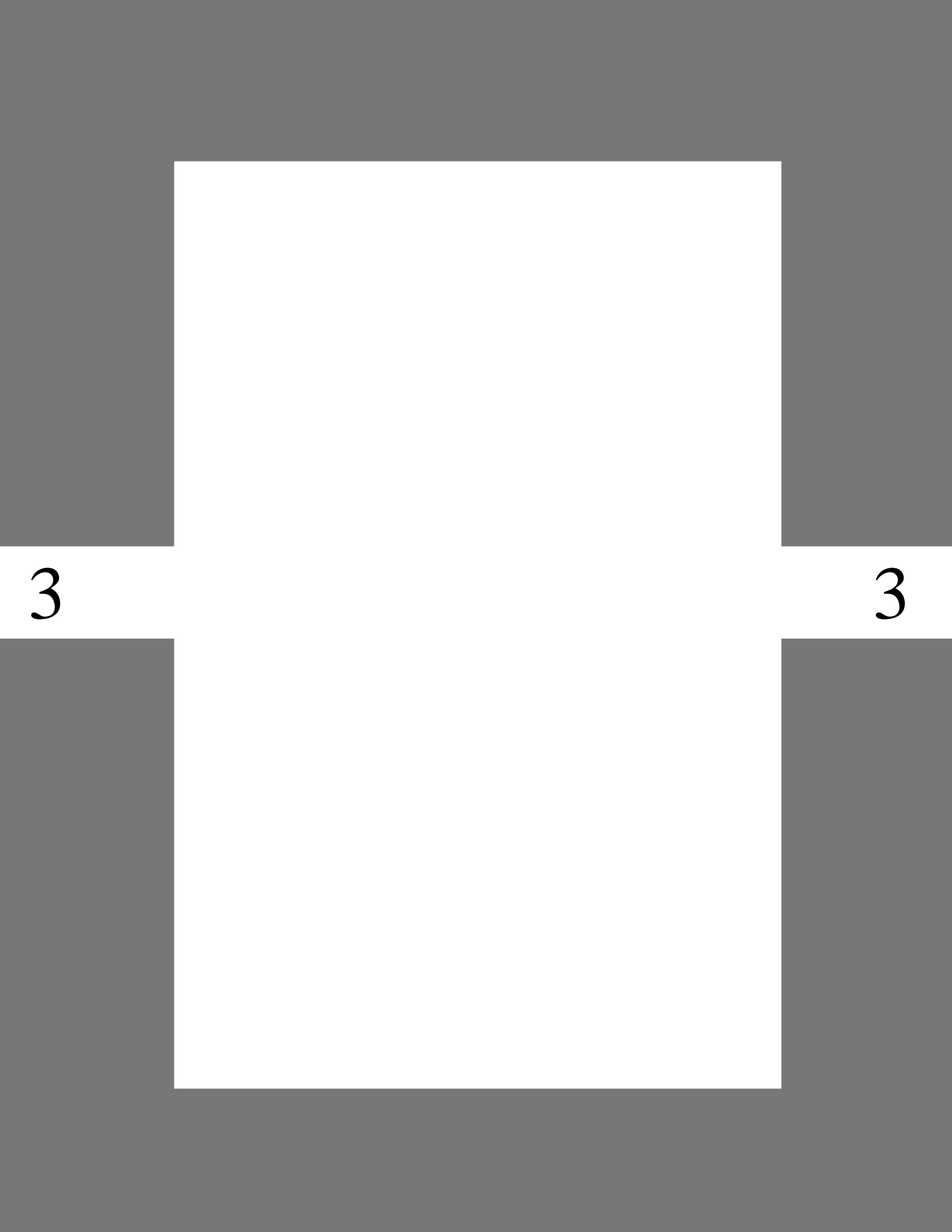
-and-

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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA )  
 KHIABANI, minors by and )  
 through their natural mother, )  
 KATAYOUN BARIN; KATAYOUN )  
 BARIN, individually; KATAYOUN )  
 BARIN as Executrix of the )  
 Estate of Kayvan Khiabani, )  
 M.D. (Decedent) and the Estate )  
 of Kayvan Khiabani, M.D. )  
 (Decedent), )

Plaintiffs,

CASE NO.: A-17-755977-C

DEPT. NO.: XIV

vs.

MOTOR COACH INDUSTRIES, INC., )  
 a Delaware corporation; )  
 MICHELANGELO LEASING, INC. )  
 d/b/a RYAN'S EXPRESS, an )  
 Arizona corporation; EDWARD )  
 HUBBARD, a Nevada resident, et )  
 al., )

Defendants.

*REPORTER'S TRANSCRIPTION OF MOTION FOR TEMPORARY  
 RESTRAINING ORDER*

BEFORE THE HONORABLE ADRIANA ESCOBAR  
 DEPARTMENT XIV

DATED THURSDAY, JUNE 15, 2017

RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: AMBER M. McCLANE, NV CCR No. 914

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## 1 APPEARANCES:

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(Cont. on next page)

1 APPEARANCES CONTINUED:

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3 business as Ryan's Express and Edward Hubbard  
(Telephonically):

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1           **LAS VEGAS, NEVADA; THURSDAY, JUNE 15, 2017**  
2                           **9:49 A.M.**

3                           **\* \* \* \* \***  
4                           **P R O C E E D I N G S**  
5                           **\* \* \* \* \***

6           **THE MARSHAL:** Case No. A-17-755977.

7           **THE COURT:** Mr. Freeman is on the line. Mr.  
8 Freeman, are you still on? Mr. Freeman?

9           **MR. FREEMAN:** (Inaudible.)

10          **THE COURT:** Good morning, Mr. Freeman. This  
11 is Judge Adriana Escobar. Will you please make your  
12 appearance?

13          **MR. FREEMAN:** Good morning, Your Honor.

14          **THE COURT:** Good morning. I have your name,  
15 but I'd like to know who you represent as I have -- I  
16 don't have any indication of that at this point.

17                   Can you hear me?

18          **MR. FREEMAN:** I'm appearing on behalf of  
19 Michelangelo Leasing dba Ryan's Express and Edward  
20 Hubbard. I don't believe either have been served yet  
21 in this case.

22          **THE COURT:** All right. So do -- Edward  
23 Hubbard and who else? I'm sorry. I wasn't able to  
24 hear that. Who was the first --

25          **MR. FREEMAN:** I'm sorry?

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1           **THE COURT:** What was the first client you  
2 mentioned, please?

3           **MR. FREEMAN:** Oh. Michelangelo Leasing.

4           **THE COURT:** Okay. Michelangelo Leasing?

5           **MR. FREEMAN:** Correct.

6           **THE COURT:** Okay. Do you represent Motor  
7 Coach Industries, Inc.?

8           **MR. RUSSELL:** No. That's me, Your Honor.  
9 Howard Russell.

10          **THE COURT:** Oh, I'm sorry. I show no  
11 attorney there as well. So --

12          **MR. RUSSELL:** Howard Russell, 8879.

13          **THE COURT:** Okay. Thank you.

14               All right. And let's see. Bell Sports,  
15 Inc., do we have counsel?

16          **MR. STOBERSKI:** Bell Sports, Your Honor.  
17 Michael Stoberski.

18          **THE COURT:** Okay. And what about Sevenplus  
19 Bicycles, Inc.?

20          **MR. KEMP:** Your Honor, they have been served  
21 but they have not made an appearance.

22          **THE COURT:** No appearance yet?

23          **MR. KEMP:** Right.

24          **THE COURT:** And they have notice of this  
25 hearing?

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1           **MR. KEMP:** Yes, Your Honor. With regards to  
2 Mr. Hubbard and Michelangelo Leasing, counsel indicated  
3 just a second ago he didn't think they'd been served, I  
4 have affidavits of service where they were both served  
5 two days ago.

6           **THE COURT:** All right. Very good.

7           **MR. KEMP:** Maybe it hasn't filtered down to  
8 him yet, but they've both been served.

9           **THE COURT:** Okay. Very good.

10           All right. We are here pursuant to  
11 plaintiff's application for TRO requiring bus -- the  
12 bus company and driver to preserve and immediately turn  
13 over relevant electronic monitoring information from  
14 the bus driver and cell phone on an order shortening  
15 time.

16           Go on, counsel.

17           **MS. COURT RECORDER:** Court's indulgence, Your  
18 Honor. I don't believe I got all the appearances.

19           **THE COURT:** All right.

20           **MR. KEMP:** Your Honor, Will Kemp from Kemp  
21 Jones & Coulthard and Eric Pepperman and we represent  
22 the first named plaintiff, Keon Khiabani, K-e-o-n,  
23 Khiabani, K-h-i-a-b-a-n-i, and we represent the estate.

24           **THE COURT:** Okay. And before we go on --

25           **MR. CHRISTIANSEN:** And, Your Honor, just so

1 that we're all clear, Pete Christiansen and Kendelea  
2 Works. I represent the second minor child, Aria  
3 Khiabani and Katayoun, who goes by Katie, Barin, the  
4 mother individually.

5 **THE COURT:** Okay. Very good.

6 Sandy, will you please make sure we have the  
7 C -- I have the CD? Thank you.

8 All right. Anyone else?

9 **MR. KEMP:** No, Your Honor.

10 **THE COURT:** Okay. I'd like to disclose that  
11 in the past I have been supported by I believe the law  
12 firm that Mr. -- that Mr. Kemp works with and many  
13 other law firms, fortunately for me, but this happens  
14 almost daily in my motion calendar or my cases and I --  
15 I am and will be fair and impartial.

16 Okay. Go on.

17 **MR. KEMP:** Your Honor, what we're here today  
18 to do is just to try to preserve some evidence.

19 **THE COURT:** Yes.

20 **MR. KEMP:** And the evidence at issue consists  
21 of two types of evidence. One, computer data generated  
22 by the bus that was involved in the accident which  
23 occurred on April 18th, and two is the cell phone of  
24 the driver of the bus.

25 Basically all vehicles now are moving



1 computers, and so what we think the bus data would  
2 provide for us is the speed of the bus at the time of  
3 the accident and immediately before the accident and  
4 the direction, the exact direction of the bus, as well  
5 as any information with regards to other things that  
6 were going on in the bus, infotainment centers,  
7 entertainment centers, anything of that sort. Metro is  
8 investigating the accident but -- and you may ask,  
9 well, why didn't Metro preserve this? Metro does not  
10 have the capability to download bus data at the present  
11 time. They can download car data, but they cannot  
12 download bus data. So while it's commonplace for the  
13 Metro investigating team to download all the car data  
14 and preserve it, they don't have the equipment to  
15 download the bus data. There's two places in town, one  
16 of whom our consultant operates that can download the  
17 bus data. So what we would propose is that --

18 **THE COURT:** What is the other place, Counsel?

19 **MR. KEMP:** I'm not sure as I sit here today,  
20 Your Honor, but I do know there's two.

21 **THE COURT:** Okay.

22 **MR. KEMP:** Okay? And if it -- if there's a  
23 dispute as to what location to use, we don't have any  
24 problem using an independent location.

25 **THE COURT:** Okay.

1           **MR. KEMP:** The other type of data we're  
2 asking for is the cell phone data of the driver of the  
3 bus, and specifically what we think is going to be in  
4 there is GPS data that will allow us, No. 1, to  
5 calculate speed and potentially direction to confirm  
6 the data from the bus.

7           So the proposed order -- if I can approach,  
8 Your Honor, with the proposed order? Your Honor, this  
9 needs to be changed because, as Mr. Stoberski pointed  
10 out to me just a second ago, this is our original  
11 caption, it's not the amended caption. But I handed it  
12 to you just to show you the parameters of what we're  
13 asking for.

14           We're asking that the bus company immediately  
15 download all this data. Some of it they may not have  
16 per the example of proximity sensors. I don't know  
17 what kind of data, if any, they have on proximity  
18 sensors. But if they have it, we want to download it  
19 and copy it within five days of service of the order on  
20 the bus company.

21           And we're very flexible with regards to  
22 working with the bus company and counsel, but I think  
23 it's in the best interest of all the parties that this  
24 data be made available to everybody immediately.

25           Now, with regards to the cell phone data, I

1 proposed a slightly different procedure. I'm sensitive  
2 to the fact that cell phone data --

3 **THE COURT:** Counsel, just will you please  
4 repeat the distinction in the bus information that you  
5 need downloaded?

6 **MR. KEMP:** Okay. We want what's called the  
7 engine control module, ECM; the global positioning  
8 system --

9 **THE COURT:** Yeah, I have a list of those, but  
10 I don't know what differs from your order.

11 **MR. KEMP:** It's not different from the order,  
12 Your Honor. The order tracks exactly what we want.

13 **THE COURT:** Oh, okay.

14 **MR. KEMP:** Okay?

15 **THE COURT:** Okay.

16 **MR. KEMP:** We don't want anything different  
17 than the order.

18 With regards to the cell phone, first of all,  
19 as we say in our moving papers, unfortunately cell  
20 phone data sometimes disappears. The Tom Brady  
21 incident where he was being investigated.

22 **THE COURT:** I read that.

23 **MR. KEMP:** Yeah, that's the classic example.  
24 People want something and then all of the sudden the  
25 cell phone disappears.

1 But we are sensitive to the fact that cell  
2 phones include stuff that we're not entitled to,  
3 privileged communications. So what we proposed is  
4 merely that the data be copied, and then we will work  
5 with opposing counsel at a later date to determine how  
6 we access it or whether he accesses it and provides us  
7 what we want from it. I'm very sensitive to that.

8 So that is our proposal. As the Court  
9 comment in a minute order, the defendants have an  
10 obligation to preserve the evidence in any event, but  
11 I'm -- you know, I hate to refer back to Tom Brady  
12 again, but I'm very concerned that this data might not  
13 be maintained in its complete form and we can't get to  
14 it. And so, for that reason, we would submit that  
15 there's grounds for temporary restraining order.

16 With regards to the hardship, I don't see any  
17 hardship whatsoever upon the defendants because they  
18 have to preserve the data in the first place. So for  
19 those reasons we submit that the order should be  
20 granted.

21 **THE COURT:** Counsel?

22 **MR. RUSSELL:** On behalf of Motor Coach  
23 Industries, we don't have any objection to any of what  
24 Mr. Kemp has proposed. We think it would be fruitful  
25 for all the parties as well. As he mentioned, there's

1 going to be a new order submitted. There was some  
2 additions that I spoke to Mr. Pepperman about, changes  
3 to that proposed order. But beyond that, nothing  
4 specific.

5 **THE COURT:** And those -- you've seen it,  
6 the --

7 **MR. RUSSELL:** He provided a proposed order  
8 and I --

9 **THE COURT:** Interchanged --

10 **MR. RUSSELL:** -- suggested a couple changes  
11 to it, yeah.

12 **THE COURT:** Okay.

13 **MR. RUSSELL:** I just wanted to make sure that  
14 all parties were going to be -- as it related to the  
15 cell phone review, I -- Mr. Kemp makes a good point  
16 about keeping it privileged and conferring about that,  
17 but I think all parties should be involved in that in  
18 case there's evidence that we believe is relevant or  
19 Mr. Stoberski believes is relevant and Mr. Kemp  
20 doesn't. So we should all be involved in that  
21 discussion.

22 **THE COURT:** Of course.

23 **MR. STOBERSKI:** No objection overall, Your  
24 Honor. But various comments, same thing. And I'd also  
25 like to have my national counsel take a look at the

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1 proposed order before we sign off on it.

2 **THE COURT:** Okay. How long will that take?

3 **MR. STOBERSKI:** Just a day, a half day.

4 **THE COURT:** Okay. Okay.

5 Let's see. I've reviewed everything. I  
6 actually think that --

7 **MR. FREEMAN:** Your Honor? Hello?

8 **THE COURT:** Oh, I'm sorry. Yes, Mr. Freeman.

9 **MR. FREEMAN:** Yes.

10 **THE COURT:** Yes. Sorry about that.

11 **MR. FREEMAN:** Unfortunately, I had a very  
12 difficult time hearing the people speaking in the  
13 courtroom there, and I guess my objection and what I  
14 don't understand is the need for the TRO.

15 Obligations to preserve evidence are well  
16 known. They're outlined in all the Nevada cases that  
17 have been cited. What I take exception with and object  
18 to is the immediate disclosure of the information and  
19 data. I think it's completely overbroad. The  
20 defendants that it affects haven't made an appearance  
21 yet. I don't even believe they've been served. These  
22 defendants should have the advice of counsel before  
23 turning over any type of information or data, whatever  
24 that means, and they should be able to have an  
25 understanding of the specifics of what is being

1 requested.

2           You know, NRCP 65(e) which covers TROs, you  
3 know, sets out that, you know, reasonable detail deemed  
4 to be put out about what is to be restrained. I don't  
5 see how it relates to a required disclosure. You know,  
6 preserving evidence is one thing, but the immediate  
7 turning over of this vague information and data is a  
8 whole other thing.

9           **THE COURT:** Well --

10           **MR. FREEMAN:** You know, while I will surely  
11 cooperate and give access to, you know, what is -- you  
12 know, what is reasonably requested, you know, we'll  
13 definitely do that. You know, my concern is that this  
14 is, you know, coming before the Court before the  
15 defendants that it affects have even been served and  
16 neither have made an appearance.

17           **THE COURT:** Okay. It's my understanding --  
18 you may -- you may have heard it. Counsel, will you  
19 please --

20           **MR. KEMP:** Your Honor, I have --

21           **THE COURT:** If you don't mind taking the  
22 podium so he can hear you?

23           **MR. KEMP:** No, I don't.

24           **THE COURT:** Thank you.

25           **MR. KEMP:** Your Honor, as I indicated -- and

1 I have two affidavits of service here. Both  
2 Mr. Hubbard and Michelangelo Leasing were served two  
3 days ago, and I'd be more than happy to make these as  
4 part of the record.

5 **THE COURT:** Okay.

6 **MR. KEMP:** And also, Your Honor, I do have a  
7 little bit of a concern about the preservation of the  
8 data, and I don't want to cast any aspersions on  
9 opposing counsel, but I sent a letter about a month ago  
10 with a copy of the then complaint and our first  
11 application for preservation by Federal Express to  
12 counsel for Michelangelo. I've got no response.

13 Since then we had a process server attempt  
14 service on an officer of Michelangelo in Arizona, and  
15 they made I think three or four attempts on service.  
16 And he was in a gated community. He wouldn't answer  
17 the door. It causes me a lot of concern with regards  
18 to the presentation of data if a major -- I will call  
19 this a major bus company does not respond either to a  
20 Federal Express letter -- well, for example, the helmet  
21 manufacturer, we sent them the same letter and they  
22 called us up and they asked us for pictures of the  
23 helmet and we cooperated with them.

24 So, in my experience, that's kind of unusual  
25 in a major case that I send a letter and they're



1 completely silent.

2 And then when I have the service problem and  
3 now we have counsel saying that they weren't served and  
4 I have two affidavits of service. So I'm very  
5 concerned about the preservation of the data in this  
6 case, and there's no harm to them. Like he's already  
7 admitted, they have to turn --

8 **MR. FREEMAN:** Well, I don't know if they've  
9 been served. I understand that Edward Hubbard, I was  
10 told yesterday that he was served. And that's all I  
11 know.

12 I mean, I'm on vacation here and I just found  
13 out about this yesterday and made arrangements to get  
14 on Court Call just because of the concerns I mentioned  
15 regarding, you know, any type of order being issued or  
16 demand or requirement for an immediate disclosure,  
17 whatever that means, without a defendant being --  
18 making an appearance and having the advice of counsel.  
19 That's my concern.

20 **MR. KEMP:** Well, Judge, Counsel hasn't had  
21 the benefit of looking at the order. The order --

22 **THE COURT:** Please speak a little bit louder,  
23 please. Counsel, these are the worst mics that I've  
24 had since I've arrived.

25 **MR. KEMP:** Yeah. Counsel hasn't had the

1 benefit of looking at the order, Your Honor. The order  
2 provides that they have five business days to do it.  
3 And assuming for the sake of argument that we get the  
4 revised order to Mr. Stoberski today and we get it to  
5 you tomorrow, they'll have all next week and  
6 potentially until a week from Monday to do this. I  
7 think that's an ample period of time here.

8 If they need more time for some reason, Your  
9 Honor, he should say so now.

10 **THE COURT:** I'm sorry. If they need?

11 **MR. KEMP:** He should say so now. I mean, if  
12 he needs a couple more days. I just think we got to  
13 get this started.

14 **MR. FREEMAN:** Again, here's -- you know, by  
15 all means the -- we will be willing to cooperate, but  
16 without even having an opportunity to discuss this  
17 with, you know, my potential client -- I don't even  
18 know if I'm going to be representing them both as this  
19 goes further -- you know, I think there needs to be  
20 some -- you know, some wiggle room there. Like I said,  
21 I just found out about this yesterday and to have this  
22 hard-and-fast, you know, within five days you're going  
23 to immediately disclose X, Y, and Z, I think that goes  
24 beyond what a TRO is about.

25 **THE COURT:** Anything else?

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1           **MR. KEMP:** Judge, this is not --

2           *(Simultaneous crosstalk.)*

3           **MR. FREEMAN:** -- one thing but the immediate  
4 disclosure is a whole other thing.

5           **MR. KEMP:** Judge, this is not a complicated  
6 process. They stick a wire into the computer and it  
7 downloads. I mean, we're not talking about copying the  
8 Library of Congress with, you know, 4,000 monks or  
9 something. It's not obtrusive to the defendant. It's  
10 relatively easy to do. I'm surprised they didn't do it  
11 immediately themselves as soon as I sent them that  
12 letter 30 days ago. Because if it turns out any data  
13 has been lost between that period of time and now, they  
14 have an issue. So I submit that the grounds for the  
15 order have been established and you should sign.

16           **THE COURT:** Mr. Freeman, did you not  
17 receive --

18           **MR. FREEMAN:** Yes.

19           **THE COURT:** Did you not receive the letter  
20 that was discussed by counsel a few minutes ago?

21           And you said how long?

22           **MR. KEMP:** It was sent to their general  
23 counsel, Your Honor.

24           **THE COURT:** Okay.

25           **MR. KEMP:** Right after we filed the amended

1 complaint, the day before we filed the initial request  
2 that Your Honor entered the minute order on. So I  
3 don't have that exact date in front of me.

4 **THE COURT:** Have you not been privy or aware  
5 of that letter? It was sent to general counsel.

6 **MR. FREEMAN:** I am aware. When the original  
7 ex-parte motion was filed, I received a -- I got a copy  
8 of that, and there was a letter there. I don't know if  
9 that's the letter he's referring to. But, again, I'm  
10 in a position that, you know, I'm not aware that  
11 they -- that they had been served. And like I said,  
12 this is kind of -- I found out about this yesterday  
13 afternoon, and so I just scrambled to make attempts to  
14 get -- you know, get this Court Call set up so I could  
15 participate and let our position be known.

16 Like I said, you know, preserving evidence is  
17 one thing. It's the whole, you know, what does this  
18 immediate disclosure mean? And, again, I'm not -- you  
19 know, I'm not trying to hide anything or purposefully  
20 delay anything. Obviously, if it's relevant, we'll  
21 work with them to get it disclosed in the manner it  
22 needs to be done. My concern is that, you know, I  
23 didn't see the order but there was some talk about  
24 five -- within five days?

25 **THE COURT:** Yes.

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1           **MR. KEMP:** Business days. Business days.

2           **THE COURT:** Business days.

3           **MR. FREEMAN:** I mean, which -- I mean,  
4 that --

5           **THE COURT:** I don't think that's --

6           **MR. FREEMAN:** -- that could be very well --  
7           *(Simultaneous crosstalk.)*

8           **THE COURT:** Frankly --

9           **MR. FREEMAN:** -- defined --

10          **THE COURT:** -- Mr. Freeman, I don't think --

11          **MR. FREEMAN:** My concern is I haven't talked  
12 to them to know if there's going to be any kind of  
13 hiccup involved.

14          **THE COURT:** Well, here I've really given this  
15 a lot of thought because I received several weeks  
16 ago -- I can't remember the time because I've had a lot  
17 of court work recently. So I didn't find that it was  
18 something I wanted to come -- without the other parties  
19 being informed. I thought that was very important.

20               The preservation of evidence is critical and  
21 required. Okay? So I -- and I think -- well, I have  
22 cameras that erase every 30 days. I know that they're  
23 not the GPS on a bus, but they just automatically  
24 erase. Okay? And evidence, it doesn't have to be  
25 deflated footballs. It can just be the nature of the

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1 mechanism. Okay? And preserving this evidence is  
2 critical. So I am going -- I haven't read this order  
3 that you've augmented or changed, but what I am going  
4 to order is that within five business days the -- well,  
5 let's see. I have a highlight here.

6 Mr. Kemp, you talked about -- I'm going to  
7 read what I have, you know, the notes that I have on --  
8 I show that EDCRs have limited storage capacity, as the  
9 cameras I'm familiar with -- it's a little bit  
10 different but -- and any data that has not been  
11 extracted and preserved could be overwritten by the  
12 passage of time. Plaintiff believes the bus may have  
13 had electronic information, including hard braking  
14 data, last stop data, fault codes, trip data,  
15 diagnostics, snapshot data, travel computing, travel  
16 and time tracking, collision warning, and video  
17 warning, video monitoring. All of that will be  
18 preserved -- we'll talk about the plan in a moment.  
19 All of that will be preserved within five business  
20 days. Okay?

21 And, you know, this is critical. It's a very  
22 serious case. And I'm not -- by the way, Mr. Freeman,  
23 frankly, I'm not even considering that your client  
24 would try to dispose of this, but oftentimes it happens  
25 automatically depending on the apparatus that's used.

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1 And I am not an expert in this area. Okay? So it's  
2 just concerning preservation of evidence in my view, in  
3 this Court's view.

4 Now, with respect to the smartphone, the  
5 plaintiff has requested that the driver's smartphone  
6 may have electronic data which can be downloaded and  
7 preserved, including the date and time of calls, texts,  
8 GPS data, and compass data and accelerometer data.

9 Okay? And under *Bass Davis* a party has a common law  
10 duty and ethical obligation to preserve discoverable  
11 evidence. You know, so -- and I understand your  
12 concerns with the privacy of the cell phone  
13 information, Mr. Freeman.

14 So what I -- I haven't read your order this  
15 morning, Counsel, but my thought is this should be done  
16 within five days, five business days. And,  
17 Mr. Freeman, I'm not going -- my only concern was -- I  
18 have to be very careful. My goal is to preserve, but  
19 the immediate turn over of relevant electronic  
20 monitoring information from the bus involved in the  
21 April 18, 2017, accident and the cell phones, if any,  
22 Defendant Hubbard had in his possession at the time of  
23 the accident, I'm not going to order automatic --  
24 immediately turning this relevant information over or  
25 any -- any of this information over to plaintiffs at

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1 this time.

2 So my -- my thought was -- and I'm open for  
3 suggestions. I really am because a little -- this is a  
4 bit of a case of first impressions for me. It's  
5 critical that we preserve both the bus, everything I've  
6 enunciated and everything that has been discussed in  
7 this hearing, that evidence within five business days,  
8 and also everything concerning the cell phone.

9 Now, whether some of this evidence in the  
10 cell phone is discoverable or not, I don't know. And  
11 I'm not going to jump the step of -- of the  
12 determination of whether it's discoverable or not.  
13 Whether I have to do this in camera, whether it goes  
14 through the regular process through the discovery  
15 commissioner, that's a different issue.

16 But -- so both -- both will be downloaded  
17 within five days. My thought -- or, actually, I had a  
18 recommendation of having this evidence preserved by the  
19 defendants but you would have a duty to -- Mr. Freeman,  
20 your clients would have a duty to preserve this, and  
21 that would be an order by this Court.

22 What -- what I would encourage is for the --  
23 apparently there are only two entities in is it the  
24 State, Mr. Kemp, or in Clark --

25 **MR. KEMP:** There's the heirs, the widow, and



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1 the estate, Your Honor.

2 **THE COURT:** No, no. Entities that can  
3 download this or --

4 **MR. KEMP:** Oh. In this state there are, Your  
5 Honor.

6 **THE COURT:** In Nevada.

7 **MR. KEMP:** Right.

8 **THE COURT:** Okay. So it doesn't matter to  
9 counsel for plaintiff which one it is. But they would  
10 obviously be under a court order to not discuss the  
11 results of the evidence with plaintiffs' counsel until  
12 the appropriate time. I think that's absolutely --  
13 that should -- in my mind, that should --

14 **MR. KEMP:** Your Honor, my only concern --

15 **THE COURT:** -- address your concern,  
16 Mr. Freeman.

17 Yes?

18 **MR. KEMP:** Okay. My only concern is  
19 verifying that the various types of data were  
20 downloaded. So let's assume that the bus has different  
21 types of data.

22 **THE COURT:** Right.

23 **MR. KEMP:** I want to make sure all 10 were  
24 downloaded, not eight out of the 10.

25 **THE COURT:** Okay. So I would contemplate and

1 I would want, as soon as possible, a report from the --  
2 and you can select, Mr. Freeman, and speak to Mr. Kemp  
3 about -- any other counsel -- but, you know, which of  
4 the two I'll call them experts at this moment or people  
5 that are efficient or proficient in downloading this  
6 information, provide a list of what was downloaded not  
7 what it -- not what it reveals but what was downloaded  
8 and the dates. Because I think that's very important  
9 as well. And also --

10 **MR. KEMP:** It would be the dates of data  
11 generation?

12 **THE COURT:** I'm sorry. The dates of data  
13 generation, yes. And this should be downloaded from --  
14 all information from the bus and the cell phone should  
15 be downloaded from the date of the accident which I  
16 believe was April 18, 2017.

17 **MR. KEMP:** Your Honor, in my experience they  
18 can't segregate by date.

19 **THE COURT:** Okay.

20 **MR. KEMP:** They have to just download  
21 whatever's on there.

22 **THE COURT:** Well, all right. I see. Okay.  
23 So that needs -- that -- and obviously anything --  
24 information that's not relevant to the accident on  
25 April 18, 2017, is not something that's necessarily

1 going to be a part of this case.

2 **MR. KEMP:** We can argue about that later,  
3 Your Honor.

4 **THE COURT:** You can argue about it later.  
5 Okay?

6 **MR. KEMP:** If the data shows they were  
7 speeding seven days in a row before the day of the  
8 accident, you know --

9 **THE COURT:** Okay.

10 **MR. KEMP:** -- we would contend it's relevant.

11 **THE COURT:** In any case, I just want a  
12 declaration by the entity who is downloading or the  
13 person who's downloading with respect to, you know,  
14 enunciating or enumerating what they downloaded, okay,  
15 from each -- from the bus and from the -- also from the  
16 cell phone. They will not be shared with plaintiff  
17 until the appropriate time because -- but, you know,  
18 that's a concern of mine, too, Mr. Freeman. And --

19 **MR. KEMP:** Your Honor, I don't mind that  
20 they're not shared with us, but there's an ongoing  
21 Metro investigation right now. As soon as they've --

22 **THE COURT:** I'm just saying not shared with  
23 plaintiff --

24 **MR. KEMP:** If Metro asks for it, Metro  
25 could -- I mean, you're not precluding Metro from

1 getting the --

2 **THE COURT:** No. I said plaintiffs. Okay?  
3 Because what I'm trying to do is preserve the evidence  
4 but not, you know, immediately turn information over to  
5 a party when we're at this point of the proceedings.  
6 Okay?

7 But, no, if Metro needs that for their  
8 investigation, I think that that's something that's  
9 necessary. Okay?

10 All of this should be done within five  
11 business days and --

12 **MR. FREEMAN:** Okay. This is Eric Freeman.  
13 I'm in agreement with that. We will cooperate with  
14 Mr. Kemp's office. If he'd send the proposed order to  
15 me along with the information on who he believes would  
16 be able to download all of this and to make sure all of  
17 this data is preserved, then, like I said, we'll  
18 cooperate fully.

19 **THE COURT:** Okay. Very good. And I think  
20 that that also addresses your concerns and, actually,  
21 my concerns as the Court.

22 **MR. KEMP:** Your Honor, can we have some  
23 contact information from Mr. Freeman?

24 **THE COURT:** Mr. Freeman, how -- now we're  
25 going to know where you are possibly. Okay? Do you --

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1 will you please share your contact information where we  
2 can -- where Mr. Kemp can reach you or other counsel  
3 today.

4 **MR. FREEMAN:** If he would -- if his office  
5 would call my office, ask for Crystal Martin, she will  
6 be able to give him everything he needs.

7 **THE COURT:** Okay. Very good. I don't want  
8 any glitches in this.

9 **MR. KEMP:** What phone number should we use to  
10 call?

11 **THE COURT:** What phone number should Mr. Kemp  
12 use to speak to Ms. Campbell [sic]?

13 **MR. FREEMAN:** I'm on my cell phone so I'm  
14 trying to --

15 **THE COURT:** That's okay.

16 **MR. FREEMAN:** The law offices of Selman  
17 Breitman, and Crystal Martin is my assistant. She'll  
18 be able to provide him everything.

19 **THE COURT:** You can put us on hold for a  
20 moment and provide the phone number that -- and her  
21 direct line as well, please. I just don't want any --  
22 I don't want any glitches.

23 **MR. KEMP:** Yeah, Your Honor, we're okay.  
24 We --

25 **THE COURT:** Do you have it?

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1           **MR. KEMP:** Yeah.

2           **THE COURT:** Okay. Very good.

3           **MR. FREEMAN:** And if she's -- once I get off  
4 this, I will call her and I can actually have her call  
5 Mr. Kemp's office.

6           **THE COURT:** Okay. Very good. And --

7           **MR. FREEMAN:** Who should I have her ask for?

8           **MR. KEMP:** Ask for Mr. Pepperman.

9           **THE COURT:** Mr. Pepperman. Ask for Mr. --

10          **MR. PEPPERMAN:** Yes. Eric Pepperman.

11          **THE COURT:** Okay. Very good.

12          **MR. FREEMAN:** I'm sorry. Eric Pepperman?

13          **THE COURT:** Yes.

14          **MR. PEPPERMAN:** Yes.

15          **MR. FREEMAN:** Okay. I will have her call  
16 right away.

17          **MR. KEMP:** Your Honor, our intent is to  
18 redraft this immediately with the direction the Court's  
19 given us, provide it to all counsel, and hopefully get  
20 it back to you in a letter either today or tomorrow.

21          **THE COURT:** Okay. Well, it's not something  
22 that I can delineate and, you know -- do you prefer --

23          **MR. KEMP:** I think we're probably better  
24 redrafting it. What do you think, Mike?

25          **THE COURT:** All right. Go ahead and redraft,

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1 share with all counsel and --

2 **MR. FREEMAN:** Can you send the proposed order  
3 over to me as well?

4 **THE COURT:** Yes. Mr. Kemp --

5 **MR. KEMP:** Yes. Of course.

6 **THE COURT:** Okay.

7 **MR. FREEMAN:** Thank you.

8 **THE COURT:** Very good. So the order is  
9 granted, but I'm not -- I'm not going -- so partially  
10 granted. It's denied as to immediately turning over  
11 the information or the evidence that the -- I don't  
12 even know who it is that's going to be doing this.  
13 Okay?

14 **MR. KEMP:** Your Honor, we'll get the two  
15 names to counsel as soon as we --

16 **THE COURT:** For the record --

17 **MR. KEMP:** -- get back to the office.

18 **THE COURT:** -- one of two entities or people  
19 that are going to be downloading.

20 **MR. KEMP:** Right.

21 **THE COURT:** Okay. They should not turn that  
22 over nor speak to any counsel for plaintiffs about what  
23 is -- what the actual information is at this point.  
24 All right? I think that's about -- any objections  
25 from --

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| <b>M.D [3]</b> 1/7 1/8 2/2  | <b>minutes [1]</b> 18/20  | <b>name [1]</b> 4/14   |
| <b>made [6]</b> 5/21 9/24<br>13/20 14/16 15/15<br>16/13           | <b>module [1]</b> 10/7  | <b>named [1]</b> 6/22  |
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| <b>specifics [1]</b> 13/25   | 23/15 24/12 25/8             | <b>THURSDAY [2]</b> 1/21 4/1 |
| <b>speed [2]</b> 8/2 9/5     | 25/24 25/25 26/18            | <b>time [15]</b> 6/15 8/2    |
| <b>speeding [1]</b> 26/7     | 27/8 27/8 28/15 30/12        | 8/11 13/12 17/7 17/8         |
| <b>spoke [1]</b> 12/2        | 30/24                        | 18/13 20/16 21/12            |
| <b>Sport [1]</b> 2/18        | <b>their [3]</b> 1/5 18/22   | 21/16 22/7 22/22 23/1        |
| <b>Sports [3]</b> 2/18 5/14  | 27/7                         | 24/12 26/17                  |
| 5/16                         | <b>them [8]</b> 15/21 15/23  | <b>today [5]</b> 7/17 8/19   |
| <b>started [1]</b> 17/13     | 16/6 17/18 18/11             | 17/4 28/3 29/20              |
| <b>state [2]</b> 23/24 24/4  | 19/21 20/12 25/4             | <b>told [1]</b> 16/10        |
| <b>step [1]</b> 23/11        | <b>themselves [1]</b> 18/11  | <b>Tom [2]</b> 10/20 11/11   |
| <b>stick [1]</b> 18/6        | <b>then [6]</b> 10/24 11/4   | <b>tomorrow [2]</b> 17/5     |
| <b>still [1]</b> 4/8         | 15/10 15/13 16/2             | 29/20                        |
| <b>STOBERSKI [6]</b> 2/19    | 27/17                        | <b>too [1]</b> 26/18         |
| 2/20 5/17 9/9 12/19          | <b>there [12]</b> 5/11 9/4   | <b>town [1]</b> 8/15         |
| 17/4                         | 12/1 13/13 17/19             | <b>tracking [1]</b> 21/16    |
| <b>stop [1]</b> 21/14        | 17/20 19/8 19/8 19/23        | <b>tracks [1]</b> 10/12      |
| <b>storage [1]</b> 21/8      | 23/23 24/4 25/21             | <b>TRAN [1]</b> 1/1          |
| <b>stuff [1]</b> 11/2        | <b>there's [10]</b> 8/15     | <b>transcribed [2]</b> 1/25  |
| <b>submit [3]</b> 11/14      | 8/20 8/22 11/15 11/25        | 31/11                        |
| 11/19 18/14                  | 12/18 16/6 20/12             | <b>TRANSCRIPTION [1]</b>     |
| <b>submitted [1]</b> 12/1    | 23/25 26/20                  | 1/18                         |
| <b>sudden [1]</b> 10/24      |                              | <b>travel [2]</b> 21/15      |
|                              |                              | 21/15                        |

|                              |                              |                                  |
|------------------------------|------------------------------|----------------------------------|
| <b>T</b>                     | <b>verifying</b> [1] 24/19   | <b>what's</b> [1] 10/6           |
| <b>trip</b> [1] 21/14        | <b>very</b> [20] 6/6 6/9 7/5 | <b>whatever</b> [2] 13/23 000075 |
| <b>TRO</b> [5] 6/11 13/14    | 9/21 11/7 11/12 13/11        | 16/17                            |
| 17/24 31/1 31/3              | 16/4 20/6 20/19 21/21        | <b>whatever's</b> [1] 25/21      |
| <b>TROs</b> [1] 14/2         | 22/18 25/8 27/19 28/7        | <b>whatsoever</b> [1] 11/17      |
| <b>truly</b> [1] 31/11       | 29/2 29/6 29/11 30/8         | <b>WHEELER</b> [1] 2/14          |
| <b>try</b> [2] 7/18 21/24    | 31/6                         | <b>when</b> [3] 16/2 19/6        |
| <b>trying</b> [3] 19/19 27/3 | <b>video</b> [3] 21/16 21/17 | 27/5                             |
| 28/14                        | 31/11                        | <b>where</b> [5] 6/4 10/21       |
| <b>turn</b> [5] 6/12 16/7    | <b>view</b> [2] 22/2 22/3    | 27/25 28/1 28/2                  |
| 22/19 27/4 30/21             | <b>W</b>                     | <b>Whereupon</b> [1] 31/8        |
| <b>turning</b> [4] 13/23     | <b>want</b> [13] 9/18 10/6   | <b>whether</b> [5] 11/6 23/9     |
| 14/7 22/24 30/10             | 10/12 10/16 10/24            | 23/12 23/13 23/13                |
| <b>turns</b> [1] 18/12       | 11/7 15/8 24/23 25/1         | <b>which</b> [7] 7/22 14/2       |
| <b>two</b> [12] 6/5 7/21     | 26/11 28/7 28/21             | 20/3 22/6 24/9 25/3              |
| 7/23 8/15 8/20 15/1          | 28/22                        | 25/15                            |
| 15/2 16/4 23/23 25/4         | <b>wanted</b> [2] 12/13      | <b>while</b> [2] 8/12 14/10      |
| 30/14 30/18                  | 20/18                        | <b>who</b> [8] 4/15 4/23         |
| <b>type</b> [3] 9/1 13/23    | <b>warning</b> [2] 21/16     | 4/24 7/3 26/12 27/15             |
| 16/15                        | 21/17                        | 29/7 30/12                       |
| <b>types</b> [3] 7/21 24/19  | <b>was</b> [21] 4/24 5/1     | <b>who's</b> [1] 26/13           |
| 24/21                        | 7/22 10/21 12/1 15/16        | <b>whole</b> [3] 14/8 18/4       |
| <b>U</b>                     | 16/9 16/10 18/20             | 19/17                            |
| <b>under</b> [2] 22/9 24/10  | 18/22 19/5 19/7 19/8         | <b>whom</b> [1] 8/16             |
| <b>understand</b> [3] 13/14  | 19/23 20/17 20/19            | <b>why</b> [1] 8/9               |
| 16/9 22/11                   | 22/17 23/2 25/6 25/7         | <b>widow</b> [1] 23/25           |
| <b>understanding</b> [2]     | 25/16                        | <b>wiggle</b> [1] 17/20          |
| 13/25 14/17                  | <b>wasn't</b> [1] 4/23       | <b>will</b> [21] 4/11 6/20       |
| <b>unfortunately</b> [2]     | <b>way</b> [1] 21/22         | 7/6 7/15 9/4 10/3                |
| 10/19 13/11                  | <b>we</b> [47]               | 11/4 13/2 14/10 14/18            |
| <b>until</b> [3] 17/6 24/11  | <b>we'll</b> [5] 14/12 19/20 | 15/18 17/15 21/17                |
| 26/17                        | 21/18 27/17 30/14            | 21/19 23/16 26/16                |
| <b>unusual</b> [1] 15/24     | <b>we're</b> [12] 7/1 7/17   | 27/13 28/1 28/5 29/4             |
| <b>up</b> [2] 15/22 19/14    | 9/1 9/12 9/14 9/21           | 29/15                            |
| <b>upon</b> [1] 11/17        | 11/2 18/7 27/5 27/24         | <b>WILLIAM</b> [1] 2/4           |
| <b>us</b> [8] 8/2 9/4 11/6   | 28/23 29/23                  | <b>willing</b> [1] 17/15         |
| 15/22 15/22 26/20            | <b>week</b> [2] 17/5 17/6    | <b>wire</b> [1] 18/6             |
| 28/19 29/19                  | <b>weeks</b> [1] 20/15       | <b>within</b> [9] 9/19 17/22     |
| <b>use</b> [3] 8/23 28/9     | <b>WEINBERG</b> [1] 2/14     | 19/24 21/4 21/19                 |
| 28/12                        | <b>well</b> [18] 5/11 8/4    | 22/16 23/7 23/17                 |
| <b>used</b> [1] 21/25        | 8/9 11/25 13/15 14/9         | 27/10                            |
| <b>using</b> [1] 8/24        | 15/20 16/8 16/20 20/6        | <b>without</b> [3] 16/17         |
| <b>V</b>                     | 20/14 20/21 21/4 25/9        | 17/16 20/18                      |
| <b>vacation</b> [1] 16/12    | 25/22 28/21 29/21            | <b>work</b> [3] 11/4 19/21       |
| <b>vague</b> [1] 14/7        | 30/3                         | 20/17                            |
| <b>various</b> [2] 12/24     | <b>were</b> [7] 6/4 8/6      | <b>working</b> [1] 9/22          |
| 24/19                        | 12/14 15/2 24/19             | <b>works</b> [3] 2/9 7/2         |
| <b>Vegas</b> [6] 2/6 2/10    | 24/23 26/6                   | 7/12                             |
| 2/15 2/21 3/5 4/1            | <b>weren't</b> [1] 16/3      | <b>worst</b> [1] 16/23           |
| <b>vehicles</b> [1] 7/25     | <b>West</b> [1] 2/20         | <b>would</b> [17] 8/1 8/17       |
|                              | <b>what</b> [39]             | 11/14 11/24 21/24                |
|                              |                              | 23/19 23/20 23/21                |

**W**  
**would...** [9] 23/22  
24/9 24/25 25/1 25/10  
26/10 27/15 28/4 28/5  
**wouldn't** [1] 15/16  
**wwhgd.com** [1] 2/16

**X**  
**XIV** [2] 1/10 1/20

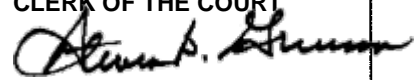
**Y**  
**yeah** [6] 10/9 10/23  
12/11 16/25 28/23  
29/1  
**yes** [14] 6/1 7/19  
13/8 13/9 13/10 18/18  
19/25 24/17 25/13  
29/10 29/13 29/14  
30/4 30/5  
**yesterday** [4] 16/10  
16/13 17/21 19/12  
**yet** [4] 4/20 5/22 6/8  
13/21  
**you** [74]  
**you're** [2] 17/22  
26/25  
**you've** [2] 12/5 21/3  
**your** [44]

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4



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9 *Attorneys for Plaintiffs*

10  
11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
14 KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as  
15 Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
16 Khiabani, M.D. (Decedent),

17 *Plaintiffs,*

18 *vs.*

19 MOTOR COACH INDUSTRIES, INC.,  
a Delaware corporation; MICHELANGELO  
20 LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
21 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California  
22 corporation; SEVENPLUS BICYCLES, INC.  
d/b/a Pro Cyclery, a Nevada corporation;  
23 DOES 1 through 20; and ROE  
24 CORPORATIONS 1 through 20.

25 *Defendants.*

Case No. A-17-755977-C

Dept. No. XIV

**NOTICE OF ENTRY OF ORDER  
DENYING WITHOUT PREJUDICE  
PLAINTIFFS' EX PARTE MOTION FOR  
ORDER REQUIRING BUS COMPANY  
AND BUS DRIVE TO PRESERVE AND  
IMMEDIATELY TURN OVER  
RELEVANT ELECTRONIC  
MONITORING INFORMATION FROM  
BUS AND DRIVER CELL PHONE**

27 TO: All parties herein; and

28 TO: Their respective counsel;

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Seventeenth Floor  
Las Vegas, Nevada 89169  
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1 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Denying  
 2 Without Prejudice Plaintiffs' Ex Parte Motion For Order Requiring Bus Company and Bus Drive to  
 3 Preserve and Immediately Turn Over Relevant Electronic Monitoring Information from Bus and  
 4 Driver Cell Phone was entered in the above entitled matter on June 20, 2017.

5 A copy of said Order is attached hereto.

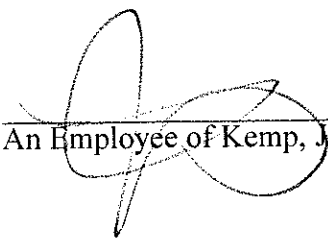
6 DATED this 21<sup>st</sup> day of June, 2017.

7 KEMP, JONES & COULTHARD, LLP

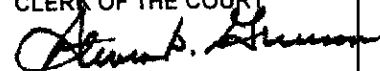
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 9 \_\_\_\_\_  
 10 WILL KEMP, ESQ. (#1205)  
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 12 KEMP, JONES & COULTHARD, LLP  
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 14 Las Vegas, NV 89169  
 15 -and-  
 16 PETER S. CHRISTIANSEN, ESQ. (#5254)  
 17 KENDELEE L. WORKS, ESQ. (#9611)  
 18 CHRISTIANSEN LAW OFFICES  
 19 810 Casino Center Blvd.  
 20 Las Vegas, Nevada 89101  
 21 Attorneys for Plaintiffs

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on the 21<sup>st</sup> day of June, 2017, the foregoing NOTICE OF ENTRY OF  
 24 ORDER DENYING WITHOUT PREJUDICE PLAINTIFFS' EX PARTE MOTION FOR ORDER  
 25 REQUIRING BUS COMPANY AND BUS DRIVE TO PRESERVE AND IMMEDIATELY TURN  
 26 OVER RELEVANT ELECTRONIC MONITORING INFORMATION FROM BUS AND DRIVER  
 27 CELL PHONE was served on all parties currently on the electronic service list via the Court's  
 28 electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules,  
 Administrative Order 14-2.

29   
 30 \_\_\_\_\_  
 An Employee of Kemp, Jones & Coulthard.

Electronically Filed  
6/20/2017 10:41 AM  
Steven D. Grierson  
CLERK OF THE COURT



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9 *Attorneys for Plaintiffs*

# 10 11 DISTRICT COURT

## 12 COUNTY OF CLARK, NEVADA

13 KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
14 KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as  
15 Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
16 Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,  
a Delaware corporation; MICHELANGELO  
20 LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
21 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California  
22 corporation; SEVENPLUS BICYCLES, INC.  
d/b/a Pro Cyclery, a Nevada corporation;  
23 DOES 1 through 20; and ROE  
24 CORPORATIONS 1 through 20,

25 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFFS' EX PARTE  
MOTION FOR ORDER REQUIRING BUS  
COMPANY AND BUS DRIVER TO  
PRESERVE AND IMMEDIATELY TURN  
OVER RELEVANT ELECTRONIC  
MONITORING INFORMATION FROM  
BUS AND DRIVER CELL PHONE**

27 Having reviewed Plaintiffs' ex parte motion filed on May 30, 2017, the Court notes that the  
28 motion is not the appropriate method for seeking the requested relief, as Plaintiffs are essentially

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1 requesting a temporary restraining order and an order compelling production of evidence. Each of  
 2 these motions require notice to the other party and will not be granted on an ex parte basis.

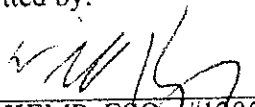
3 Accordingly, because it is not clear that Defendants were served with the ex parte motion,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' ex parte motion  
 5 is DENIED without prejudice. If Plaintiffs refile their request to preserve evidence as an application  
 6 for temporary restraining order in line with NRCP 65(b), including making efforts to serve the  
 7 Defendants with notice of that application, the Court will consider the matter at that time. The Court  
 8 notes, however, that both parties have a common law duty to preserve documents, tangible items,  
 9 and information relevant to litigation that are reasonably calculated to lead to the discovery of  
 10 admissible evidence when litigation is reasonably foreseeable. *See Bass-Davis v. Davis*, 122 Nev.  
 11 422 (2006). Plaintiffs are directed to serve a copy of the Court's June 6, 2017, minute order on the  
 12 Defendants.

13 DATED this 14 day of June, 2017.

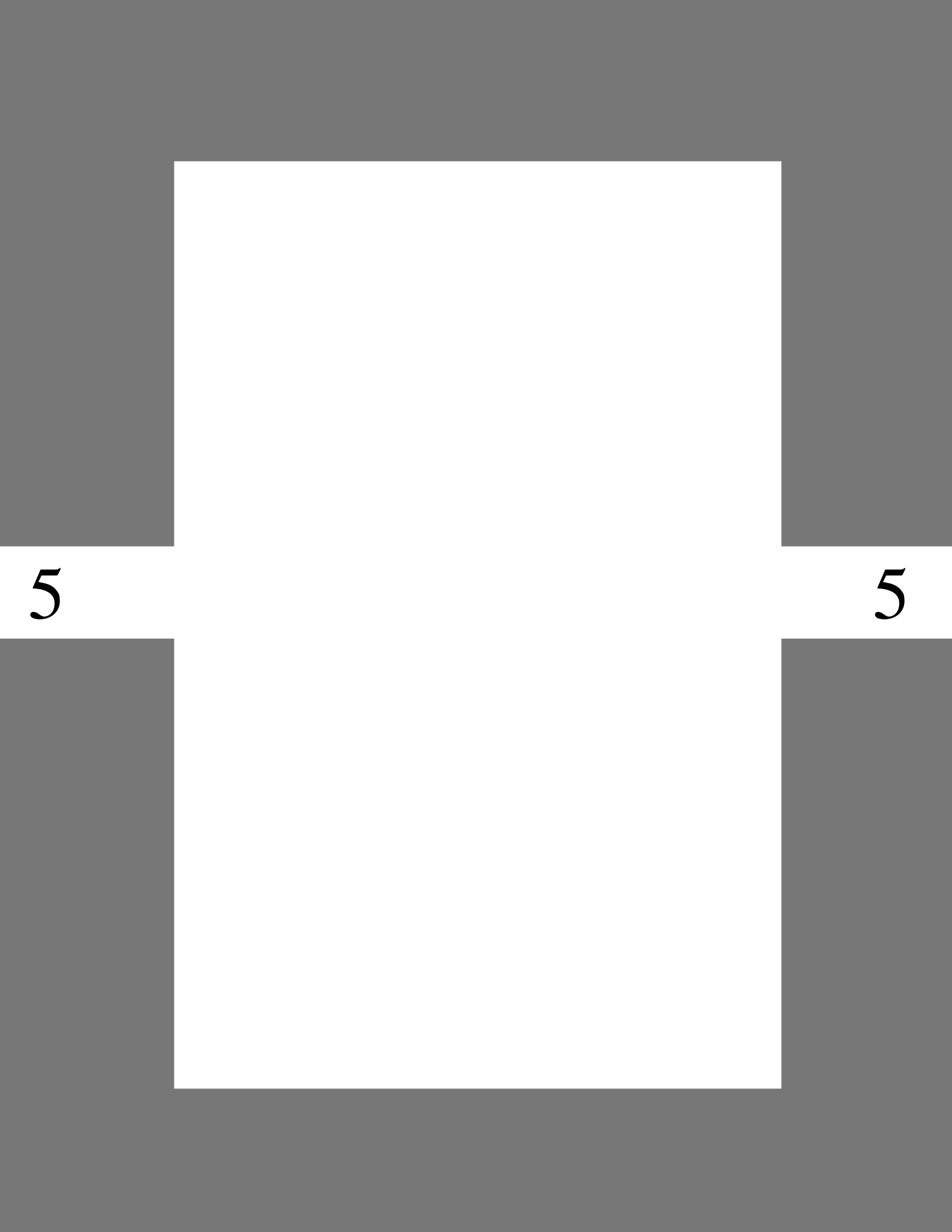
14  
 15   
 16 DISTRICT COURT JUDGE 

17  
 18 Submitted by:

19   
 20  
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 22 ERIC PEPPERMAN, ESQ. (#11679)  
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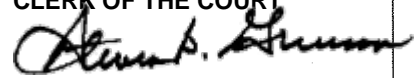
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10 Attorneys for Defendants MICHELANGELO  
11 LEASING INC. d/b/a RYAN'S EXPRESS and  
12 EDWARD HUBBARD

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 KEON KHIABANI and ARIA KHIABANI,  
16 minors by and through their natural mother,  
17 KATAYOUN BARIN; KATAYOUN BARIN,  
18 individually; KATAYOUN BARIN as  
19 Executrix of the Estate of Kayvan Khiabani,  
20 M.D. (Decedent), and the Estate of Kayvan  
21 Khiabani, M.D. (Decedent),

22 Plaintiffs,

23 v.

24 MOTOR COACH INDUSTRIES, INC. a  
25 Delaware corporation; MICHELANGELO  
26 LEASING INC. d/b/a RYAN'S EXPRESS, an  
27 Arizona corporation; EDWARD HUBBARD, a  
28 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware  
corporation; SEVENPLUS BICYCLES, INC.  
d/b/a PRO CYCLERY, a Nevada corporation,  
DOES 1 through 20; and ROE  
CORPORATIONS 1 through 20,

Defendants.

Case No. A-17-755977-C  
Dept.: XIV

**DEFENDANTS MICHELANGELO  
LEASING INC. DBA RYAN'S EXPRESS  
AND EDWARD HUBBARD'S ANSWER  
TO PLAINTIFFS' AMENDED  
COMPLAINT**

Defendants MICHELANGELO LEASING INC. dba RYAN'S EXPRESS and EDWARD  
HUBBARD by and through their counsel of record, Eric O. Freeman, Esq. of Selman Breitman  
LLP, hereby respond to Plaintiffs' Amended Complaint as follows:

**THE PARTIES**

1  
2           1.     Answering paragraph 1 of Plaintiffs' Amended Complaint, these answering  
3 defendants are without sufficient information or knowledge to form a belief as to the truth or  
4 falsity of the allegations contained in paragraph 1, and on that basis, deny the allegations  
5 contained therein.

6           2.     Answering paragraph 2 of Plaintiffs' Amended Complaint, these answering  
7 defendants are without sufficient information or knowledge to form a belief as to the truth or  
8 falsity of the allegations contained in paragraph 2, and on that basis, deny the allegations  
9 contained therein.

10          3.     Answering paragraph 3 of Plaintiffs' Amended Complaint, these answering  
11 defendants are without sufficient information or knowledge to form a belief as to the truth or  
12 falsity of the allegations contained in paragraph 3, and on that basis, deny the allegations  
13 contained therein.

14          4.     Answering paragraph 4 of Plaintiffs' Amended Complaint, these answering  
15 defendants are without sufficient information or knowledge to form a belief as to the truth or  
16 falsity of the allegations contained in paragraph 4, and on that basis, deny the allegations  
17 contained therein.

18          5.     Answering paragraph 5 of Plaintiffs' Amended Complaint, these answering  
19 defendants are without sufficient information or knowledge to form a belief as to the truth or  
20 falsity of the allegations contained in paragraph 5, and on that basis, deny the allegations  
21 contained therein.

22          6.     Answering paragraph 6 of Plaintiffs' Amended Complaint, these answering  
23 defendants are without sufficient information or knowledge to form a belief as to the truth or  
24 falsity of the allegations contained in paragraph 6, and on that basis, deny the allegations  
25 contained therein.

26          7.     Answering paragraph 7 of Plaintiffs' Amended Complaint, these answering  
27 defendants are without sufficient information or knowledge to form a belief as to the truth or  
28

1 falsity of the allegations contained in paragraph 7, and on that basis, deny the allegations  
2 contained therein.

3 8. Answering paragraph 8 of Plaintiffs' Amended Complaint, these answering  
4 defendants are without sufficient information or knowledge to form a belief as to the truth or  
5 falsity of the allegations contained in paragraph 8, and on that basis, deny the allegations  
6 contained therein.

7 9. Answering paragraph 9 of Plaintiffs' Amended Complaint, these answering  
8 defendants are without sufficient information or knowledge to form a belief as to the truth or  
9 falsity of the allegations contained in paragraph 9, and on that basis, deny the allegations  
10 contained therein.

11 10. Answering paragraph 10 of Plaintiffs' Amended Complaint, these answering  
12 defendants are without sufficient information or knowledge to form a belief as to the truth or  
13 falsity of the allegations contained in paragraph 10, and on that basis, deny the allegations  
14 contained therein.

15 11. Answering paragraph 11 of Plaintiffs' Amended Complaint, these answering  
16 defendants are without sufficient information or knowledge to form a belief as to the truth or  
17 falsity of the allegations contained in paragraph 11, and on that basis, deny the allegations  
18 contained therein.

19 12. Answering paragraph 12 of Plaintiffs' Amended Complaint, these answering  
20 defendants are without sufficient information or knowledge to form a belief as to the truth or  
21 falsity of the allegations contained in paragraph 12, and on that basis, deny the allegations  
22 contained therein.

23 **JURISDICTION AND VENUE**

24 13. Answering paragraph 13 of Plaintiffs' Amended Complaint, these answering  
25 defendants are without sufficient information or knowledge to form a belief as to the truth or  
26 falsity of the allegations contained in paragraph 13, and on that basis, deny the allegations  
27 contained therein.  
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**FIRST CLAIM FOR RELIEF**

**(STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE TO WARN AGAINST  
MCI)**

22. Answering paragraph 22 of Plaintiffs' Amended Complaint, these answering defendants repeat and reallege each and every response to paragraphs 1 through 21 of Plaintiffs' Amended Complaint, and incorporate them herein by this reference as if fully set forth at length.

23. Answering paragraph 23 of Plaintiffs' Amended Complaint, these answering defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 23, and on that basis, deny the allegations contained therein.

24. Answering paragraph 24 of Plaintiffs' Amended Complaint, these answering defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 24, and on that basis, deny the allegations contained therein.

25. Answering paragraph 25 of Plaintiffs' Amended Complaint, these answering defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 25, and on that basis, deny the allegations contained therein.

26. Answering paragraph 26 of Plaintiffs' Amended Complaint, these answering defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 26, and on that basis, deny the allegations contained therein.

27. Answering paragraph 27 of Plaintiffs' Amended Complaint, these answering defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 27, and on that basis, deny the allegations contained therein.

28. Answering paragraph 28 of Plaintiffs' Amended Complaint, these answering

1 defendants are without sufficient information or knowledge to form a belief as to the truth or  
2 falsity of the allegations contained in paragraph 28, and on that basis, deny the allegations  
3 contained therein.

4 29. Answering paragraph 29 of Plaintiffs' Amended Complaint, these answering  
5 defendants are without sufficient information or knowledge to form a belief as to the truth or  
6 falsity of the allegations contained in paragraph 29, and on that basis, deny the allegations  
7 contained therein.

8 30. Answering paragraph 30 of Plaintiffs' Amended Complaint, these answering  
9 defendants are without sufficient information or knowledge to form a belief as to the truth or  
10 falsity of the allegations contained in paragraph 30, and on that basis, deny the allegations  
11 contained therein.

12 31. Answering paragraph 31 of Plaintiffs' Amended Complaint, these answering  
13 defendants are without sufficient information or knowledge to form a belief as to the truth or  
14 falsity of the allegations contained in paragraph 31, and on that basis, deny the allegations  
15 contained therein.

16 32. Answering paragraph 32 of Plaintiffs' Amended Complaint, these answering  
17 defendants are without sufficient information or knowledge to form a belief as to the truth or  
18 falsity of the allegations contained in paragraph 32, and on that basis, deny the allegations  
19 contained therein.

20 33. Answering paragraph 33 of Plaintiffs' Amended Complaint, these answering  
21 defendants are without sufficient information or knowledge to form a belief as to the truth or  
22 falsity of the allegations contained in paragraph 33, and on that basis, deny the allegations  
23 contained therein.

24 34. Answering paragraph 34 of Plaintiffs' Amended Complaint, these answering  
25 defendants are without sufficient information or knowledge to form a belief as to the truth or  
26 falsity of the allegations contained in paragraph 34, and on that basis, deny the allegations  
27 contained therein.  
28



1           35. Answering paragraph 35 of Plaintiffs' Amended Complaint, these answering  
2 defendants are without sufficient information or knowledge to form a belief as to the truth or  
3 falsity of the allegations contained in paragraph 35, and on that basis, deny the allegations  
4 contained therein.

5                           **SECOND CLAIM FOR RELIEF**

6                   **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS AND EDWARD**  
7                                   **HUBBARD)**

8           36. Answering paragraph 36 of Plaintiffs' Amended Complaint, these answering  
9 defendants repeat and reallege each and every response to paragraphs 1 through 35 of Plaintiffs'  
10 Amended Complaint, and incorporate them herein by this reference as if fully set forth at length.

11           37. Answering paragraph 37 of Plaintiffs' Amended Complaint, these answering  
12 defendants deny the allegations contained therein.

13           38. Answering paragraph 38 of Plaintiffs' Amended Complaint, these answering  
14 defendants deny the allegations contained therein.

15           39. Answering paragraph 39 of Plaintiffs' Amended Complaint, these answering  
16 defendants deny the allegations contained therein.

17           40. Answering paragraph 40 of Plaintiffs' Amended Complaint, these answering  
18 defendants deny the allegations contained therein.

19           41. Answering paragraph 41 of Plaintiffs' Amended Complaint, these answering  
20 defendants deny the allegations contained therein.

21           42. Answering paragraph 42 of Plaintiffs' Amended Complaint, these answering  
22 defendants deny the allegations contained therein.

23           43. Answering paragraph 43 of Plaintiffs' Amended Complaint, these answering  
24 defendants deny the allegations contained therein.

25           44. Answering paragraph 44 of Plaintiffs' Amended Complaint, these answering  
26 defendants deny the allegations contained therein.

27           45. Answering paragraph 45 of Plaintiffs' Amended Complaint, these answering  
28

1 defendants deny the allegations contained therein.

2 46. Answering paragraph 46 of Plaintiffs' Amended Complaint, these answering  
3 defendants deny the allegations contained therein.

4 **THIRD CLAIM FOR RELIEF**

5 **(NEGLIGENCE PER SE AGAINST DEFENDANTS RYAN'S EXPRESS AND EDWARD**  
6 **HUBBARD)**

7 47. Answering paragraph 47 of Plaintiffs' Amended Complaint, these answering  
8 defendants repeat and reallege each and every response to paragraphs 1 through 46 of Plaintiffs'  
9 Amended Complaint, and incorporate them herein by this reference as if fully set forth at length.

10 48. Answering paragraph 48 of Plaintiffs' Amended Complaint, these answering  
11 defendants deny the allegations contained therein.

12 49. Answering paragraph 49 of Plaintiffs' Amended Complaint, these answering  
13 defendants deny the allegations contained therein.

14 50. Answering paragraph 50 of Plaintiffs' Amended Complaint, these answering  
15 defendants deny the allegations contained therein.

16 51. Answering paragraph 51 of Plaintiffs' Amended Complaint, these answering  
17 defendants deny the allegations contained therein.

18 52. Answering paragraph 52 of Plaintiffs' Amended Complaint, these answering  
19 defendants deny the allegations contained therein.

20 **FOURTH CLAIM FOR RELIEF**

21 **(NEGLIGENCE TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

22 53. Answering paragraph 53 of Plaintiffs' Amended Complaint, these answering  
23 defendants repeat and reallege each and every response to paragraphs 1 through 52 of Plaintiffs'  
24 Amended Complaint, and incorporate them herein by this reference as if fully set forth at length.

25 54. Answering paragraph 54 of Plaintiffs' Amended Complaint, these answering  
26 defendants deny the allegations contained therein.

27 55. Answering paragraph 55 of Plaintiffs' Amended Complaint, these answering  
28

1 defendants deny the allegations contained therein.

2 56. Answering paragraph 56 of Plaintiffs' Amended Complaint, these answering  
3 defendants deny the allegations contained therein.

4 57. Answering paragraph 57 of Plaintiffs' Amended Complaint, these answering  
5 defendants deny the allegations contained therein.

6 58. Answering paragraph 58 of Plaintiffs' Amended Complaint, these answering  
7 defendants deny the allegations contained therein.

8 59. Answering paragraph 59 of Plaintiffs' Amended Complaint, these answering  
9 defendants deny the allegations contained therein.

10 **FIFTH CLAIM FOR RELIEF**

11 **(STRICK LIABILITY: DEFECTIVE CONDITION OR FAILURE TO WARN AGAINST**  
12 **DEFENDANTS GIRO AND PRO CYCLERY)**

13 60. Answering paragraph 60 of Plaintiffs' Amended Complaint, these answering  
14 defendants repeat and reallege each and every response to paragraphs 1 through 59 of Plaintiffs'  
15 Amended Complaint, and incorporate them herein by this reference as if fully set forth at length.

16 61. Answering paragraph 61 of Plaintiffs' Amended Complaint, these answering  
17 defendants are without sufficient information or knowledge to form a belief as to the truth or  
18 falsity of the allegations contained in paragraph 61, and on that basis, deny the allegations  
19 contained therein.

20 62. Answering paragraph 62 of Plaintiffs' Amended Complaint, these answering  
21 defendants are without sufficient information or knowledge to form a belief as to the truth or  
22 falsity of the allegations contained in paragraph 62, and on that basis, deny the allegations  
23 contained therein.

24 63. Answering paragraph 63 of Plaintiffs' Amended Complaint, these answering  
25 defendants are without sufficient information or knowledge to form a belief as to the truth or  
26 falsity of the allegations contained in paragraph 63, and on that basis, deny the allegations  
27 contained therein.  
28

1           64.     Answering paragraph 64 of Plaintiffs' Amended Complaint, these answering  
2 defendants are without sufficient information or knowledge to form a belief as to the truth or  
3 falsity of the allegations contained in paragraph 64, and on that basis, deny the allegations  
4 contained therein.

5           65.     Answering paragraph 65 of Plaintiffs' Amended Complaint, these answering  
6 defendants are without sufficient information or knowledge to form a belief as to the truth or  
7 falsity of the allegations contained in paragraph 65, and on that basis, deny the allegations  
8 contained therein.

9           66.     Answering paragraph 66 of Plaintiffs' Amended Complaint, these answering  
10 defendants are without sufficient information or knowledge to form a belief as to the truth or  
11 falsity of the allegations contained in paragraph 66, and on that basis, deny the allegations  
12 contained therein.

13          67.     Answering paragraph 67 of Plaintiffs' Amended Complaint, these answering  
14 defendants are without sufficient information or knowledge to form a belief as to the truth or  
15 falsity of the allegations contained in paragraph 67, and on that basis, deny the allegations  
16 contained therein.

17          68.     Answering paragraph 68 of Plaintiffs' Amended Complaint, these answering  
18 defendants are without sufficient information or knowledge to form a belief as to the truth or  
19 falsity of the allegations contained in paragraph 68, and on that basis, deny the allegations  
20 contained therein.

21          69.     Answering paragraph 69 of Plaintiffs' Amended Complaint, these answering  
22 defendants are without sufficient information or knowledge to form a belief as to the truth or  
23 falsity of the allegations contained in paragraph 69, and on that basis, deny the allegations  
24 contained therein.

25          70.     Answering paragraph 70 of Plaintiffs' Amended Complaint, these answering  
26 defendants are without sufficient information or knowledge to form a belief as to the truth or  
27 falsity of the allegations contained in paragraph 70, and on that basis, deny the allegations  
28

1 contained therein.

2 71. Answering paragraph 71 of Plaintiffs' Amended Complaint, these answering  
3 defendants are without sufficient information or knowledge to form a belief as to the truth or  
4 falsity of the allegations contained in paragraph 71, and on that basis, deny the allegations  
5 contained therein.

6 72. Answering paragraph 72 of Plaintiffs' Amended Complaint, these answering  
7 defendants are without sufficient information or knowledge to form a belief as to the truth or  
8 falsity of the allegations contained in paragraph 72, and on that basis, deny the allegations  
9 contained therein.

10 73. Answering paragraph 73 of Plaintiffs' Amended Complaint, these answering  
11 defendants are without sufficient information or knowledge to form a belief as to the truth or  
12 falsity of the allegations contained in paragraph 73, and on that basis, deny the allegations  
13 contained therein.

14 74. Answering paragraph 74 of Plaintiffs' Amended Complaint, these answering  
15 defendants are without sufficient information or knowledge to form a belief as to the truth or  
16 falsity of the allegations contained in paragraph 74, and on that basis, deny the allegations  
17 contained therein.

18 **SIXTH CLAIM FOR RELIEF**

19 **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**  
20 **AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

21 75. Answering paragraph 75 of Plaintiffs' Amended Complaint, these answering  
22 defendants repeat and reallege each and every response to paragraphs 1 through 74 of Plaintiffs'  
23 Amended Complaint, and incorporate them herein by this reference as if fully set forth at length.

24 76. Answering paragraph 76 of Plaintiffs' Amended Complaint, these answering  
25 defendants are without sufficient information or knowledge to form a belief as to the truth or  
26 falsity of the allegations contained in paragraph 76, and on that basis, deny the allegations  
27 contained therein.  
28

1           77. Answering paragraph 77 of Plaintiffs' Amended Complaint, these answering  
2 defendants are without sufficient information or knowledge to form a belief as to the truth or  
3 falsity of the allegations contained in paragraph 77, and on that basis, deny the allegations  
4 contained therein.

5           78. Answering paragraph 78 of Plaintiffs' Amended Complaint, these answering  
6 defendants are without sufficient information or knowledge to form a belief as to the truth or  
7 falsity of the allegations contained in paragraph 78, and on that basis, deny the allegations  
8 contained therein.

9           79. Answering paragraph 79 of Plaintiffs' Amended Complaint, these answering  
10 defendants are without sufficient information or knowledge to form a belief as to the truth or  
11 falsity of the allegations contained in paragraph 79, and on that basis, deny the allegations  
12 contained therein.

13           80. Answering paragraph 80 of Plaintiffs' Amended Complaint, these answering  
14 defendants are without sufficient information or knowledge to form a belief as to the truth or  
15 falsity of the allegations contained in paragraph 80, and on that basis, deny the allegations  
16 contained therein.

17           81. Answering paragraph 81 of Plaintiffs' Amended Complaint, these answering  
18 defendants are without sufficient information or knowledge to form a belief as to the truth or  
19 falsity of the allegations contained in paragraph 81, and on that basis, deny the allegations  
20 contained therein.

21                           **SEVENTH CLAIM FOR RELIEF**

22                           **(WRONGFUL DEATH AGAINST ALL DEFENDANTS)**

23           82. Answering paragraph 82 of Plaintiffs' Amended Complaint, these answering  
24 defendants repeat and reallege each and every response to paragraphs 1 through 81 of Plaintiffs'  
25 Amended Complaint, and incorporate them herein by this reference as if fully set forth at length.

26           83. Answering paragraph 83 of Plaintiffs' Amended Complaint, these answering  
27 defendants deny the allegations contained therein.  
28

1           84.     Answering paragraph 84 of Plaintiffs' Amended Complaint, these answering  
2 defendants deny the allegations contained therein.

3           85.     Answering paragraph 85 of Plaintiffs' Amended Complaint, these answering  
4 defendants deny the allegations contained therein.

5           86.     Answering paragraph 86 of Plaintiffs' Amended Complaint, these answering  
6 defendants deny the allegations contained therein.

7           87.     Answering paragraph 87 of Plaintiffs' Amended Complaint, these answering  
8 defendants deny the allegations contained therein.

9                   **PLAINTIFFS' PRAYERS FOR RELIEF**

10           These answering defendants deny that Plaintiffs are entitled to any relief whatsoever, under  
11 and cause of action, and on that basis, deny Plaintiffs' prayers for relief numbers 1 through 7.

12                   **AFFIRMATIVE DEFENSES**

13                   **FIRST AFFIRMATIVE DEFENSE**

14           The negligence of the plaintiffs exceeds that of these answering defendants, if any, and the  
15 plaintiffs are thereby barred from any recovery.

16                   **SECOND AFFIRMATIVE DEFENSE**

17           These answering defendants are informed and believe, and thereon allege, the damages  
18 suffered by plaintiffs if any, were the direct and proximate result of the negligence of parties,  
19 persons, corporations and/or entities other than these answering defendants, and that the liability  
20 of these answering defendants, if any, is limited in direct proportion to the percentage of fault  
21 actually attributable to these answering defendants.

22                   **THIRD AFFIRMATIVE DEFENSE**

23           The plaintiffs have failed to mitigate their damages.

24                   **FOURTH AFFIRMATIVE DEFENSE**

25           Plaintiffs failed to name a party necessary for full and adequate relief essential in this  
26 action.

1                                   **FIFTH AFFIRMATIVE DEFENSE**

2           The allegations contained in Plaintiffs' Amended Complaint fail to state a cause of action  
3 against these answering defendants upon which relief can be granted.

4                                   **SIXTH AFFIRMATIVE DEFENSE**

5           The injuries, if any, suffered by the plaintiffs were caused in whole or in part by the  
6 negligence of a third party over which these answering defendants had no control.

7                                   **SEVENTH AFFIRMATIVE DEFENSE**

8           These answering defendants allege that the hazard or defect alleged in Plaintiffs' Amended  
9 Complaint was open and obvious to the plaintiffs and the plaintiffs are thereby barred from any  
10 recovery.

11                                  **EIGHTH AFFIRMATIVE DEFENSE**

12           The injuries claimed to have been suffered by the plaintiffs were caused by pre-existing  
13 and/or unrelated medical conditions.

14                                  **NINTH AFFIRMATIVE DEFENSE**

15           These answering defendants are informed and believe, and thereon allege, that the  
16 amended complaint was brought without reasonable cause and without a good faith belief that  
17 there was a justifiable controversy under the facts of the law which warranted the filing of the  
18 amended complaint against these answering defendants. Plaintiffs should therefore be responsible  
19 for all of these answering defendants' necessary and reasonable defense costs.

20                                  **TENTH AFFIRMATIVE DEFENSE**

21           The plaintiffs' cause of action is barred by the doctrine of laches.

22                                  **ELEVENTH AFFIRMATIVE DEFENSE**

23           There has been an insufficiency of process.

24                                  **TWELFTH AFFIRMATIVE DEFENSE**

25           There has been an insufficiency of service of process.

26                                  **THIRTEENTH AFFIRMATIVE DEFENSE**

27           The Amended Complaint and any purported causes of action alleged therein are uncertain,  
28



1 vague and ambiguous.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 These answering defendants acted at all times with due care in the performance of their  
4 relevant duties.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 The allegations contained in plaintiffs' amended complaint fail to state facts sufficient to  
7 warrant an award of punitive or exemplary damages against these answering defendants.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 These answering defendants are informed and believe, and thereon allege, that the claim  
10 for punitive damages is unconstitutional under the United States Constitution and the Nevada  
11 Constitution, including but not limited to, the excessive fines, due process and equal protection  
12 provisions thereof.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 These answering defendants are informed and believe, and thereon allege, that plaintiffs  
15 fail to state facts sufficient to, and that no facts exist which are sufficient to, warrant any claim or  
16 claims for punitive and/or exemplary damages.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been  
19 alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the  
20 filing of these answering defendants' answer and, therefore, defendant reserves the right to amend  
21 this answer to allege additional affirmative defenses if subsequent investigation warrants.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, having fully answered Plaintiffs' Amended Complaint, and asserted  
24 affirmative defenses, these answering defendants request the following relief:

- 25 1. That plaintiffs take nothing by way of their amended complaint;  
26 2. For an award of attorneys' fees and costs of suit; and  
27  
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1           3.       For such other relief as this court deems just and proper.

2  
3  
4       DATED: June 28, 2017

SELMAN BREITMAN LLP

5  
6           By:     /s/ Eric O. Freeman

ERIC O. FREEMAN

NEVADA BAR NO. 6648

3993 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169-0961

Telephone: 702.228.7717

Facsimile: 702.228.8824

Attorneys for Defendants MICHELANGELO

LEASING INC. d/b/a RYAN'S EXPRESS and

EDWARD HUBBARD

960000  
Selman Breitman LLP  
ATTORNEYS AT LAW

000096

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:  
☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing document to be served upon the persons designated by the parties in the E-Service master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

a true and correct copy of the above and foregoing **DEFENDANTS MICHELANGELO LEASING INC. DBA RYAN'S EXPRESS AND EDWARD HUBBARD'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT**, this 28 day of June 2017, addressed as follows:

Will Kemp, Esq.  
 Eric Pepperman, Esq.  
 KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 Las Vegas, NV 89169

Attorneys for Plaintiffs

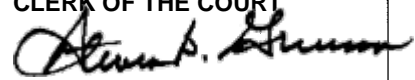
Peter S. Christiansen, Esq.  
 Kendelea L. Works, Esq.  
 CHRISTIANSEN LAW OFFICES  
 810 South Casino Center Blvd.  
 Las Vegas, NV 89101

Attorneys for Plaintiffs

  
 CRYSTAL MARTIN  
 An Employee of Selman Breitman LLP

6

6



1 **DMJT**

2 ERIC O. FREEMAN

3 NEVADA BAR NO. 6648

4 SELMAN BREITMAN LLP

5 3993 Howard Hughes Parkway, Suite 200

6 Las Vegas, NV 89169-0961

7 Telephone: 702.228.7717

8 Facsimile: 702.228.8824

9 Email: efreeman@selmanlaw.com

10 Attorneys for Defendants MICHELANGELO  
11 LEASING INC. d/b/a RYAN'S EXPRESS and  
12 EDWARD HUBBARD

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 KEON KHIABANI and ARIA KHIABANI,  
16 minors by and through their natural mother,  
17 KATAYOUN BARIN; KATAYOUN BARIN,  
18 individually; KATAYOUN BARIN as  
19 Executrix of the Estate of Kayvan Khiabani,  
20 M.D. (Decedent), and the Estate of Kayvan  
21 Khiabani, M.D. (Decedent),

22 Plaintiffs,

23 v.

24 MOTOR COACH INDUSTRIES, INC. a  
25 Delaware corporation; MICHELANGELO  
26 LEASING INC. d/b/a RYAN'S EXPRESS, an  
27 Arizona corporation; EDWARD HUBBARD, a  
28 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware  
corporation; SEVENPLUS BICYCLES, INC.  
d/b/a PRO CYCLERY, a Nevada corporation,  
DOES 1 through 20; and ROE  
CORPORATIONS 1 through 20,

Defendants.

Case No. A-17-755977-C  
Dept.: XIV

**DEMAND FOR JURY TRIAL**

Defendants MICHELANGELO LEASING INC dba RYAN'S EXPRESS and EDWARD

1 HUBBARD hereby demand a jury trial in the above-captioned matter.  
2  
3

4 DATED: June 28, 2017

SELMAN BREITMAN LLP

By: /s/ Eric O. Freeman

ERIC O. FREEMAN

NEVADA BAR NO. 6648

3993 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169-0961

Telephone: 702.228.7717

Facsimile: 702.228.8824

Attorneys for Defendants MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS and  
EDWARD HUBBARD

660000  
Selman Breitman LLP  
ATTORNEYS AT LAW

660000

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:

3 ☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing

4 document to be served upon the persons designated by the parties in the E-Service

5 master List for the above-referenced matter in the Eighth Judicial District Court

6 eFiling System in accordance with the mandatory electronic service requirements of

7 Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

8 a true and correct copy of the above and foregoing **DEMAND FOR JURY TRIAL**, this 28 day

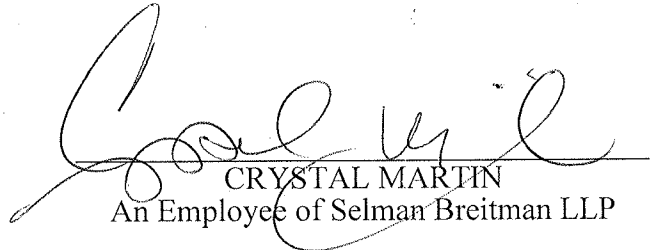
9 of June 2017, addressed as follows:

10 Will Kemp, Esq.  
 11 Eric Pepperman, Esq.  
 12 KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 Las Vegas, NV 89169

Attorneys for Plaintiffs

13 Peter S. Christiansen, Esq.  
 14 Kendelea L. Works, Esq.  
 CHRISTIANSEN LAW OFFICES  
 810 South Casino Center Blvd.  
 15 Las Vegas, NV 89101

Attorneys for Plaintiffs

16  
 17  
 18  
 19  
 20   
 21 CRYSTAL MARTIN  
 An Employee of Selman Breitman LLP

*7*

*7*



6/30/2017 11:11 AM

Steven D. Grierson

CLERK OF THE COURT

1 **ANAC**

D. Lee Roberts, Jr., Esq.

2 Nevada Bar No. 8877

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3 Howard J. Russell, Esq.

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Michael S. Valiente, Esq.

5 Nevada Bar No. 14293

[mvaliente@wwhgd.com](mailto:mvaliente@wwhgd.com)

6 WEINBERG, WHEELER, HUDGINS,

GUNN &amp; DIAL, LLC

7 6385 S. Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

8 Telephone: (702) 938-3838

Facsimile: (702) 938-3864

9 *Attorneys for Defendant*10 *Motor Coach Industries, Inc.*11 **DISTRICT COURT**12 **CLARK COUNTY, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,  
 14 minors by and through their natural mother,  
 15 KATAYOUN BARIN; and KATAYOUN  
 16 BARIN, individually; KATAYOUN BARIN as  
 17 Executrix of the Estate of Kayvan Khiabani,  
 18 M.D. (Decedent), and the Estate of Kayvan  
 19 Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 v.

19 MOTOR COACH INDUSTRIES, INC., a  
 20 Delaware corporation; MICHELANGELO  
 21 LEASING INC. d/b/a RYAN'S EXPRESS, an  
 22 Arizona corporation; EDWARD HUBBARD, a  
 23 Nevada resident; BELL SPORTS, INC. d/b/a  
 24 GIRO SPORT DESIGN, a Delaware  
 25 corporation; SEVENPLUS BICYCLES, INC.  
 d/v/a PRO CYCLERY, a Nevada corporation,  
 DOES 1 through 20; and ROE  
 CORPORATIONS 1 through 20,

24 Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**DEFENDANT MOTOR COACH  
 INDUSTRIES, INC.'S ANSWER TO  
 PLAINTIFFS' AMENDED COMPLAINT**

26 Defendant **MOTOR COACH INDUSTRIES, INC.** (hereinafter "Defendant" or "MCI"),  
 27 by and through its attorneys of the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL,  
 28 LLC, hereby files its Answer to Plaintiffs' Amended Complaint.

**ANSWER**

Defendant denies generally the allegations of Plaintiffs' Amended Complaint and further denies that it was responsible for, or liable for, any of the happenings or events mentioned in Plaintiffs' Amended Complaint.

**THE PARTIES**

Responding to the individual allegations of Plaintiffs' Amended Complaint, Defendant answers:

1. Answering paragraph 1 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

2. Answering paragraph 2 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

3. Answering paragraph 3 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

4. Answering paragraph 4 of Plaintiffs' Amended Complaint, Defendant admits that it was and is a Delaware corporation, and that it sells new motor coaches in the United States. Defendant did not design or manufacture the motor coach referenced in the Amended Complaint, and denies such allegations. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Defendant sold the specific motor coach involved in the incident described in the Amended Complaint and, therefore, cannot admit or deny that allegation.

5. Answering paragraph 5 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

6. Answering paragraph 6 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

1           7.       Answering paragraph 7 of Plaintiffs' Amended Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
3 this paragraph and, therefore, cannot admit or deny these allegations.

4           8.       Answering paragraph 8 of Plaintiffs' Amended Complaint, Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
6 this paragraph and, therefore, cannot admit or deny these allegations.

7           9.       Answering paragraph 9 of Plaintiffs' Amended Complaint, Defendant is without  
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
9 this paragraph and, therefore, cannot admit or deny these allegations.

10          10.       Answering paragraph 10 of Plaintiffs' Amended Complaint, Defendant denies the  
11 allegations contained in this paragraph as they pertain to MCI. MCI is without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations contained in this paragraph  
13 regarding other parties and, therefore, cannot admit or deny these allegations.

14          11.       Answering paragraph 11 of Plaintiffs' Amended Complaint, Defendant denies the  
15 allegations contained in this paragraph as they pertain to MCI. MCI is without knowledge or  
16 information sufficient to form a belief as to the truth of the allegations contained in this paragraph  
17 regarding other parties and, therefore, cannot admit or deny these allegations.

18          12.       Answering paragraph 12 of Plaintiffs' Amended Complaint, Defendant denies the  
19 allegations contained in this paragraph as they pertain to MCI. MCI is without knowledge or  
20 information sufficient to form a belief as to the truth of the allegations contained in this paragraph  
21 regarding other parties and, therefore, cannot admit or deny these allegations.

22                                   **JURISDICTION AND VENUE**

23          13.       Answering paragraph 13 of Plaintiffs' Amended Complaint, Defendant is without  
24 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
25 this paragraph and, therefore, cannot admit or deny these allegations.

26          14.       Answering paragraph 14 of Plaintiffs' Amended Complaint, Defendant is without  
27 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
28 this paragraph and, therefore, cannot admit or deny these allegations.

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**GENERAL ALLEGATIONS**

15. Answering paragraph 15 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

16. Answering paragraph 16 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

17. Answering the first sentence of paragraph 17 of Plaintiffs' Amended Complaint, Defendant admits that it sold a 2008 motor coach bearing Vehicle Identification No. 2M93JMHA28W064555. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding whether the referenced motor coach was involved in the subject incident, the nature of the motor coach in question, or the license plate number of the motor coach in question. As to the remainder of the allegations contained in the first sentence of paragraph 17 of Plaintiffs' Amended Complaint, Defendant, except as expressly admitted herein, denies the remainder of such allegations. Answering the second sentence of paragraph 17 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of such allegations, because of the lack of clarity with regard to the "proximity sensors" referenced therein, and, therefore, cannot admit or deny these allegations.

18. Answering paragraph 18 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

19. Answering paragraph 19 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

20. Answering paragraph 20 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

///

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21. Answering paragraph 21 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

**FIRST CLAIM FOR RELIEF**

**(STRICT LIABILITY: DEFECTIVE CONDITION OR  
FAILURE TO WARN AGAINST DEFENDANT MCI)**

22. Defendant incorporates by reference its responses and defenses to paragraphs 1 through 21 of Plaintiffs' Amended Complaint as if fully set forth herein.

23. Answering paragraph 23 of Plaintiffs' Amended Complaint, Defendant admits that it sells new motor coaches in the United States and was responsible for the sale of a 2008 motor coach bearing Vehicle Identification No. 2M93JMHA28W064555. The motor coach bearing that Vehicle Identification No. was designed and manufactured by Motor Coach Industries Limited, a Canadian company. Except as expressly admitted herein, Defendant denies the remaining allegations of paragraph 23.

24. Answering paragraph 24 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

25. Answering paragraph 25 of Plaintiffs' Amended Complaint, Defendant denies the allegations contained in this paragraph.

26. Answering paragraph 26 of Plaintiffs' Amended Complaint, Defendant denies the allegations contained in this paragraph.

27. Answering paragraph 27 of Plaintiffs' Amended Complaint, Defendant denies the allegations contained in this paragraph.

28. Answering paragraph 28 of Plaintiffs' Amended Complaint, Defendant denies the allegations contained in this paragraph.

29. Answering paragraph 29 of Plaintiffs' Amended Complaint, Defendant denies the allegations contained in this paragraph.

///

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1           30.     Answering paragraph 30 of Plaintiffs' Amended Complaint, Defendant denies the  
2 allegations contained in this paragraph.

3           31.     Answering paragraph 31 of Plaintiffs' Amended Complaint, Defendant denies the  
4 allegations contained in this paragraph.

5           32.     Answering paragraph 32 of Plaintiffs' Amended Complaint, Defendant denies the  
6 allegations contained in this paragraph.

7           33.     Answering paragraph 33 of Plaintiffs' Amended Complaint, Defendant denies the  
8 allegations contained in this paragraph.

9           34.     Answering paragraph 34 of Plaintiffs' Amended Complaint, Defendant denies the  
10 allegations contained in this paragraph.

11          35.     Answering paragraph 35 of Plaintiffs' Amended Complaint, Defendant denies the  
12 allegations contained in this paragraph.

13                   **SECOND CLAIM FOR RELIEF**

14                   **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**

15                   **AND EDWARD HUBBARD)**

16          36.     Defendant incorporates by reference its responses and defenses to paragraphs 1  
17 through 35 of Plaintiffs' Amended Complaint as if fully set forth herein.

18          37.     Answering paragraph 37 of Plaintiffs' Amended Complaint, Defendant is without  
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
20 this paragraph and, therefore, cannot admit or deny these allegations.

21          38.     Answering paragraph 38 of Plaintiffs' Amended Complaint, Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
23 this paragraph and, therefore, cannot admit or deny these allegations.

24          39.     Answering paragraph 39 of Plaintiffs' Amended Complaint, Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
26 this paragraph and, therefore, cannot admit or deny these allegations. To the extent "Defendants"  
27 is meant to apply to MCI, MCI denies any such allegations.

28     ///

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40. Answering paragraph 40 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

41. Answering paragraph 41 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

42. Answering paragraph 42 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

43. Answering paragraph 43 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

44. Answering paragraph 44 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

45. Answering paragraph 45 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

46. Answering paragraph 46 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

### **THIRD CLAIM FOR RELIEF**

#### **(NEGLIGENCE PER SE AGAINST DEFENDANTS**

#### **RYAN'S EXPRESS AND EDWARD HUBBARD)**

47. Defendant incorporates by reference its responses and defenses to paragraphs 1 through 46 of Plaintiffs' Amended Complaint as if fully set forth herein.

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1           48.     Answering paragraph 48 of Plaintiffs' Amended Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
3 this paragraph and, therefore, cannot admit or deny these allegations.

4           49.     Answering paragraph 49 of Plaintiffs' Amended Complaint, Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
6 this paragraph and, therefore, cannot admit or deny these allegations.

7           50.     Answering paragraph 50 of Plaintiffs' Amended Complaint, Defendant is without  
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
9 this paragraph and, therefore, cannot admit or deny these allegations.

10          51.     Answering paragraph 51 of Plaintiffs' Amended Complaint, Defendant is without  
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
12 this paragraph and, therefore, cannot admit or deny these allegations. To the extent "Defendants"  
13 is meant to apply to MCI, MCI denies any such allegations.

14          52.     Answering paragraph 52 of Plaintiffs' Amended Complaint, Defendant is without  
15 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
16 this paragraph and, therefore, cannot admit or deny these allegations.

17                   **FOURTH CLAIM FOR RELIEF**

18                   **(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

19          53.     Defendant incorporates by reference its responses and defenses to paragraphs 1  
20 through 52 of Plaintiffs' Amended Complaint as if fully set forth herein.

21          54.     Answering paragraph 54 of Plaintiffs' Amended Complaint, Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
23 this paragraph and, therefore, cannot admit or deny these allegations.

24          55.     Answering paragraph 55 of Plaintiffs' Amended Complaint, Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
26 this paragraph and, therefore, cannot admit or deny these allegations.

27     ///

28     ///

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1           56.     Answering paragraph 56 of Plaintiffs' Amended Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
3 this paragraph and, therefore, cannot admit or deny these allegations.

4           57.     Answering paragraph 57 of Plaintiffs' Amended Complaint, Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
6 this paragraph and, therefore, cannot admit or deny these allegations.

7           58.     Answering paragraph 58 of Plaintiffs' Amended Complaint, Defendant is without  
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
9 this paragraph and, therefore, cannot admit or deny these allegations.

10          59.     Answering paragraph 59 of Plaintiffs' Amended Complaint, Defendant is without  
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
12 this paragraph and, therefore, cannot admit or deny these allegations.

13                   **FIFTH CLAIM FOR RELIEF**

14                   **(STRICT LIABILITY: DEFECTIVE CONDITION OR**  
15                   **FAILURE TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

16          60.     Defendant incorporates by reference its responses and defenses to paragraphs 1  
17 through 59 of Plaintiffs' Amended Complaint as if fully set forth herein.

18          61.     Answering paragraph 61 of Plaintiffs' Amended Complaint, Defendant is without  
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
20 this paragraph and, therefore, cannot admit or deny these allegations.

21          62.     Answering paragraph 62 of Plaintiffs' Amended Complaint, Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
23 this paragraph and, therefore, cannot admit or deny these allegations.

24          63.     Answering paragraph 63 of Plaintiffs' Amended Complaint, Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
26 this paragraph and, therefore, cannot admit or deny these allegations.

27     ///

28     ///

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64. Answering paragraph 64 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

65. Answering paragraph 65 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

66. Answering paragraph 66 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

67. Answering paragraph 67 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

68. Answering paragraph 68 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

69. Answering paragraph 69 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

70. Answering paragraph 70 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

71. Answering paragraph 71 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

72. Answering paragraph 72 of Plaintiffs' Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations.

///

1           73.     Answering paragraph 73 of Plaintiffs' Amended Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
3 this paragraph and, therefore, cannot admit or deny these allegations.

4           74.     Answering paragraph 74 of Plaintiffs' Amended Complaint, Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
6 this paragraph and, therefore, cannot admit or deny these allegations.

7                               **SIXTH CLAIM FOR RELIEF**

8                               **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A**  
9                               **PARTICULAR PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

10          75.     Defendant incorporates by reference its responses and defenses to paragraphs 1  
11 through 74 of Plaintiffs' Amended Complaint as if fully set forth herein.

12          76.     Answering paragraph 76 of Plaintiffs' Amended Complaint, Defendant is without  
13 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
14 this paragraph and, therefore, cannot admit or deny these allegations.

15          77.     Answering paragraph 77 of Plaintiffs' Amended Complaint, Defendant is without  
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
17 this paragraph and, therefore, cannot admit or deny these allegations.

18          78.     Answering paragraph 78 of Plaintiffs' Amended Complaint, Defendant is without  
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
20 this paragraph and, therefore, cannot admit or deny these allegations.

21          79.     Answering paragraph 79 of Plaintiffs' Amended Complaint, Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
23 this paragraph and, therefore, cannot admit or deny these allegations.

24          80.     Answering paragraph 80 of Plaintiffs' Amended Complaint, Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
26 this paragraph and, therefore, cannot admit or deny these allegations.

27       ///

28       ///

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1           81.     Answering paragraph 81 of Plaintiffs' Amended Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
3 this paragraph and, therefore, cannot admit or deny these allegations.

4                               **SEVENTH CLAIM FOR RELIEF**

5                               **(WRONGFUL DEATH AGAINST ALL DEFENDANTS)**

6           82.     Defendant incorporates by reference its responses and defenses to paragraphs 1  
7 through 81 of Plaintiffs' Amended Complaint as if fully set forth herein.

8           83.     Answering paragraph 83 of Plaintiffs' Amended Complaint, Defendant denies the  
9 allegations contained in this paragraph as they pertain to MCI. MCI is without knowledge or  
10 information sufficient to form a belief as to the truth of the allegations contained in this paragraph  
11 regarding other parties and, therefore, cannot admit or deny these allegations.

12           84.     Answering paragraph 84 of Plaintiffs' Amended Complaint, Defendant denies the  
13 allegations contained in this paragraph as they pertain to MCI. MCI is without knowledge or  
14 information sufficient to form a belief as to the truth of the allegations contained in this paragraph  
15 regarding other parties and, therefore, cannot admit or deny these allegations.

16           85.     Answering paragraph 85 of Plaintiffs' Amended Complaint, Defendant denies the  
17 allegations contained in this paragraph as they pertain to MCI. MCI is without knowledge or  
18 information sufficient to form a belief as to the truth of the allegations contained in this paragraph  
19 regarding other parties and, therefore, cannot admit or deny these allegations.

20           86.     Answering paragraph 86 of Plaintiffs' Amended Complaint, Defendant denies the  
21 allegations contained in this paragraph as they pertain to MCI. MCI is without knowledge or  
22 information sufficient to form a belief as to the truth of the allegations contained in this paragraph  
23 regarding other parties and, therefore, cannot admit or deny these allegations.

24           87.     Answering paragraph 87 of Plaintiffs' Amended Complaint, Defendant denies the  
25 allegations contained in this paragraph as they pertain to MCI. MCI is without knowledge or  
26 information sufficient to form a belief as to the truth of the allegations contained in this paragraph  
27 regarding other parties and, therefore, cannot admit or deny these allegations.

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1           88.     Responding to Plaintiffs' Prayer for Relief, including the "WHEREFORE"  
2 statement and all subparts thereto, Defendant denies that it is liable to Plaintiffs in any fashion or in  
3 any amount.

4           89.     Any and all allegations set forth in Plaintiffs' Amended Complaint which have not  
5 heretofore been either expressly admitted or denied, are hereby denied.

6                               **AFFIRMATIVE DEFENSES**

7                               **FIRST AFFIRMATIVE DEFENSE**

8           Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief  
9 can be granted.

10                              **SECOND AFFIRMATIVE DEFENSE**

11           Necessary and indispensable parties may not have been joined and/or parties may have  
12 been improperly joined, including Defendant.

13                              **THIRD AFFIRMATIVE DEFENSE**

14           Plaintiffs' claims are barred by the doctrines of laches, waiver and estoppel.

15                              **FOURTH AFFIRMATIVE DEFENSE**

16           Plaintiffs have failed to mitigate their damages.

17                              **FIFTH AFFIRMATIVE DEFENSE**

18           Defendant owed no duty to Plaintiffs and to the extent owed, breached no duty alleged.

19                              **SIXTH AFFIRMATIVE DEFENSE**

20           Defendant, at all times relevant to the allegations contained in Plaintiffs' Amended  
21 Complaint, acted with reasonable care in the performance of any and all duties, if any.

22                              **SEVENTH AFFIRMATIVE DEFENSE**

23           Plaintiffs' decedent failed to exercise ordinary care, caution or prudence for his own safety,  
24 thereby proximately causing or contributing to the cause of Plaintiffs' damages, if any, through  
25 Plaintiffs' decedent's own negligence.

26                              **EIGHTH AFFIRMATIVE DEFENSE**

27           The negligence of Plaintiffs' decedent exceeded that of Defendant, if any, and therefore,  
28 Plaintiffs are barred from recovery.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' decedent knowingly and voluntarily accepted, and/or assumed all risks.

**TENTH AFFIRMATIVE DEFENSE**

Damages sustained by Plaintiffs, if any, were caused by the acts of third persons who were not acting on the part of Defendant in any manner or form, and as such, Defendant is not liable.

**ELEVENTH AFFIRMATIVE DEFENSE**

The liability, if any, of Defendant must be reduced by the percentage of fault of others, including Plaintiffs' decedent.

**TWELFTH AFFIRMATIVE DEFENSE**

The alleged injuries and damages complained of by Plaintiffs were caused in whole or in part by a new, independent and superseding intervening cause over which Defendant had no control.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The liability, if any, of Defendant is several and not joint and several and based upon its own acts and not the acts of others.

**FOURTEENTH AFFIRMATIVE DEFENSE**

If Plaintiffs have settled with any other parties, Defendant is entitled to credit and set-off in the amount of such settlement.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' and their decedent's injuries are the result of material alterations or modifications of the subject product, without the consent of the manufacturer, distributor or seller, in a manner inconsistent with the product's intended use.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' injuries are the result of unforeseeable misuse of the product at issue.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive damages that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount of punitive damages that may be imposed, would: (1) violate

1 Defendant's Due Process rights guaranteed by the Fifth and Fourteenth Amendments to the United  
 2 States Constitution; (2) violate Defendant's right not to be subjected to an excessive award; and (3)  
 3 be improper under the Constitution, common law and public policies of Nevada.


#### 4 EIGHTEENTH AFFIRMATIVE DEFENSE

5 Pursuant to NRCPC 11, as amended, all possible affirmative defenses may not have been  
 6 alleged herein insofar as facts were not available after reasonable inquiry upon the filing of  
 7 Defendant's Answer to Plaintiffs' Amended Complaint, and Defendant therefore reserves the right  
 8 to amend its Answer to allege additional affirmative defenses if subsequent investigation warrants.

9 WHEREFORE, having fully responded to the allegations of Plaintiffs' Amended  
 10 Complaint, Defendant respectfully prays:

- 11 1. that it be granted a trial by jury as to all appropriate issues;
- 12 2. that Plaintiffs take nothing by their Amended Complaint;
- 13 3. that Defendant be discharged from this action without liability;
- 14 4. that the Court award to Defendant all costs, including attorneys' fees, of this action;
- 15 and
- 16 5. that the Court award to Defendant such other and further relief as the Court deems
- 17 just and proper.

18  
 19 DATED this 30<sup>th</sup> day of June, 2017.

20  
 21   
 22 D. Lee Roberts, Jr., Esq.  
 23 Howard J. Russell, Esq.  
 24 Michael S. Valiente, Esq.  
 25 WEINBERG, WHEELER, HUDGINS,  
 26 GUNN & DIAL, LLC  
 27 6385 S. Rainbow Blvd., Suite 400  
 28 Las Vegas, NV 89118

*Attorneys for Defendant  
 Motor Coach Industries, Inc.*

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 Las Vegas, Nevada 89118  
 (702) 938-3838

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of June, 2017, a true and correct copy of the foregoing **DEFENDANT MOTOR COACH INDUSTRIES, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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*Attorney for Bell Sports, Inc. d/b/a Giro*

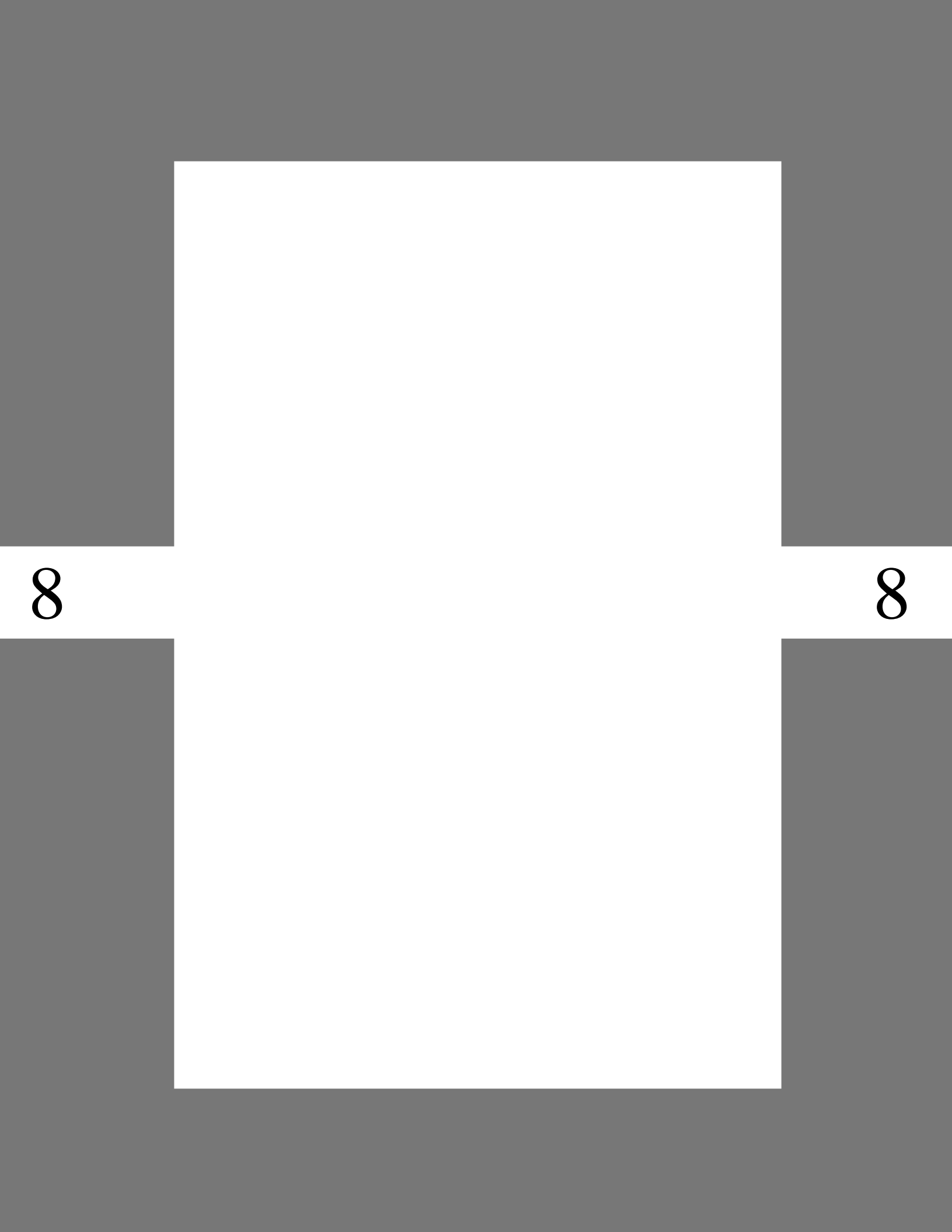


An Employee of WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC

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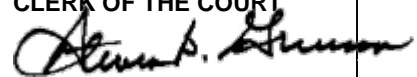
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**ANAC**

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Attorneys for Defendant SEVENPLUS  
BICYCLES, INC d/b/a PRO CYCLERY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CASE NO. A-17-755977-C  
DEPT NO.: XIV

**DEFENDANT SEVENPLUS BICYCLES,  
INC. d/b/a PRO CYCLERY'S ANSWER  
TO PLAINTIFFS' AMENDED  
COMPLAINT**

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural  
mother, KATAYOUN BARIN; KATAYOUN  
BARIN, individually; KATAYOUN BARIN  
as executrix of the Estate of Kayvan  
Khiabani, M.D. (Decedent), and the Estate  
of Kayvan Khiabani, M.D. (Decedent),

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS,  
an Arizona corporation; EDWARD  
HUBBARD, a Nevada resident; BELL  
SPORTS, INC. d/b/a GIRO SPORT  
DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES  
1 through 20 and ROE CORPORATIONS  
1 through 20,

Defendants.

COMES NOW Defendant, SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY,  
("SevenPlus"), by and through its attorney of record Murchison & Cumming, LLP, in response to  
Plaintiffs' Amended Complaint on file herein, admits, denies and alleges as follows:

**GENERAL ALLEGATIONS**

1. Answering Paragraph 1 of Plaintiffs' Amended Complaint, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

2. Answering Paragraph 2 of Plaintiffs' Amended Complaint, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

3. Answering Paragraph 3 of Plaintiffs' Amended Complaint, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

4. Answering Paragraph 4 of Plaintiffs' Amended Complaint, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same..

5. Answering Paragraph 5 of Plaintiffs' Amended Complaint, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

6. Answering Paragraph 6 of Plaintiffs' Amended Complaint, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

7. Answering Paragraph 7 of Plaintiffs' Amended Complaint, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

8. Answering Paragraph 8 of Plaintiffs' Amended Complaint, SevenPlus admits it is a Domestic Corporation authorized to do business in the State of Nevada, including Clark County, as to the remaining allegations, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

1           9.       Answering Paragraph 9 of Plaintiffs' Amended Complaint, SevenPlus states the  
2 allegations contained therein constitute conclusions of law and thus, no response is required.  
3 To the extent Paragraph 9 contains allegations of fact, SevenPlus is without knowledge or  
4 information sufficient to form a belief as to the truth or falsity of the allegations contained  
5 therein; and therefore, denies the same.

6           10.      Answering Paragraph 10 of Plaintiffs' Amended Complaint, SevenPlus is without  
7 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
8 allegations contained therein, and therefore, denies the same.

9           11.      Answering Paragraph 11 of Plaintiffs' Amended Complaint, SevenPlus denies the  
10 allegations contained therein.

11          12.      Answering Paragraph 12 of Plaintiffs' Amended Complaint, SevenPlus denies the  
12 allegations contained therein.

### 13                                   **JURISDICTION AND VENUE**

14          13.      Answering Paragraph 13 of Plaintiffs' Amended Complaint makes no allegations  
15 against SevenPlus and, as a result, no response to the allegations of Paragraph 13 of Plaintiffs'  
16 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
17 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
18 of the allegations contained therein, and therefore, denies the same.

19          14. Answering Paragraph 14 of Plaintiffs' Amended Complaint, SevenPlus states the  
20 allegations contained therein constitute conclusions of law and thus, no response is required.  
21 To the extent Paragraph 14 contains allegations of fact, SevenPlus is without knowledge or  
22 information sufficient to form a belief as to the truth or falsity of the allegations contained  
23 therein; and therefore, denies the same.

### 24                                   **GENERAL ALLEGATIONS**

25          15. Answering Paragraph 15 of Plaintiffs' Amended Complaint, SevenPlus is without  
26 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
27 allegations contained therein, and therefore, denies the same.  
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1 16. Answering Paragraph 16 of Plaintiffs' Amended Complaint makes no allegations  
2 against SevenPlus and, as a result, no response to the allegations of Paragraph 16 of Plaintiffs'  
3 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
4 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
5 of the allegations contained therein, and therefore, denies the same.

6 17. Answering Paragraph 17 of Plaintiffs' Amended Complaint makes no allegations  
7 against SevenPlus and, as a result, no response to the allegations of Paragraph 17 of Plaintiffs'  
8 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
9 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
10 of the allegations contained therein, and therefore, denies the same.

11 18. Answering Paragraph 18 of Plaintiffs' Amended Complaint makes no allegations  
12 against SevenPlus and, as a result, no response to the allegations of Paragraph 18 of Plaintiffs'  
13 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
14 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
15 of the allegations contained therein, and therefore, denies the same.

16 19. Answering Paragraph 19 of Plaintiffs' Amended Complaint makes no allegations  
17 against SevenPlus and, as a result, no response to the allegations of Paragraph 19 of Plaintiffs'  
18 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
19 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
20 of the allegations contained therein, and therefore, denies the same.

21 20. Answering Paragraph 20 of Plaintiffs' Amended Complaint makes no allegations  
22 against SevenPlus and, as a result, no response to the allegations of Paragraph 20 of Plaintiffs'  
23 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
24 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
25 of the allegations contained therein, and therefore, denies the same.

26 21. Answering Paragraph 21 of Plaintiffs' Amended Complaint makes no allegations  
27 against SevenPlus and, as a result, no response to the allegations of Paragraph 21 of Plaintiffs'  
28 Amended Complaint is required. To the extent that a response is required, SevenPlus is

1 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
2 of the allegations contained therein, and therefore, denies the same.

3 **FIRST CLAIM FOR RELIEF**

4 **(STRICT LIABILITY: DEFECTIVE CONDITION**

5 **OR FAILURE TO WARN AGAINST DEFENDANT MCI)**

6 22. Answering Paragraph 22 of Plaintiffs' Amended Complaint, SevenPlus repeats and  
7 re-alleges its answers to Paragraphs 1 through 21 above as though the same were set forth at  
8 length herein.

9 23. Answering Paragraph 23 of Plaintiffs' Amended Complaint makes no allegations  
10 against SevenPlus and, as a result, no response to the allegations of Paragraph 23 of Plaintiffs'  
11 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
12 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
13 of the allegations contained therein, and therefore, denies the same.

14 24. Answering Paragraph 24 of Plaintiffs' Amended Complaint makes no allegations  
15 against SevenPlus and, as a result, no response to the allegations of Paragraph 24 of Plaintiffs'  
16 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
17 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
18 of the allegations contained therein, and therefore, denies the same.

19 25. Answering Paragraph 25 of Plaintiffs' Amended Complaint makes no allegations  
20 against SevenPlus and, as a result, no response to the allegations of Paragraph 25 of Plaintiffs'  
21 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
22 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
23 of the allegations contained therein, and therefore, denies the same.

24 26. Answering Paragraph 26 of Plaintiffs' Amended Complaint makes no allegations  
25 against SevenPlus and, as a result, no response to the allegations of Paragraph 26 of Plaintiffs'  
26 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
27 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
28 of the allegations contained therein, and therefore, denies the same.

1        27. Answering Paragraph 27 of Plaintiffs' Amended Complaint makes no allegations  
2 against SevenPlus and, as a result, no response to the allegations of Paragraph 27 of Plaintiffs'  
3 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
4 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
5 of the allegations contained therein, and therefore, denies the same.

6        28. Answering Paragraph 28 of Plaintiffs' Amended Complaint makes no allegations  
7 against SevenPlus and, as a result, no response to the allegations of Paragraph 28 of Plaintiffs'  
8 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
9 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
10 of the allegations contained therein, and therefore, denies the same.

11        29. Answering Paragraph 29 of Plaintiffs' Amended Complaint makes no allegations  
12 against SevenPlus and, as a result, no response to the allegations of Paragraph 29 of Plaintiffs'  
13 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
14 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
15 of the allegations contained therein, and therefore, denies the same.

16        30. Answering Paragraph 30 of Plaintiffs' Amended Complaint makes no allegations  
17 against SevenPlus and, as a result, no response to the allegations of Paragraph 30 of Plaintiffs'  
18 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
19 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
20 of the allegations contained therein, and therefore, denies the same.

21        31. Answering Paragraph 31 of Plaintiffs' Amended Complaint makes no allegations  
22 against SevenPlus and, as a result, no response to the allegations of Paragraph 31 of Plaintiffs'  
23 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
24 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
25 of the allegations contained therein, and therefore, denies the same.

26        32. Answering Paragraph 32 of Plaintiffs' Amended Complaint makes no allegations  
27 against SevenPlus and, as a result, no response to the allegations of Paragraph 32 of Plaintiffs'  
28 Amended Complaint is required. To the extent that a response is required, SevenPlus is

1 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
2 of the allegations contained therein, and therefore, denies the same.

3 33. Answering Paragraph 33 of Plaintiffs' Amended Complaint makes no allegations  
4 against SevenPlus and, as a result, no response to the allegations of Paragraph 33 of Plaintiffs'  
5 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
6 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
7 of the allegations contained therein, and therefore, denies the same.

8 34. Answering Paragraph 34 of Plaintiffs' Amended Complaint makes no allegations  
9 against SevenPlus and, as a result, no response to the allegations of Paragraph 34 of Plaintiffs'  
10 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
11 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
12 of the allegations contained therein, and therefore, denies the same.

13 35. Answering Paragraph 35 of Plaintiffs' Amended Complaint, SevenPlus denies the  
14 allegations contained therein.

15 **SECOND CLAIM FOR RELIEF**

16 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS AND EDWARD HUBBARD)**

17 36. Answering Paragraph 36 of Plaintiffs' Amended Complaint, SevenPlus repeats and  
18 re-alleges its answers to Paragraphs 1 through 35 above as though the same were set forth at  
19 length herein.

20 37. Answering Paragraph 37 of Plaintiffs' Amended Complaint makes no allegations  
21 against SevenPlus and, as a result, no response to the allegations of Paragraph 37 of Plaintiffs'  
22 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
23 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
24 of the allegations contained therein, and therefore, denies the same.

25 38. Answering Paragraph 38 of Plaintiffs' Amended Complaint makes no allegations  
26 against SevenPlus and, as a result, no response to the allegations of Paragraph 38 of Plaintiffs'  
27 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
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1 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
2 of the allegations contained therein, and therefore, denies the same.

3 39. Answering Paragraph 39 of Plaintiffs' Amended Complaint makes no allegations  
4 against SevenPlus and, as a result, no response to the allegations of Paragraph 39 of Plaintiffs'  
5 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
6 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
7 of the allegations contained therein, and therefore, denies the same.

8 40. Answering Paragraph 40 of Plaintiffs' Amended Complaint makes no allegations  
9 against SevenPlus and, as a result, no response to the allegations of Paragraph 40 of Plaintiffs'  
10 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
11 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
12 of the allegations contained therein, and therefore, denies the same.

13 41. Answering Paragraph 41 of Plaintiffs' Amended Complaint makes no allegations  
14 against SevenPlus and, as a result, no response to the allegations of Paragraph 41 of Plaintiffs'  
15 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
16 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
17 of the allegations contained therein, and therefore, denies the same.

18 42. Answering Paragraph 42 of Plaintiffs' Amended Complaint makes no allegations  
19 against SevenPlus and, as a result, no response to the allegations of Paragraph 42 of Plaintiffs'  
20 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
21 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
22 of the allegations contained therein, and therefore, denies the same.

23 43. Answering Paragraph 43 of Plaintiffs' Amended Complaint makes no allegations  
24 against SevenPlus and, as a result, no response to the allegations of Paragraph 43 of Plaintiffs'  
25 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
26 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
27 of the allegations contained therein, and therefore, denies the same.

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1           44.     Answering Paragraph 44 of Plaintiffs' Amended Complaint makes no allegations  
2 against SevenPlus and, as a result, no response to the allegations of Paragraph 44 of Plaintiffs'  
3 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
4 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
5 of the allegations contained therein, and therefore, denies the same.

6           45.     Answering Paragraph 45 of Plaintiffs' Amended Complaint makes no allegations  
7 against SevenPlus and, as a result, no response to the allegations of Paragraph 45 of Plaintiffs'  
8 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
9 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
10 of the allegations contained therein, and therefore, denies the same.

11           46.     Answering Paragraph 46 of Plaintiffs' Amended Complaint, SevenPlus denies the  
12 allegations contained therein.

13                           **THIRD CLAIM FOR RELIEF**

14                           **(NEGLIGENCE PER SE AGAINST DEFENDANTS**

15                           **RYAN'S EXPRESS AND EDWARD HUBBARD)**

16           47.     Answering Paragraph 47 of Plaintiffs' Amended Complaint, SevenPlus repeats  
17 and realleges its answers to Paragraphs 1 through 46 above as though the same were set forth  
18 at length herein.

19           48.     Answering Paragraph 48 of Plaintiffs' Amended Complaint makes no allegations  
20 against SevenPlus and, as a result, no response to the allegations of Paragraph 49 of Plaintiffs'  
21 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
22 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
23 of the allegations contained therein, and therefore, denies the same.

24           49.     Answering Paragraph 49 of Plaintiffs' Amended Complaint makes no allegations  
25 against SevenPlus and, as a result, no response to the allegations of Paragraph 49 of Plaintiffs'  
26 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
27 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
28 of the allegations contained therein, and therefore, denies the same.

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1           56.     Answering Paragraph 56 of Plaintiffs' Amended Complaint makes no allegations  
2 against SevenPlus and, as a result, no response to the allegations of Paragraph 56 of Plaintiffs'  
3 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
4 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
5 of the allegations contained therein, and therefore, denies the same.

6           57.     Answering Paragraph 57 of Plaintiffs' Amended Complaint makes no allegations  
7 against SevenPlus and, as a result, no response to the allegations of Paragraph 57 of Plaintiffs'  
8 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
9 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
10 of the allegations contained therein, and therefore, denies the same.

11           58.     Answering Paragraph 58 of Plaintiffs' Amended Complaint makes no allegations  
12 against SevenPlus and, as a result, no response to the allegations of Paragraph 58 of Plaintiffs'  
13 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
14 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
15 of the allegations contained therein, and therefore, denies the same.

16           59.     Answering Paragraph 59 of Plaintiffs' Amended Complaint, SevenPlus denies the  
17 allegations contained therein.

18                   **FIFTH CLAIM FOR RELIEF**

19           **(STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE TO WARN AGAINST**  
20                   **DEFENDANTS GIRO AND PRO CYCLERY)**

21           60.     Answering Paragraph 60 of Plaintiffs' Amended Complaint, SevenPlus repeats  
22 and realleges its answers to Paragraphs 1 through 59 above as though the same were set forth  
23 at length herein.

24           61.     Answering Paragraph 61 of Plaintiffs' Amended Complaint makes no allegations  
25 against SevenPlus and, as a result, no response to the allegations of Paragraph 61 of Plaintiffs'  
26 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
27 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
28 of the allegations contained therein, and therefore, denies the same.

1           62.     Answering Paragraph 62 of Plaintiffs' Amended Complaint, SevenPlus is without  
2 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
3 allegations contained therein, and therefore, denies the same.

4           63.     Answering Paragraph 63 of Plaintiffs' Amended Complaint, SevenPlus is without  
5 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
6 allegations contained therein, and therefore, denies the same.

7           64.     Answering Paragraph 64 of Plaintiffs' Amended Complaint, SevenPlus denies the  
8 allegations contained therein.

9           65.     Answering Paragraph 65 of Plaintiffs' Amended Complaint, SevenPlus denies the  
10 allegations contained therein.

11          66.     Answering Paragraph 66 of Plaintiffs' Amended Complaint, SevenPlus denies the  
12 allegations contained therein.

13          67.     Answering Paragraph 67 of Plaintiffs' Amended Complaint, SevenPlus denies the  
14 allegations contained therein.

15          68.     Answering Paragraph 68 of Plaintiffs' Amended Complaint, SevenPlus denies the  
16 allegations contained therein.

17          69.     Answering Paragraph 69 of Plaintiffs' Amended Complaint, SevenPlus denies the  
18 allegations contained therein.

19          70.     Answering Paragraph 70 of Plaintiffs' Amended Complaint, SevenPlus denies the  
20 allegations contained therein.

21          71.     Answering Paragraph 71 of Plaintiffs' Amended Complaint, SevenPlus denies the  
22 allegations contained therein.

23          72.     Answering Paragraph 72 of Plaintiffs' Amended Complaint, SevenPlus denies the  
24 allegations contained therein.

25          73.     Answering Paragraph 73 of Plaintiffs' Amended Complaint makes no allegations  
26 against SevenPlus and, as a result, no response to the allegations of Paragraph 73 of Plaintiffs'  
27 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
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1 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
2 of the allegations contained therein, and therefore, denies the same.

3 74. Answering Paragraph 74 of Plaintiffs' Amended Complaint, SevenPlus denies the  
4 allegations contained therein.

5 **SIXTH CLAIM FOR RELIEF**

6 **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**  
7 **AGAINST DEFENDANT GIRO AND PRO CYCLERY)**

8 75. Answering Paragraph 75 of Plaintiffs' Amended Complaint, SevenPlus repeats  
9 and realleges its answers to Paragraphs 1 through 74 above as though the same were set forth  
10 at length herein.

11 76. Answering Paragraph 76 of Plaintiffs' Amended Complaint, SevenPlus is without  
12 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
13 allegations contained therein, and therefore, denies the same.

14 77. Answering Paragraph 77 of Plaintiffs' Amended Complaint, SevenPlus is without  
15 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
16 allegations contained therein, and therefore, denies the same.

17 78. Answering Paragraph 78 of Plaintiffs' Amended Complaint, SevenPlus is without  
18 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
19 allegations contained therein, and therefore, denies the same.

20 79. Answering Paragraph 79 of Plaintiffs' Amended Complaint, SevenPlus denies the  
21 allegations contained therein.

22 80. Answering Paragraph 80 of Plaintiffs' Amended Complaint makes no allegations  
23 against SevenPlus and, as a result, no response to the allegations of Paragraph 80 of Plaintiffs'  
24 Amended Complaint is required. To the extent that a response is required, SevenPlus is  
25 without sufficient knowledge or information upon which to base a belief as to the truth or falsity  
26 of the allegations contained therein, and therefore, denies the same.

27 81. Answering Paragraph 81 of Plaintiffs' Amended Complaint, SevenPlus denies the  
28 allegations contained therein.

**SEVENTH CLAIM FOR RELIEF****(WRONGFUL DEATH AGAINST ALL DEFENDANT)**

82. Answering Paragraph 82 of Plaintiffs' Amended Complaint, SevenPlus repeats and realleges its answers to Paragraphs 1 through 81 above as though the same were set forth at length herein.

83. Answering Paragraph 83 of Plaintiffs' Amended Complaint, SevenPlus is without sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

84. Answering Paragraph 84 of Plaintiffs' Amended Complaint, SevenPlus states the allegations contained therein constitute conclusions of law and thus, no response is required. To the extent Paragraph 84 contains allegations of fact, SevenPlus is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein; and therefore, denies the same.

85. Answering Paragraph 85 of Plaintiffs' Amended Complaint, SevenPlus denies the allegations contained therein.

86. Answering Paragraph 86 of Plaintiffs' Amended Complaint, SevenPlus denies the allegations contained therein.

87. Answering Paragraph 87 of Plaintiffs' Amended Complaint, SevenPlus denies the allegations contained therein.

**AFFIRMATIVE DEFENSES****FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Amended Complaint fails to state a claim against SevenPlus upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The loss, injuries and damages, if any, which Plaintiffs allege, were directly and proximately caused by the negligence, carelessness or fault of Plaintiffs, which is greater than the alleged negligence, carelessness or fault, if any, of SevenPlus and therefore, Plaintiffs' claims against SevenPlus are barred.

**THIRD AFFIRMATIVE DEFENSE**

The loss, injuries and damages, if any, which Plaintiffs allege, were directly and proximately caused and/or contributed to by the negligence, carelessness or fault of Plaintiffs and therefore, SevenPlus is entitled to contribution in proportion to the percentage of negligence attributed to Plaintiffs.

**FOURTH AFFIRMATIVE DEFENSE**

At the time and place, and under the circumstances alleged, the injuries of Plaintiffs, if any, and the damages of Plaintiffs, if any, were caused solely by the acts or omissions of some parties over whom SevenPlus had no control, and for whose acts SevenPlus is not responsible.

**FIFTH AFFIRMATIVE DEFENSE**

SevenPlus alleges that Plaintiffs are barred by the contribution laws of the State of Nevada.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff action against SevenPlus is moot because Plaintiffs' actions are barred by the applicable Statute of Limitations.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are estopped by virtue of their own acts and omissions from asserting the claims for relief set forth in the Amended Complaint against SevenPlus.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' Amended Complaint is barred by the Doctrine of Laches.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' have failed to mitigate their alleged damages, if any, as required by law.

**TENTH AFFIRMATIVE DEFENSE**

SevenPlus's liability, the existence of which is expressly denied, must be reduced by the percentage of fault of others, including Plaintiffs.

**ELEVENTH AFFIRMATIVE DEFENSE**

SevenPlus alleges that Plaintiffs failed to name each party necessary for full and adequate relief essential in this action.



**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims have been waived as a result of Plaintiffs act and conduct and, therefore, Plaintiffs are estopped from asserting their claims for damages against SevenPlus.

**THIRTEENTH AFFIRMATIVE DEFENSE**

SevenPlus alleges that the damages, if any, suffered by the Plaintiffs were caused, in whole or in part, by an independent intervening cause, and were not the result of negligence on the part of SevenPlus.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The products and materials provided by SevenPlus were fit and proper for their intended use.

**FIFTEENTH AFFIRMATIVE DEFENSE**

SevenPlus's product and materials were misused.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The products and materials were altered or modified in some unforeseeable manner, which subsequently caused the damages, if any.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are estopped from asserting any claim against SevenPlus in that Plaintiffs or other parties modified, altered, redesigned, or in some fashion, materially altered SevenPlus's product. Said changes, alterations, redesign or modifications were accomplished in the absence of SevenPlus's knowledge, approval or consent; said changes, alterations, redesign or modifications proximately causing or contributing to the damages claimed by Plaintiffs.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

It has been necessary for SevenPlus to retain counsel to defend this action, and it is, therefore, entitled to an award of reasonable attorney's fees.

**NINETEENTH AFFIRMATIVE DEFENSE**

SevenPlus is not the real party in interest.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' punitive damages claims are barred due to the lack of clear and convincing evidence that this Defendant has been guilty of oppression, fraud or malice, express or implied, as required pursuant to NRC § 42.005.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

SevenPlus is informed and believes and thereon alleges that the events referred to in Plaintiffs' Amended Complaint resulted from the abnormal or improper use of the helmet referred to in Plaintiffs' Amended Complaint.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

The utility and benefit of the helmet referred to in Plaintiffs' Amended Complaint outweighed any risk or harm posed by its design, and/or the helmet met the expectations of the reasonable consumer and/or performed in the manner reasonable to be expected in light of its nature and intended functions.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

In the event that Plaintiffs recover damages against one or more Defendants, the liability for Defendants on one or more claims may be several and not joint and subject to apportionment.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

SevenPlus alleges that the damages sustained by Plaintiffs, if any, were the result of an unavoidable accident, insofar as SevenPlus is concerned, and occurred without any negligence, want of care, default, or other breach of duty to Plaintiffs on the part of the SevenPlus.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

SevenPlus adopts and incorporates by reference any affirmative defenses of the Co-Defendant as may be applicable to SevenPlus.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

SevenPlus alleges that Plaintiffs' claims are barred by any and all releases and waivers of liability agreements signed by Plaintiffs.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

SevenPlus hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure, as if fully set forth herein.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

SevenPlus alleges that Plaintiffs knowingly, intelligently and voluntarily assumed the risk of loss, damage and/or injury of which Plaintiffs complain, and Plaintiffs are therefore barred from recovery for such loss, damage and/or injury.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

SevenPlus alleges it was not the designer, manufacturer, or distributor of the helmet, so as to this no negligence can be assigned on the part of SevenPlus.

**THIRTIETH AFFIRMATIVE DEFENSE**

All possible affirmative defenses may not have been alleged herein, so far as sufficient facts were not available after a reasonable inquiry upon the filing of SevenPlus's Answer.

**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' punitive damages claims are barred based upon the provisions of NRS § 42.007, because Plaintiffs' cannot prove any of the elements necessary to impose such liability upon this Defendant.

WHEREFORE, Defendant SevenPlus prays for judgment as follows:

1. Plaintiffs take nothing against SevenPlus by way of their Amended Complaint;
2. Plaintiffs' Amended Complaint be dismissed with prejudice and that it take nothing thereby;
3. Defendant SevenPlus be awarded its attorney's fees and costs incurred; and

1           4.       For such other and further relief as the Court deems just and proper in the  
2 premises.

3           DATED: June 30, 2017

4                               **MURCHISON & CUMMING, LLP**

5  
6           By 

Michael J. Nuñez, Esq.  
Nevada Bar No. 10703  
6900 Westcliff Drive, Suite 605  
Las Vegas, Nevada 89145  
Attorneys for Defendant SEVENPLUS  
BICYCLES, INC d/b/a PRO CYCLERY

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At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Clark, State of Nevada. My business address is 6900 Westcliff Drive, Suite 605, Las Vegas, Nevada 89145.

**SEE ATTACHED LIST**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 30, 2017, at Las Vegas, Nevada.

  
Conrad Voigt

**Keon Khiabani, et. al. vs. Motor Coach Industries, et. a l.**

**Will Kemp**  
**Kemp, Jones & Coulthard, LLP**  
**3800 Howard Hughes Parkway**  
**17th Floor**  
**Las Vegas, NV 89169**  
**Telephone: 702-385-6000**

Attorneys for Plaintiffs

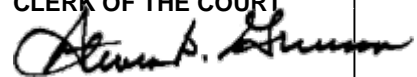
Peter S. Christiansen  
Christiansen Law Offices  
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Telephone: 702-240-7979

Attorneys for Plaintiffs

000136

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1 **DMJT**  
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2 Nevada Bar No. 10703  
MURCHISON & CUMMING, LLP  
3 6900 Westcliff Drive, Suite 605  
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4 Telephone: (702) 360-3956  
Facsimile: (702) 360-3957

5 Attorneys for Defendant SEVENPLUS  
6 BICYCLES, INC d/b/a PRO CYCLERY

7  
8  
9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11  
12 KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural  
13 mother, KATAYOUN BARIN; KATAYOUN  
BARIN, individually; KATAYOUN BARIN  
14 as executrix of the Estate of Kayvan  
Khiabani, M.D. (Decedent), and the Estate  
15 of Kayvan Khiabani, M.D. (Decedent),

16 Plaintiffs,

17 v.

18 MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
19 LEASING INC. d/b/a RYAN'S EXPRESS,  
an Arizona corporation; EDWARD  
20 HUBBARD, a Nevada resident; BELL  
SPORTS, INC. d/b/a GIRO SPORT  
21 DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
22 CYCLERY, a Nevada corporation, DOES  
1 through 20 and ROE CORPORATIONS  
23 1 through 20,

24 Defendants.

CASE NO. A-17-755977-C  
DEPT NO.: XIV

**DEFENDANT SEVENPLUS BICYCLES,  
INC d/b/a PRO CYCLERY'S DEMAND  
FOR JURY TRIAL**

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26 ///

27 ///

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**DEMAND FOR JURY TRIAL**

COMES NOW, Defendant, SEVENPLUS BICYCLES, INC d/b/a PRO CYCLERY, by and through its attorneys of record, Murchison & Cumming, LLP, and hereby demands that a trial of the above-entitled action be heard before a jury.

DATED: June 30, 2017

**MURCHISON & CUMMING, LLP**

By 

Michael J. Nuñez, Esq.  
Nevada Bar No. 10703  
6900 Westcliff Drive, Suite 605  
Las Vegas, Nevada 89145  
Attorneys for Defendant SEVENPLUS  
BICYCLES, INC d/b/a PRO CYCLERY



**PROOF OF SERVICE**

**STATE OF NEVADA, COUNTY OF CLARK**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Clark, State of Nevada. My business address is 6900 Westcliff Drive, Suite 605, Las Vegas, Nevada 89145.

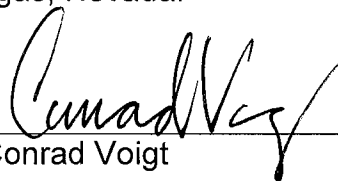
On June 30, 2017, I served true copies of the following document(s) described as **DEFENDANT SEVENPLUS BICYCLES, INC D/B/A PRO CYCLERY'S DEMAND FOR JURY TRIAL** on the interested parties in this action as follows:

**SEE ATTACHED LIST**

**BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing and electronic service the document(s) listed above to the Counsel set forth on the service list on this date pursuant to Administrative order 14-2 NEFCR 9 (a), and EDCR Rule 7.26.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 30, 2017, at Las Vegas, Nevada.

  
Conrad Voigt

**SERVICE LIST**

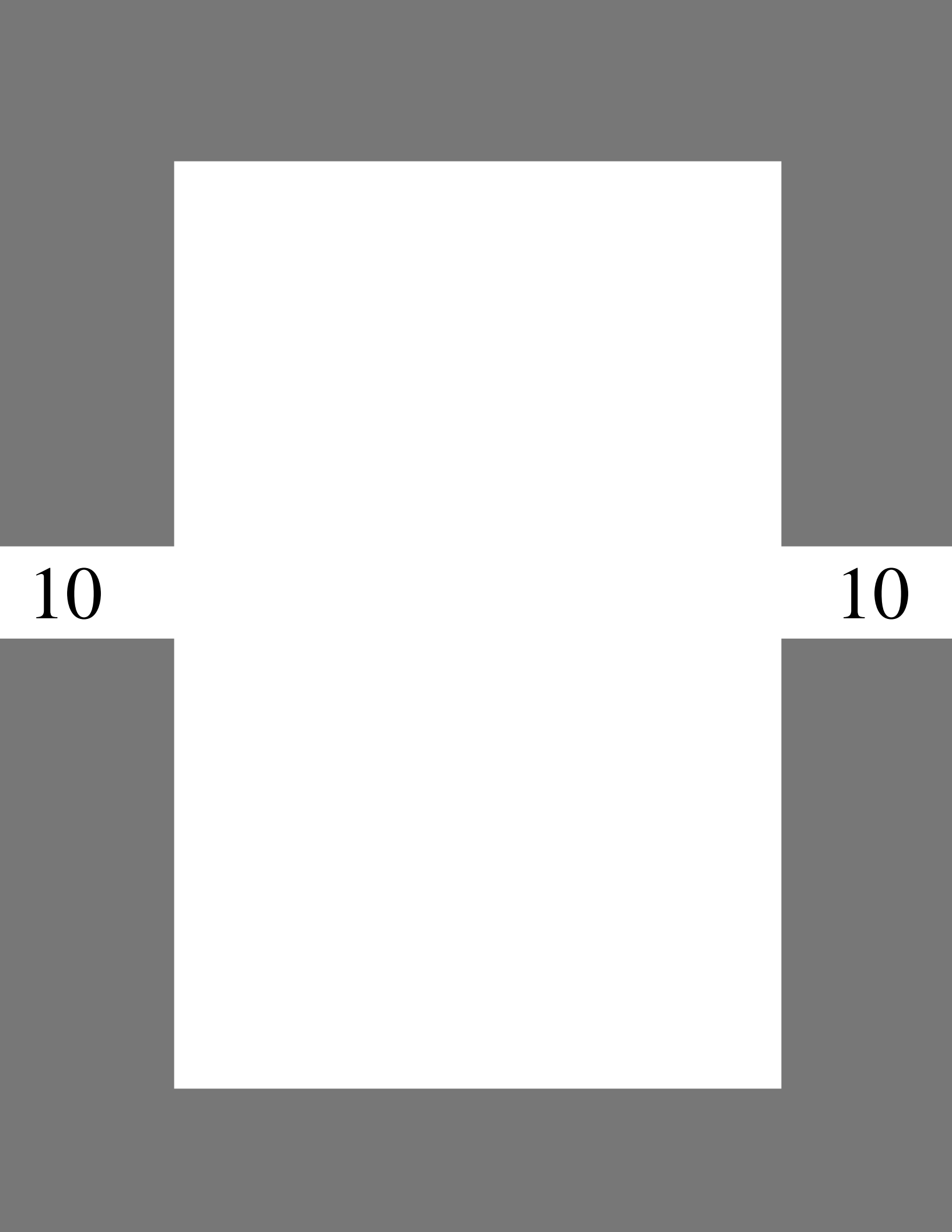
**Keon Khiabani, et. al. vs. Motor Coach Industries, et. a l.**

Will Kemp  
Kemp, Jones & Coulthard, LLP  
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17th Floor  
Las Vegas, NV 89169  
Telephone: 702-385-6000

Attorneys for Plaintiffs

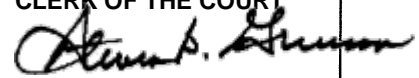
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Attorneys for Defendant  
BELL SPORTS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; and KATAYOUN  
BARIN, individually,

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20.

Defendants.

CASE NO. A-17-755977-C  
DEPT. NO. XIV

**DEFENDANT BELL SPORTS, INC'S ANSWER TO  
PLAINTIFF'S AMENDED COMPLAINT**

///

///

Defendant BELL SPORTS, INC. ("BSI"),<sup>1</sup> by and through its attorneys, Olson, Cannon, Gormley, Angulo & Stoberski, P.C., as and for its Answer to Plaintiffs' Amended Complaint herein, respond as follows:

### **THE PARTIES<sup>2</sup>**

1. BSI denies knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of Plaintiffs' Amended Complaint.

2. BSI denies knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of Plaintiffs' Amended Complaint.

3. BSI denies knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of Plaintiffs' Amended Complaint.

4. BSI denies knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of Plaintiffs' Amended Complaint.

5. BSI denies knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of Plaintiffs' Amended Complaint.

6. BSI denies knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of Plaintiffs' Amended Complaint.

7. BSI admits that it is a corporation organized and existing under the laws of the State of California. BSI further admits that it is engaged in the business of designing, marketing and selling certain helmets under the "Giro" brand. BSI denies that it does business as "Giro Sports Design," and BSI further denies the remaining allegations in Paragraph 7 of Plaintiffs' Amended Complaint.

8. BSI denies knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of Plaintiffs' Amended Complaint.

9. BSI denies knowledge and information sufficient to form a belief as to the truth

<sup>1</sup> In their Amended Complaint, Plaintiffs refer to BSI as "Giro" based on the erroneous allegation that "Giro Sports Design" is a d/b/a for Bell Sports, Inc. BSI will respond to Plaintiffs' allegations against "Giro" in their Amended Complaint as if they were properly directed at BSI.

<sup>2</sup> BSI is including the headings used in Plaintiffs' Amended Complaint for ease of reference. BSI expressly denies the truth of any allegations contained in such headings.

1 of the allegations in Paragraph 9 of Plaintiffs' Amended Complaint, and BSI refers all  
2 conclusions of law to this Honorable Court.

3 10. BSI denies the allegations in Paragraph 10 of Plaintiffs' Amended Complaint,  
4 and BSI refers all conclusions of law to this Honorable Court.

5 11. BSI denies the allegations in Paragraph 11 of Plaintiffs' Amended Complaint,  
6 and BSI refers all conclusions of law to this Honorable Court.

7 12. BSI denies the allegations in Paragraph 12 of Plaintiffs' Amended Complaint,  
8 and BSI refers all conclusions of law to this Honorable Court.

9 13. BSI denies knowledge and information sufficient to form a belief as to the truth  
10 of the allegations in Paragraph 13 of Plaintiffs' Amended Complaint.

11 14. BSI denies knowledge and information sufficient to form a belief as to the truth  
12 of the allegations in Paragraph 14 of Plaintiffs' Amended Complaint.

13 **GENERAL ALLEGATIONS**

14 15. BSI denies knowledge and information sufficient to form a belief as to the truth  
15 of the allegations in Paragraph 15 of Plaintiffs' Amended Complaint.

16 16. BSI denies knowledge and information sufficient to form a belief as to the truth  
17 of the allegations in Paragraph 16 of Plaintiffs' Amended Complaint.

18 17. BSI denies knowledge and information sufficient to form a belief as to the truth  
19 of the allegations in Paragraph 17 of Plaintiffs' Amended Complaint.

20 18. BSI denies knowledge and information sufficient to form a belief as to the truth  
21 of the allegations in Paragraph 18 of Plaintiffs' Amended Complaint.

22 19. BSI denies knowledge and information sufficient to form a belief as to the truth  
23 of the allegations in Paragraph 19 of Plaintiffs' Amended Complaint.

24 20. BSI denies knowledge and information sufficient to form a belief as to the truth  
25 of the allegations in Paragraph 20 of Plaintiffs' Amended Complaint.

26 21. BSI denies knowledge and information sufficient to form a belief as to the truth  
27 of the allegations in Paragraph 21 of Plaintiffs' Amended Complaint.  
28

**AS AND FOR AN ANSWER TO PLAINTIFFS' FIRST CLAIM FOR RELIEF**  
**(STRICT LIABILITY: DEFECTIVE CONDITION OR**  
**FAILURE TO WARN AGAINST DEFENDANT MCI)**

22. In response to Paragraph 22 of Plaintiffs' Amended Complaint, BSI repeats, reiterates and realleges each and every response to Paragraph 1 through Paragraph 21 of Plaintiffs' Amended Complaint as though fully set forth at length herein.

23. – 35. Paragraphs 23 – 35 of Plaintiffs' Amended Complaint are not directed to BSI and, therefore, no response by BSI is required. To the extent any of the allegations are found to be directed against BSI, such allegations are denied, and BSI specifically denies any liability related to such paragraphs.

**AS AND FOR AN ANSWER TO PLAINTIFFS' SECOND CLAIM FOR RELIEF**  
**(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**  
**AND EDWARD HUBBARD)**

36. In response to Paragraph 36 of Plaintiffs' Amended Complaint, BSI repeats, reiterates and realleges each and every response to Paragraph 1 through Paragraph 35 of Plaintiffs' Amended Complaint as though fully set forth at length herein.

37. – 46. Paragraphs 37 – 46 of Plaintiffs' Amended Complaint are not directed to BSI and, therefore, no response by BSI is required. To the extent any of the allegations are found to be directed against BSI, such allegations are denied, and BSI specifically denies any liability related to such paragraphs.

**AS AND FOR AN ANSWER TO PLAINTIFFS' THIRD CLAIM FOR RELIEF**  
**(NEGLIGENCE PER SE AGAINST DEFENDANTS**  
**RYAN'S EXPRESS AND EDWARD HUBBARD)**

47. In response to Paragraph 47 of Plaintiffs' Amended Complaint, BSI repeats, reiterates and realleges each and every response to Paragraph 1 through Paragraph 46 of Plaintiffs' Amended Complaint as though fully set forth at length herein.

48. – 52. Paragraphs 48 – 52 of Plaintiffs' Amended Complaint are not directed to BSI and, therefore, no response by BSI is required. To the extent any of the allegations are found to be directed against BSI, such allegations are denied, and BSI specifically denies any liability related to such paragraphs.

**AS AND FOR AN ANSWER TO PLAINTIFFS' FOURTH CLAIM FOR RELIEF  
(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

53. In response to Paragraph 53 of Plaintiffs' Amended Complaint, BSI repeats, reiterates and realleges each and every response to Paragraph 1 through Paragraph 52 of Plaintiffs' Amended Complaint as though fully set forth at length herein.

54. – 59. Paragraphs 54 – 59 of Plaintiffs' Amended Complaint are not directed to BSI and, therefore, no response by BSI is required. To the extent any of the allegations are found to be directed against BSI, such allegations are denied, and BSI specifically denies any liability related to such paragraphs.

**AS AND FOR AN ANSWER TO PLAINTIFFS' FIFTH CLAIM FOR RELIEF  
(STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE  
TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

60. In response to Paragraph 60 of Plaintiffs' Amended Complaint, BSI repeats, reiterates and realleges each and every response to Paragraph 1 through Paragraph 59 of Plaintiffs' Amended Complaint as though fully set forth at length herein.

61. BSI admits that it is engaged in the business of designing, testing, distributing, marketing and selling certain helmets under the "Giro" brand, but BSI denies knowledge or information sufficient to form a belief as to the truth of the allegation regarding Dr. Khiabani's helmet. BSI denies the remaining allegations contained in Paragraph 61 of Plaintiffs' Amended Complaint.

62. BSI denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of Plaintiffs' Amended Complaint.

63. BSI denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of Plaintiffs' Amended Complaint.

64. BSI denies the allegations contained in Paragraph 64 of Plaintiffs' Amended Complaint.

65. BSI denies the allegations contained in Paragraph 65 of Plaintiffs' Amended Complaint.

66. BSI denies the allegations contained in Paragraph 66 of Plaintiffs' Amended

1 Complaint.

2 67. BSI denies the allegations contained in Paragraph 67 of Plaintiffs' Amended  
3 Complaint.

4 68. BSI denies the allegations contained in Paragraph 68 of Plaintiffs' Amended  
5 Complaint.

6 69. BSI denies the allegations contained in Paragraph 69 of Plaintiffs' Amended  
7 Complaint.

8 70. BSI denies the allegations contained in Paragraph 70 of Plaintiffs' Amended  
9 Complaint.

10 71. BSI denies the allegations contained in Paragraph 71 of Plaintiffs' Amended  
11 Complaint.

12 72. BSI denies the allegations contained in Paragraph 72 of Plaintiffs' Amended  
13 Complaint.

14 73. BSI denies the allegations contained in Paragraph 73 of Plaintiffs' Amended  
15 Complaint, and BSI refers all questions of law to this Honorable Court.

16 74. BSI denies the allegations contained in Paragraph 74 of Plaintiffs' Amended  
17 Complaint, and BSI refers all questions of law to this Honorable Court.

18 **AS AND FOR AN ANSWER TO PLAINTIFFS' SIXTH CLAIM FOR RELIEF**  
19 **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR**  
20 **PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

21 75. In response to Paragraph 75 of Plaintiffs' Amended Complaint, BSI repeats,  
22 reiterates and realleges each and every response to Paragraph 1 through Paragraph 74 of  
23 Plaintiffs' Amended Complaint as though fully set forth at length herein.

24 76. BSI denies the allegations contained in Paragraph 76 of Plaintiffs' Amended  
25 Complaint.

26 77. BSI denies the allegations contained in Paragraph 77 of Plaintiffs' Amended  
27 Complaint.

28 78. BSI denies the allegations contained in Paragraph 78 of Plaintiffs' Amended  
Complaint.



1 79. BSI denies the allegations contained in Paragraph 79 of Plaintiffs' Amended  
2 Complaint.

3 80. BSI denies the allegations contained in Paragraph 80 of Plaintiffs' Amended  
4 Complaint, and BSI refers all questions of law to this Honorable Court.

5 81. BSI denies the allegations contained in Paragraph 81 of Plaintiffs' Amended  
6 Complaint, and BSI refers all questions of law to this Honorable Court.

7 **AS AND FOR AN ANSWER TO PLAINTIFFS' SEVENTH CLAIM**  
8 **(WRONGFUL DEATH AGAINST ALL DEFENDANTS)**

9 82. In response to Paragraph 82 of Plaintiffs' Amended Complaint, BSI repeats,  
10 reiterates and realleges each and every response to Paragraph 1 through Paragraph 81 of  
11 Plaintiffs' Amended Complaint as though fully set forth at length herein.

12 83. BSI denies knowledge or information sufficient to form a belief as to the truth of  
13 the allegations contained in Paragraph 83 of Plaintiffs' Amended Complaint, and BSI refers all  
14 questions of law to this Honorable Court.

15 84. BSI denies the allegations contained in Paragraph 84 of Plaintiffs' Amended  
16 Complaint, and BSI refers all questions of law to this Honorable Court.

17 85. BSI denies the allegations contained in Paragraph 85 of Plaintiffs' Amended  
18 Complaint.

19 86. BSI denies the allegations contained in Paragraph 86 of Plaintiffs' Amended  
20 Complaint.

21 87. BSI denies the allegations contained in Paragraph 87 of Plaintiffs' Amended  
22 Complaint, and BSI refers all questions of law to this Honorable Court.

23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 Plaintiffs' Amended Complaint fails to state a claim against BSI upon which relief can  
26 be granted.

27 **SECOND AFFIRMATIVE DEFENSE**

28 The damages complained of in Plaintiffs' Amended Complaint may have been the result

1 of the intervening actions of others and were not proximately caused by the actions or omissions  
2 of BSI

3 **THIRD AFFIRMATIVE DEFENSE**

4 Plaintiffs' claims are barred to the extent that Plaintiffs' Decedent incurred or assumed  
5 the risks of which Plaintiffs complain in this action.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 The incident alleged in Plaintiffs' Amended Complaint and the resulting damages, if any,  
8 to Plaintiffs was proximately caused or contributed to by Plaintiffs' Decedent and/or Plaintiffs'  
9 own negligence, and such negligence was greater than the negligence, if any, of BSI, which BSI  
10 denies.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 BSI's product, if any, was in compliance with all federal, state and local codes,  
13 standards, regulations, specifications and statutes regarding the manufacture, sale and use of the  
14 product at all times pertinent to this action.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitation.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 Plaintiffs cannot recover herein against BSI because the manufacture, inspection,  
19 packaging, warning and labeling of the product described in Plaintiffs' Amended Complaint was  
20 in conformity with the generally recognized state of the art at the time such product was  
21 manufactured, inspected, packaged and labeled.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims may be barred because the physical harm complained of was caused by  
24 a modification or alteration of the product at issue made by a person after the delivery to the  
25 initial user or consumer which modification or alteration was the proximate cause of the  
26 physical harm complained of by Plaintiffs, and such modification or alteration was not  
27 reasonably expectable by BSI.

28 ///

## NINTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs have been compensated for the alleged damages by receiving payment from other persons or entities, the amount of any such compensation should be set off against any recovery Plaintiffs may receive in this action.

## TENTH AFFIRMATIVE DEFENSE

The injuries or damages of which Plaintiffs complains were caused in whole or in part by the named parties in this action other than BSI and/or non-parties whom Plaintiffs have failed to join in this action. Any allocation of liability to any named party or any non-party should be set off against any recovery Plaintiffs may receive for any fault which may be attributed to BSI.

## ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent that Plaintiffs' Decedent failed and neglected to exercise ordinary care for his safety and welfare, which directly and proximately caused or contributed to Plaintiffs' Decedent's alleged injuries and Plaintiffs' alleged damages.

**TWELFTY AFFIRMATIVE DEFENSE**

Plaintiffs and/or Plaintiffs' Decedent failed to mitigate their damages, if any.

### THIRTEENTH AFFIRMATIVE DEFENSE

All risks and dangers involved in the factual situation described in the Complaint were open, obvious and known to Plaintiffs and/or Plaintiffs' Decedent, who voluntarily assumed said risks and dangers.

## FOURTEENTH AFFIRMATIVE DEFENSE

Any physical harm alleged can be attributed to several causes and the damages for this harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.

## FIFTEENTH AFFIRMATIVE DEFENSE

BSI is informed and believes and on that basis alleges that Plaintiffs' warranty claims are barred due to lack of privity of contract between Plaintiffs and/or Plaintiffs' decedent and BSI, and on the basis that there are no express or implied warranties running from BSI to Plaintiffs and/or to Plaintiffs' Decedent.

1                                   **SIXTEENTH AFFIRMATIVE DEFENSE**

2           The product that allegedly caused injuries or damage to the Plaintiffs was reasonably fit  
3 for the uses for which it was intended.

4                                   **SEVENTEENTH AFFIRMATIVE DEFENSE**

5           Plaintiffs are not entitled to recover to the extent any alleged damages or injuries were  
6 caused by the misuse, abuse, or failure to properly maintain or care for the products at issue  
7 herein.

8                                   **EIGHTEENTH AFFIRMATIVE DEFENSE**

9           Discovery and investigation are incomplete and BSI does not and cannot reasonably be  
10 expected to know whether additional affirmative defenses may be applicable. BSI therefore  
11 reserves the right to add additional affirmative and other defenses as may be applicable and  
12 appropriate during the pendency of this action.

13                                   **NINETEENTH AFFIRMATIVE DEENSE**

14           Plaintiffs' Amended Complaint does not contain any allegations, as opposed to  
15 conclusory statements of law, that would support any claim for punitive damages and, as such,  
16 Plaintiffs' claim for punitive damages against BSI should be stricken.

17                                   **TWENTIETH AFFIRMATIVE DEFENSE**

18           Plaintiffs' claim for punitive damages in a product liability action is unconstitutional in  
19 that recovery of punitive damages in this case would violate BSI's constitutional rights to due  
20 process and equal protection under the Fourteenth Amendment to the Constitution of the United  
21 States and similar protections afforded by the Constitution of the State of Nevada.

22                                   **TWENTY-FIRST AFFIRMATIVE DEFENSE**

23           Plaintiffs' claim for punitive damages is unconstitutional in that the standards established  
24 for granting and assessing punitive damages are vague and ambiguous, thereby violating BSI's  
25 constitutional rights to due process under the Eighth and Fourteenth Amendments of the  
26 Constitution of the United States and similar protections afforded by the Constitution of the  
27 State of Nevada.

28   ///

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claim for punitive damages is unconstitutional to the extent that Plaintiffs seek to punish BSI without the protection of constitutional safeguards, including, but not limited to, the right to proof beyond a reasonable doubt, the prohibition against excessive fines as guaranteed by the Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States and similar protections afforded by the State of Nevada.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claim for punitive damages is unconstitutional in that the standards for granting and assessing punitive damages do not prohibit other Plaintiffs from seeking such damages against BSI for the same allegations of defect in the same product and, as such, constitute multiple punishments for the same alleged offense, resulting in the deprivation of BSI's property without due process of law and will, at the same time, resulting in unjustified windfalls for Plaintiffs and Plaintiffs' counsel, all in violation of the Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States and similar protections afforded by the Constitution of the State of Nevada.

WHEREFORE, this answering Defendant prays as follows:

1. That Plaintiffs take nothing by reason of their Amended Complaint on file herein

and that the same be dismissed with prejudice;

2. For reasonable attorneys' fees and costs incurred to defend this suit; and

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1 3. For such other and further relief as the Court may deem just and proper in this  
2 matter.

3 DATED this 3<sup>rd</sup> day of July, 2017.

4 OLSON, CANNON, GORMLEY,  
5 ANGULO & STOBERSKI

6  
7 

8 MICHAEL E. STOBERSKI, ESQ.

9 Nevada Bar No. 004762

10 JOSLYN SHAPIRO, ESQ.

11 Nevada Bar No. 010754

12 9950 West Cheyenne Avenue

13 Las Vegas, Nevada 89129

14 Telephone: 702-384-4012

15 Facsimile: 702-383-0701

16 Email: [mstoberski@ocgas.com](mailto:mstoberski@ocgas.com)

17 Email: [jshapiro@ocgas.com](mailto:jshapiro@ocgas.com)

18 Attorneys for Defendant

19 BELL SPORTS, INC.

000151  
Law Offices of  
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A Professional Corporation  
9950 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
(702) 384-4012 Telecopier (702) 383-0701

000151

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI, and that on the 3<sup>rd</sup> day of July 2017, I served a true and correct copy of **DEFENDANT BELL SPORTS, INC'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** via the court's Electronic Filing and Service System to the following person (s):

William Simon Kemp, Esq.  
Eric Pepperman, Esq.  
3800 Howard Hughes Parkway, 17<sup>th</sup> Fl  
Las Vegas, NV 89169  
Phone: 702-385-6000  
Fax: 702-385-6001  
Email: [w.kemp@kempjones.com](mailto:w.kemp@kempjones.com)  
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Peter S. Christiansen, Esq.  
Kendele Leascher Works, Esq.  
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E-Mail: [hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)  
Attorneys for Defendant Motor Coach Industries

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4 Las Vegas, NV 89169-0961  
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6 Fax: 702-228-8824  
7 E-mail: [efreeman@selmanlaw.com](mailto:efreeman@selmanlaw.com)  
8 Attorneys for Defendant Michelangelo Leasing Inc  
9 d/b/a Ryan's Express

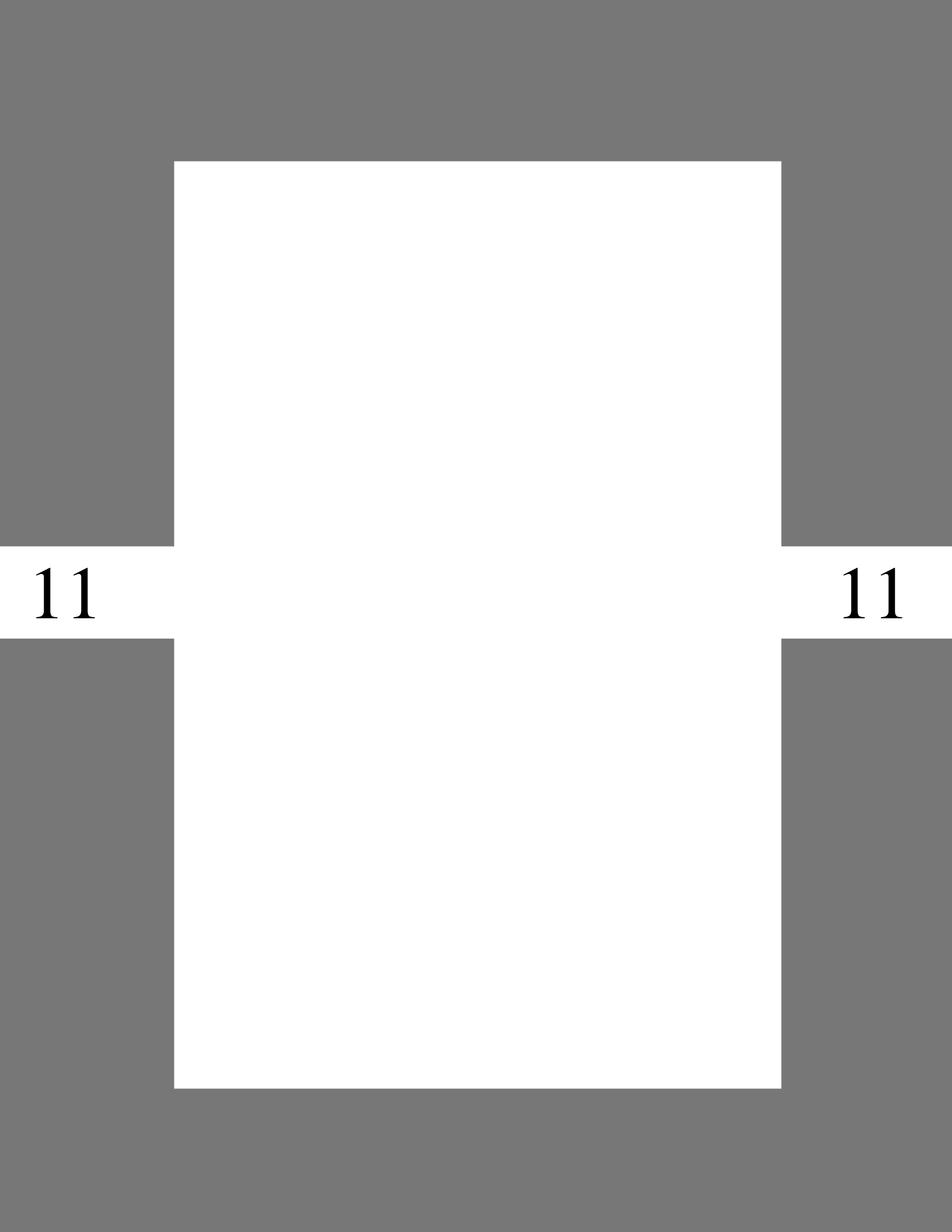
10 Michael J. Nunez, Esq.  
11 MURCHISON & CUMMINGS, LLP  
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13 Las Vegas, NV 89145  
14 Phone: 702-360-3956  
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16 E-Mail: [mnunez@murchisonlaw.com](mailto:mnunez@murchisonlaw.com)  
17 Attorneys for Defendant SevenPlus Bicycles, Inc.  
18 Db a Pro Cyclery

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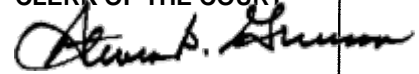
An Employee of OLSON, CANNON, GORMLEY,  
ANGULO & STOBERSKI





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11



MICHAEL E. STOBERSKI, ESQ.  
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JOSLYN SHAPIRO, ESQ.  
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Attorneys for Defendant  
BELL SPORTS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; and KATAYOUN  
BARIN, individually,

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20.

Defendants.

CASE NO. A-17-755977-C  
DEPT. NO. XIV

**DEFENDANT BELL SPORTS, INC.'S DEMAND FOR JURY TRIAL**

DEMAND is hereby made by Defendant BELL SPORTS, INC., for a trial by jury in the

///

///

1 above captioned matter.

2  
3 DATED this 3<sup>rd</sup> day of July, 2017.

4 OLSON, CANNON, GORMLEY,  
5 ANGULO & STOBERSKI

6 

7 MICHAEL E. STOBERSKI, ESQ.

8 Nevada Bar No. 004762

9 JOSLYN SHAPIRO, ESQ.

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15 Email: mstoberski@ocgas.com

16 Email: jshapiro@ocgas.com

17 Attorneys for Defendant

18 BELL SPORTS, INC.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of OLSON, CANNON,  
GORMLEY, ANGULO & STOBERSKI, and that on the 3<sup>rd</sup> day of July 2017, I served a  
and correct copy of **DEFENDANT BELL SPORTS, INC.'S DEMAND FOR JURY TRIAL**  
via the court's Electronic Filing and Service System to the following person (s):

William Simon Kemp, Esq.  
Eric Pepperman, Esq.  
3800 Howard Hughes Parkway, 17<sup>th</sup> Fl  
Las Vegas, NV 89169  
Phone: 702-385-6000  
Fax: 702-385-6001  
Email: [w.kemp@kempjones.com](mailto:w.kemp@kempjones.com)  
[e.pepperman@kempjones.com](mailto:e.pepperman@kempjones.com)

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Kendele Leascher Works, Esq.  
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[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)

Attorneys for Plaintiffs

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E-Mail: [hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)  
Attorneys for Defendant Motor Coach Industries

///

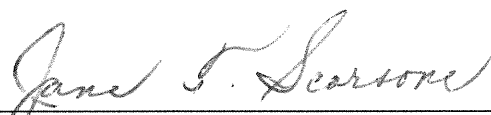
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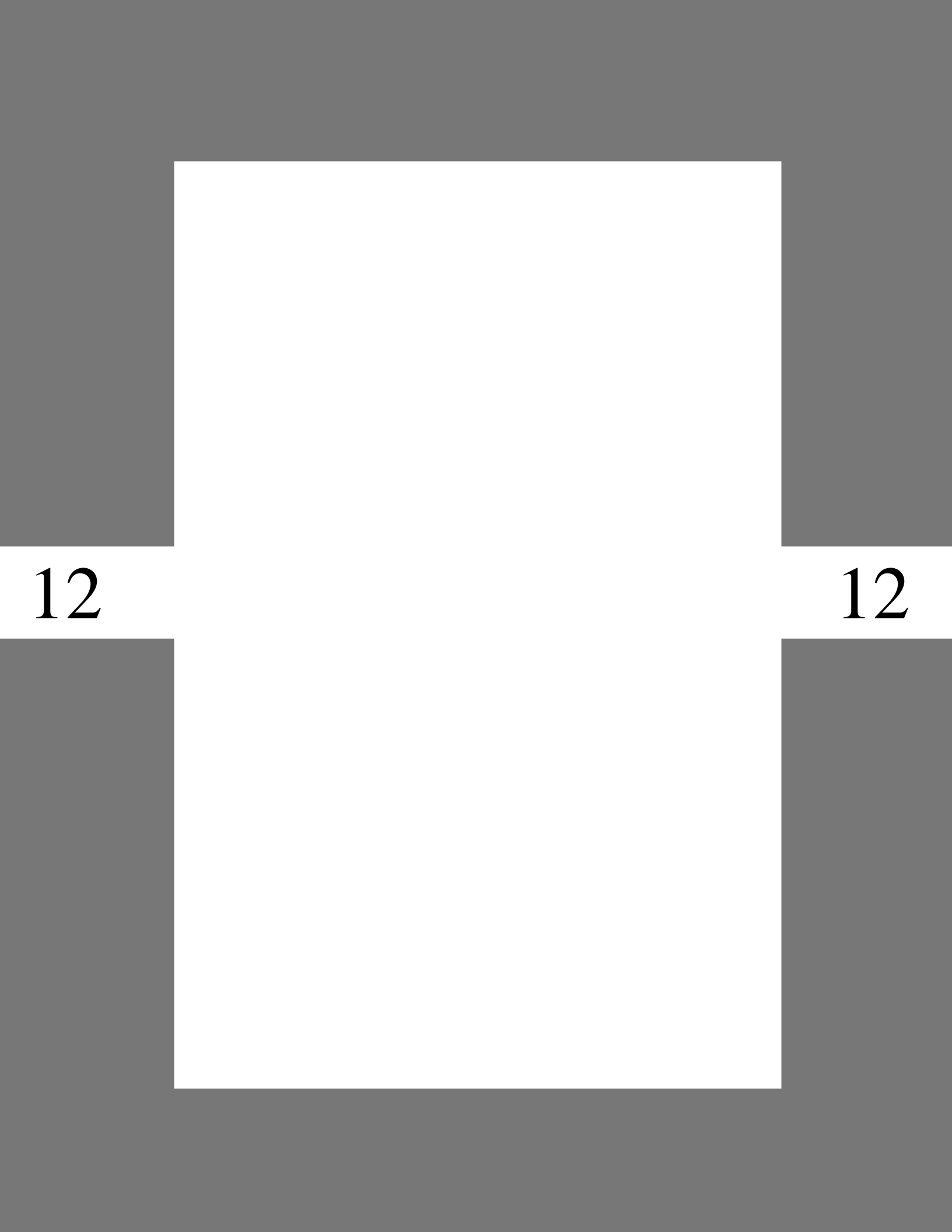
1 Eric O. Freeman, Esq.  
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3 3993 Howard Hughes Parkway, Suite 200  
4 Las Vegas, NV 89169-0961  
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8 Attorneys for Defendant Michelangelo Leasing Inc  
9 d/b/a Ryan's Express

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14 Phone: 702-360-3956  
15 Fax: 702-360-3957  
16 E-Mail: [mnunez@murchisonlaw.com](mailto:mnunez@murchisonlaw.com)  
17 Attorneys for Defendant SevenPlus Bicycles, Inc.  
18 d/b/a Pro Cyclery

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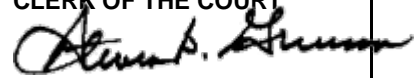


An Employee of OLSON, CANNON, GORMLEY  
ANGULO & STOBERSKI



12

12



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9 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
14 KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as  
15 Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
16 Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,  
a Delaware corporation; MICHELANGELO  
20 LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
21 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California  
22 corporation; SEVENPLUS BICYCLES, INC.  
d/b/a Pro Cyclery, a Nevada corporation;  
23 DOES 1 through 20; and ROE  
24 CORPORATIONS 1 through 20.

25 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

**NOTICE OF ENTRY OF ORDER  
GRANTING IN PART AND DENYING IN  
PART PLAINTIFFS' APPLICATION  
UNDER NRCP 65(b) FOR TEMPORARY  
RESTRAINING ORDER REQUIRING BUS  
COMPANY AND DRIVER TO PRESERVE  
AND IMMEDIATELY TURN OVER  
RELEVANT ELECTRONIC  
MONITORING INFORMATION FROM  
BUS AND DRIVER CELL PHONE ON  
ORDER SHORTENING TIME**

27 TO: All parties herein; and

28 TO: Their respective counsel;

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

1 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Granting in  
 2 Part and Denying in Part Plaintiffs' Application Under NRCP 65(b) for Temporary Restraining  
 3 Order Requiring Bus Company and Driver to Preserve and Immediately Turn Over Relevant  
 4 Electronic Monitoring Information from Bus and Driver Cell Phone on Order Shortening Time was  
 5 entered in the above-entitled matter on July 5, 2017. A copy of said Order is attached hereto.

6 DATED this 10<sup>th</sup> day of July, 2017.

7  
 8 KEMP, JONES & COULTHARD, LLP

9 /s/ Eric Pepperman

10 WILL KEMP, ESQ. (#1205)

11 ERIC PEPPERMAN, ESQ. (#11679)

12 KEMP, JONES & COULTHARD, LLP

13 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 14 Las Vegas, NV 89169

15 -and-

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17 KENDELEE L. WORKS, ESQ. (#9611)

18 CHRISTIANSEN LAW OFFICES

19 810 Casino Center Blvd.

20 Las Vegas, Nevada 89101

21 *Attorneys for Plaintiffs*

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on the 11<sup>th</sup> day of July, 2017, the foregoing NOTICE OF ENTRY OF  
 24 ORDER was served on all parties currently on the electronic service list via the Court's electronic  
 25 filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative  
 26 Order 14-2.

27 /s/ Patty Pierson

28 An Employee of Kemp, Jones & Coulthard

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ORIGINAL

*Steven D. Grierson*

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9 *Attorneys for Plaintiffs*

10  
11 **DISTRICT COURT**  
12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,  
14 minors by and through their natural mother,  
KATAYOUN BARIN; KATAYOUN BARIN,  
15 individually; KATAYOUN BARIN as  
Executrix of the Estate of Kayvan Khiabani,  
16 M.D. (Decedent), and the Estate of Kayvan  
Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,  
20 a Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
21 Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
22 GIRO SPORT DESIGN, a California  
corporation; SEVENPLUS BICYCLES, INC.  
23 d/b/a Pro Cyclery, a Nevada corporation;  
DOES 1 through 20; and ROE  
24 CORPORATIONS 1 through 20.

25 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
APPLICATION UNDER NRCP 65(b) FOR  
TEMPORARY RESTRAINING ORDER  
REQUIRING BUS COMPANY AND  
DRIVER TO PRESERVE AND  
IMMEDIATELY TURN OVER  
RELEVANT ELECTRONIC  
MONITORING INFORMATION FROM  
BUS AND DRIVER CELL PHONE ON  
ORDER SHORTENING TIME**

27 This matter came before the Court on June 15, 2017, at 9:30 AM, pursuant to Plaintiffs'  
28 application under NRCP 65(b) for a Temporary Restraining Order requiring Defendant

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1 Michelangelo Leasing, Inc. and Defendant Hubbard to preserve and immediately turn over relevant  
2 electronic monitoring information from the bus involved in the April 18, 2017 accident and the cell  
3 phone(s), if any, that Defendant Hubbard had in his possession at the time of the accident. Plaintiffs  
4 were represented by Will Kemp, Esq. and Eric Pepperman, Esq. of the law firm KEMP, JONES &  
5 COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendele L. Works, Esq. of  
6 CHRISTIANSEN LAW OFFICES; Defendant Motor Coach Industries, Inc. was represented by  
7 Howard Russell, Esq. of the law firm WEINBERG WHEELER HUDGINS GUNN & DIAL;  
8 Defendant Bell Sports, Inc. was represented by Michael Stoberski, Esq. of the law firm OLSON  
9 CANNON GORMLEY ANGULO STOBERSKI; Defendants Michelangelo Leasing, Inc. and  
10 Edward Hubbard were represented by Eric Freeman, Esq. of the law firm SELMAN BREITMAN,  
11 who appeared via Court Call; there was no appearance by Defendant Sevenplus Bicycles, Inc.  
12 Having considered the application and arguments of counsel present at the hearing, and for good  
13 cause appearing, Plaintiffs' application for Temporary Restraining Order under NRCP 65(b) is  
14 hereby GRANTED, in part, and DENIED, in part, as follows:

15         1.         Given the limited storage capacity of electronic data recording devices and the  
16 possibility that data on these devices may be overridden, the Court finds good cause to enter a  
17 Temporary Restraining Order requiring the preservation of this evidence. Thus, to the extent that  
18 Plaintiffs seek an order preserving evidence, their application is GRANTED.

19         2.         Since this electronic data will be preserved, the Court sees no need for it to be  
20 immediately turned-over at this early stage of the proceedings. Thus, to the extent that Plaintiffs  
21 seek an order requiring that the electronic data be immediately turned over to Plaintiffs, their  
22 application is DENIED. The Court makes no ruling on the relevance or ultimate discoverability of  
23 this electronic data, only that it need not be immediately turned over pursuant to a Temporary  
24 Restraining Order at this time.

25         3.         Defendant Michelangelo Leasing, Inc. shall make the bus available in Las Vegas for  
26 Rimkus Consulting to download any and all electronic information on the Electronic Data Recorders  
27 of the bus, if any, and to copy any and all video recordings from the bus, if any. All electronic  
28 information or video information from an available source, if any, shall be encompassed by this

1 order, including but not limited to the following sources: (a) Engine Control Module (ECM); (b)  
2 Global Positioning System (GPS); (c) Infotainment System; (d) Video Recording Devices; (e) Drive  
3 Cam; and (f) proximity sensors. Rimkus Consulting shall use its best efforts to preserve the  
4 electronic information and video recordings of the bus, if any, in a format that can later be accessed  
5 by all parties and the Plaintiffs' expert shall not do anything during the download and copying  
6 process that would erase any information, data or video recordings. To the extent that any of the  
7 forgoing data or data sources cannot be accessed by Rimkus Consulting, the parties are to meet and  
8 confer regarding additional avenues to ensure preservation of all electronic data and video from the  
9 bus.

10 4. Unless otherwise agreed by Plaintiffs and Defendant Michelangelo Leasing, the  
11 downloading and copying described above shall occur within 5 business days of notice of entry of  
12 this order.

13 5. Rimkus Consulting shall make seven copies of any electronic data or video  
14 downloaded or copied from the bus (one copy for each party, one copy for the Court, and one copy  
15 that Rimkus Consulting shall retain for itself). Rimkus Consulting shall provide one of these copies  
16 to counsel for Defendants Michelangelo Leasing and Edward Hubbard, but it shall not provide  
17 copies to any other party. The remaining five copies shall be submitted to the Court with a copy of  
18 the Report described in paragraph six of this order. Plaintiffs and/or Plaintiffs' experts shall not  
19 access the same unless agreed to by Defendant Michelangelo Leasing or until further order of this  
20 court. If Plaintiffs are provided access to the information, the other parties will also be provided  
21 access to the information. Nothing in this order precludes the Las Vegas Metropolitan Police  
22 Department or any other government agency from requesting and receiving the downloaded data.

23 6. Immediately following the download, Rimkus Consulting shall file a Verified  
24 Report with the Court. The Report should describe the download process and procedure and, to the  
25 extent possible, contain the following: (1) a description of the software used to download or copy the  
26 data, (2) a list of the materials that were downloaded, (3) the date of download, (4) the date that  
27 downloaded or copied data appeared to have been originally generated, and (5) any other pertinent  
28 information.

7. In addition to the bus data, Defendant Edward Hubbard shall make the cell phone(s) that he possessed at the time of the incident available in Las Vegas for Plaintiffs' computer expert to copy and the Plaintiffs' expert shall not do anything during the copying process that would erase any information on the cell phone(s). Unless otherwise agreed by Plaintiffs and Defendant Hubbard, such copying shall occur within 5 business days of notice of entry of this order. Plaintiffs' expert shall make six copies of the cell phone(s), if any (one copy for each party and one copy for the court). Plaintiffs' expert shall provide one of these copies to counsel for Defendant Edward Hubbard, but it shall not provide copies to any other party or retain a copy for itself. The remaining five copies shall be submitted to the Court. Although Plaintiffs may copy the entire cell phone data, Plaintiffs and/or Plaintiffs' expert shall not access the same. At the appropriate time in the future, the parties shall conduct a meet and confer regarding an agreed upon access protocol that protects potential privileges and avoids the review of materials that are not relevant (e.g., personal phone numbers, messages, etc.).

8. This Temporary Restraining Order will expire by its own terms in 30 days from the date that it is entered. Good cause exists to extend the expiration date from 15 to 30 days because the additional time will give the parties greater flexibility in scheduling the matters contemplated by this order before it expires.

9. Given the benefit of this order to all parties, the Court finds good cause to waive any security requirement under NRCP 65(c).

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10. Nothing in this Temporary Restraining Order shall be construed as relieving any party from their obligation to preserve evidence.

DATED this 20 day of June, 2017.

  
DISTRICT COURT JUDGE

Submitted by:

/s/ Eric Pepperman  
WILL KEMP, ESQ. (#1205)  
ERIC PEPPERMAN, ESQ. (#11679)  
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-and-  
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KENDELEE L. WORKS, ESQ. (#9611)  
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*Attorneys for Plaintiffs*

Approved as to form and content:

SELMAN BREITMAN LLP

/s/ Eric Freeman  
Eric O. Freeman, Esq.  
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Las Vegas, Nevada 89169  
*Attorneys for Defendants,*  
*MICHELANGELO LEASING, INC.*  
*and EDWARD HUBBARD*

Approved as to form and content:

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

/s/ Howard Russell  
Howard J. Russell, Esq.  
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*COACH INDUSTRIES, INC.*

1 Approved as to form and content:

2 OLSON, CANNON, GORMLEY,  
3 ANGULO & STOBERSKI

4 /s/ Michael Stoberski

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8 Las Vegas, Nevada 89129

9 *Attorneys for Defendant,*

10 *BELL SPORTS, INC.*

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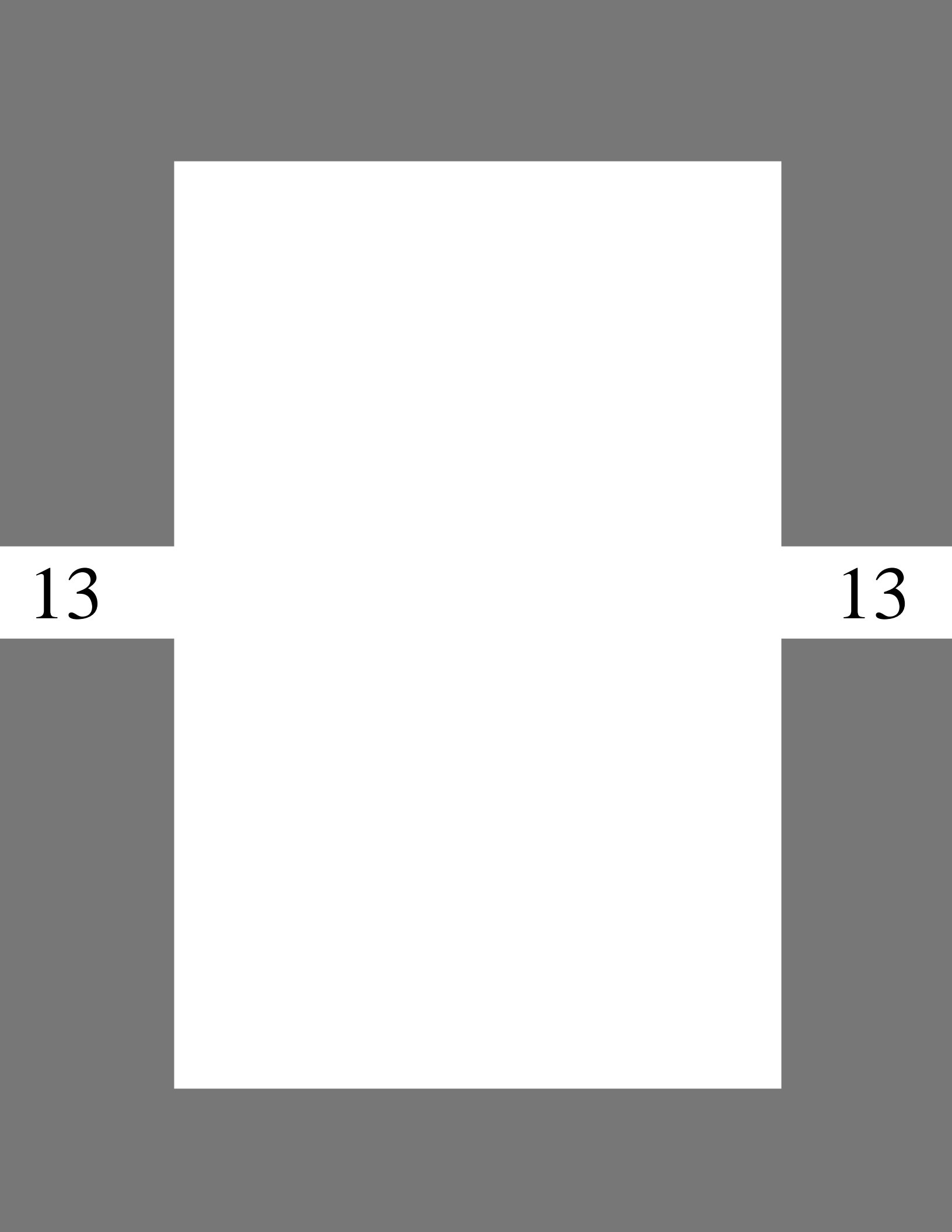
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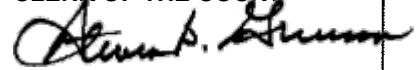
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7/20/2017 2:10 PM

Steven D. Grierson

CLERK OF THE COURT



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 8 Las Vegas, Nevada 89101  
 Telephone: (702) 240-7979

9 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,  
 minors by and through their natural mother,  
 14 KATAYOUN BARIN; KATAYOUN BARIN,  
 individually; KATAYOUN BARIN as  
 15 Executrix of the Estate of Kayvan Khiabani,  
 M.D. (Decedent), and the Estate of Kayvan  
 16 Khiabani, M.D. (Decedent),

17 **Plaintiffs,**

18 **vs.**

19 MOTOR COACH INDUSTRIES, INC.,  
 a Delaware corporation; MICHELANGELO  
 20 LEASING INC. d/b/a RYAN'S EXPRESS, an  
 Arizona corporation; EDWARD HUBBARD, a  
 21 Nevada resident; BELL SPORTS, INC. d/b/a  
 22 GIRO SPORT DESIGN, a California  
 corporation; SEVENPLUS BICYCLES, INC.  
 23 d/b/a Pro Cyclery, a Nevada corporation;  
 DOES 1 through 20; and ROE  
 24 CORPORATIONS 1 through 20.

25 **Defendants.**

Case No. A-17-755977-C

Dept. No. XIV

**NOTICE OF ENTRY OF ORDER  
 GRANTING PLAINTIFFS' MOTION FOR  
 PREFERENTIAL TRIAL SETTING**

27 TO: All parties herein; and

28 TO: Their respective counsel;

KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Parkway  
 Seventeenth Floor  
 Las Vegas, Nevada 89169  
 (702) 385-6000 • Fax (702) 385-6001  
 kjc@kempjones.com




1 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Granting  
 2 Plaintiffs' Motion for Preferential Trial Setting was entered in the above entitled matter on July 20,  
 3 2017.

4 A copy of said Order is attached hereto.

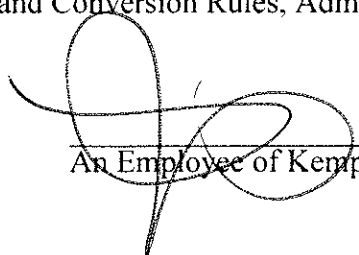
5 DATED this 20<sup>th</sup> day of July, 2017.

6 KEMP, JONES & COULTHARD, LLP

7  
 8   
 9 WILL KEMP, ESQ. (#1205)  
 10 ERIC PEPPERMAN, ESQ. (#11679)  
 11 KEMP, JONES & COULTHARD, LLP  
 12 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 13 Las Vegas, NV 89169  
 14 -and-  
 15 PETER S. CHRISTIANSEN, ESQ. (#5254)  
 16 KENDELEE L. WORKS, ESQ. (#9611)  
 17 CHRISTIANSEN LAW OFFICES  
 18 810 Casino Center Blvd.  
 19 Las Vegas, Nevada 89101  
 20 *Attorneys for Plaintiffs*

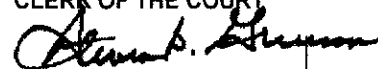
21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on the 20<sup>th</sup> day of July, 2017, the foregoing NOTICE OF ENTRY OF  
 23 ORDER GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL TRIAL SETTING was  
 24 served on all parties currently on the electronic service list via the Court's electronic filing system  
 25 only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.  
 26  
 27  
 28

29   
 30 An Employee of Kemp, Jones & Coulthard.

KEMP, JONES & COULTHARD, LLP  
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9  
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11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
14 KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as  
15 Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
16 Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,  
a Delaware corporation; MICHELANGELO  
20 LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
21 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California  
22 corporation; SEVENPLUS BICYCLES, INC.  
d/b/a Pro Cyclery, a Nevada corporation;  
23 DOES 1 through 20; and ROE  
24 CORPORATIONS 1 through 20.

25 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR PREFERENTIAL TRIAL  
SETTING**

26 This matter came before the Court on July 20, 2017, at 9:30 AM, pursuant to Plaintiffs'  
27 Motion for Preferential Trial Setting. Plaintiffs were represented by Will Kemp, Esq. of the law  
28 firm KEMP, JONES & COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendelee L.

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1 Works, Esq. of CHRISTIANSEN LAW OFFICES; Defendant Motor Coach Industries, Inc. was  
 2 represented by D. Lee Roberts, Jr., Esq. and Howard Russell, Esq. of the law firm WEINBERG  
 3 WHEELER HUDGINS GUNN & DIAL; Defendant Bell Sports, Inc. was represented by Michael  
 4 Stoberski, Esq. of the law firm OLSON CANNON GORMLEY ANGULO STOBERSKI;  
 5 Defendants Michelangelo Leasing, Inc. and Edward Hubbard were represented by Eric Freeman,  
 6 Esq. of the law firm SELMAN BREITMAN; and Defendant Sevenplus Bicycles, Inc. was  
 7 represented by Michael J. Nunez, Esq. of the law firm MURCHISON & CUMMING, LLP. Having  
 8 considered the briefing, the Declarations of Plaintiff Katayoun ("Katy") Barin and Anthony Nguyen  
 9 MD in support of a preferential trial setting, and the arguments of counsel in light of NRS 16.025,  
 10 and for other good cause appearing,

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for  
 12 Preferential Trial Setting is GRANTED. Pursuant to NRS 16.025(2), the Court finds that based  
 13 upon clear and convincing medical evidence, including the Declaration of Anthony Nguyen, MD,  
 14 Plaintiff Katy Barin suffers from an illness--late stage IV colon cancer and further metastasis into the  
 15 liver, lungs, and other gastrointestinal nodes--that raises substantial medical doubt that she will  
 16 survive for more than six months. The Court also finds that the interest of justice would be served  
 17 by granting the present motion.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, in compliance with NRS  
 19 16.025(3)(a), the above-entitled case is set on a firm trial date, beginning on November 20, 2017  
 20 9:30 AM.

21 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, to facilitate the  
 22 preferential trial setting, the parties may commence discovery immediately, even though no joint  
 23 case conference report has yet been filed.

24 ///

25 ///

26

27

28

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that a status check hearing on  
 2 the status of discovery is scheduled on September 21, 2017, at 9:30 AM.

3 DATED this 20<sup>th</sup> day of July, 2017.

4   
 5 DISTRICT COURT JUDGE

6 Submitted by:

7 KEMP, JONES & COULTHARD, LLP

8   
 9 WILL KEMP, ESQ. (#1205)

10 ERIC PEPPERMAN, ESQ. (#11679)

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11 -and-

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14 Attorneys for Plaintiffs

15 Approved as to form ~~and content~~ by:

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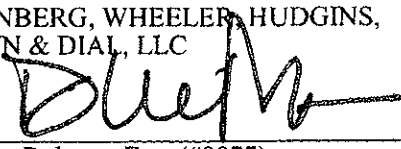
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21 and EDWARD HUBBARD

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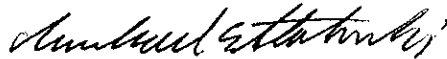
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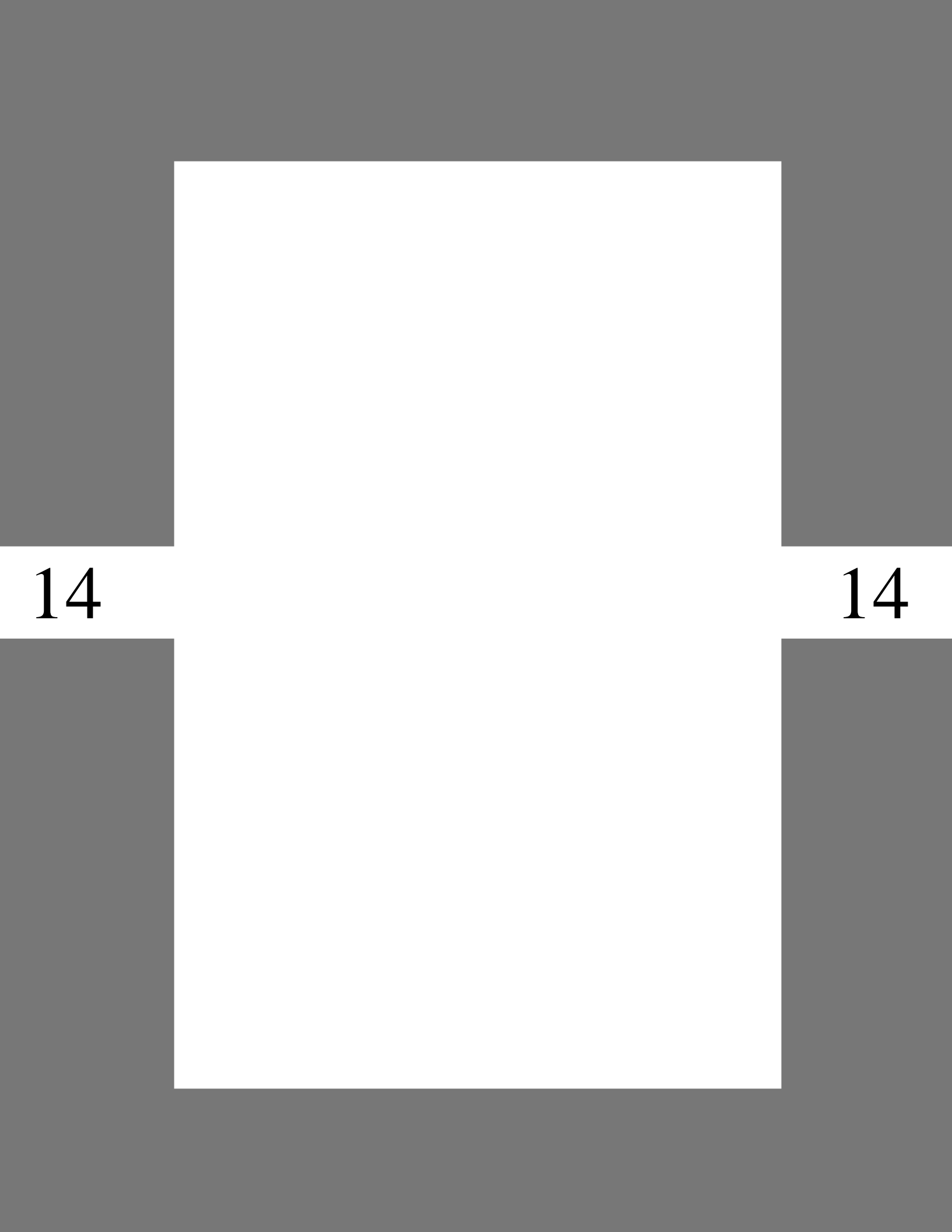
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14

14

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA )  
 KHIABANI, minors by and )  
 through their natural mother, )  
 KATAYOUN BARIN; KATAYOUN )  
 BARIN, individually; KATAYOUN )  
 BARIN as Executrix of the )  
 Estate of Kayvan Khiabani, )  
 M.D. (Decedent) and the Estate )  
 of Kayvan Khiabani, M.D. )  
 (Decedent), )

Plaintiffs,

CASE NO.: A-17-755977-C

DEPT. NO.: XIV

vs.

MOTOR COACH INDUSTRIES, INC., )  
 a Delaware corporation; )  
 MICHELANGELO LEASING, INC. )  
 d/b/a RYAN'S EXPRESS, an )  
 Arizona corporation; EDWARD )  
 HUBBARD, a Nevada resident, et )  
 al., )

Defendants.

*REPORTER'S TRANSCRIPTION OF MOTION FOR PREFERENTIAL  
 TRIAL SETTING*

BEFORE THE HONORABLE TIERRA JONES

DEPARTMENT XIV

DATED THURSDAY, JULY 20, 2017

RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: AMBER M. McCLANE, NV CCR No. 914

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## 1 APPEARANCES:

2 For the Plaintiffs Keon Khiabani and the Estate of  
3 Kayvan Khiabani, M.D.:4 BY: WILLIAM S. KEMP, ESQ.  
5 BY: ERIC M. PEPPERMAN, ESQ.  
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(Cont. on next page)



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1 APPEARANCES CONTINUED:

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3 Giro Sport Design:

4 *BY: MICHAEL E. STOBERSKI, ESQ.*  
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10 For the Defendants Michelangelo Leasing, Inc., doing  
11 business as Ryan's Express and Edward Hubbard:

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18 For the Defendant Sevenplus Bicycles, Inc. doing  
19 business as Pro Cyclery:

20 *BY: MICHAEL NUNEZ, ESQ.*  
21 *BY: CHER SHAINÉ, ESQ.*  
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\* \* \* \* \*

A-17-755977-C • 07/20/2017

1                   **LAS VEGAS, NEVADA; THURSDAY, JULY 20, 2017**  
2                   **9:31 A.M.**

3                   \* \* \* \* \*  
4                   **P R O C E E D I N G S**  
5                   \* \* \* \* \*

6                   **THE COURT:** Katayoun Barin versus Motor Coach  
7 Industries, Inc.

8                   Good morning. As soon as everyone is  
9 situated, if we can just have everyone's appearances  
10 for the record.

11                  **MR. KEMP:** Your Honor, Will Kemp from Kemp  
12 Jones & Coulthard representing plaintiffs.

13                  **MR. CHRISTIANSEN:** Pete Christiansen and  
14 Kendeleee Works also on behalf of the plaintiffs.

15                  **MS. WORKS:** Good morning, Your Honor.

16                  **THE COURT:** Good morning.

17                  **MR. ROBERTS:** Good morning, Your Honor. Lee  
18 Roberts representing Motor Coach Industries. Also here  
19 with me is Marissa Rodriguez and Mr. Darrell Barger who  
20 has been admitted pro hac vice by Judge Escobar. He's  
21 here from Corpus Christi, Texas.

22                  **THE COURT:** Okay.

23                  **MR. STOBERSKI:** Good morning, Your Honor.  
24 Michael Stoberski for Bell Sports, Inc.

25                  **MR. FREEMAN:** Good morning. Eric Freeman on

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1   behalf of Michelangelo Leasing and Edward Hubbard.  
2   Also Paul Stephan, he's not going to make an appearance  
3   today. His pro hac vice is pending.

4           **THE COURT:**   Okay.

5           **MR. NUNEZ:**   Good morning, Your Honor.  
6   Michael Nuñez and Cher Shaine for Sevenplus.

7           **THE COURT:**   Okay. And this is on for the  
8   plaintiffs' motion for a preferential trial setting. I  
9   have read the plaintiffs' motion. I've also read all  
10  of the oppositions that were filed as well as the reply  
11  that was filed in this case.

12           Does anyone have anything -- does plaintiff  
13  have anything to add?

14           **MR. KEMP:**   Your Honor, I'll be brief.

15           I think we've met the statute. We have the  
16  affidavit of the doctor and the widow. So I think --  
17  and the doctor's affidavit tracks the statute word for  
18  word. So I don't think there's an issue here as to  
19  whether we meet the statute. I think the core issue is  
20  whether we can get done what we want to try to get  
21  done, and our position is it's a doable thing.

22           And to give you some perspective, I was lead  
23  counsel in the MGM fire case, biggest mass disaster in  
24  the history of Nevada; 87 people killed, 2,000  
25  injuries, 200 defendants. It was a hearing in

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1 June 1982. It took a while for the case to get going  
2 because we had an MDL judge and everything had to be  
3 consolidated.

4 So we had a hearing in June 1982, and Judge  
5 Bechtle said, "Saddle up, boys. We're trying this case  
6 in January 1983."

7 We started taking 40 depositions a day. We  
8 got the case ready for trial. If we can get the  
9 largest mass disaster in the history of Nevada ready  
10 for trial in six months, I think we can get this case  
11 ready for trial.

12 At its core, this case is, against the first  
13 defendant, a motor vehicle accident. So the suggestion  
14 that we can't get a motor vehicle accident ready for  
15 trial in six months I think is inappropriate.

16 The second defendant is the bus manufacturer  
17 that Mr. Roberts represents. Against that defendant is  
18 just a blind spot case. That exact same case has been  
19 tried before multiple times, and we attached the  
20 verdict from Philadelphia, the *Chin* case. So that case  
21 I think is relatively easy to prepare.

22 I have the transcript of that case. I'm sure  
23 Mr. Roberts has the transcript of that case. I know  
24 what their witnesses are going to say. I still want to  
25 depose them, but I have a pretty good idea. So I think

1 the blind spot case is pretty easy to prepare.

2 The next case is a defective helmet case. We  
3 are not unique in this is the only defect helmet case  
4 that's ever been filed. Defective helmet cases have  
5 been tried multiple times. I have transcripts of some  
6 of those cases involving this exact same helmet, by the  
7 way.

8 So the suggestion that we cannot get the case  
9 ready for trial I don't think is appropriate. But  
10 we're not asking the Court to decide that at this time.  
11 All we're asking the Court to do is to give us a chance  
12 to get the case ready for trial some time in November  
13 or whenever is available on the Court's calendar. And  
14 we're not asking the Court to make a final decision  
15 that we're going to go to trial at that time come hell  
16 or high water.

17 You know, if, for example, Mr. Roberts  
18 suggests there's 10 defendants and -- 10 expert  
19 witnesses, excuse me, and that we might have problems  
20 scheduling some of them. If that's the case, you know,  
21 and we can only do five expert depositions and five are  
22 still out there -- which I don't really see being the  
23 case -- but if that's the case, we can make that  
24 decision in October. So we're not saying let's make a  
25 final decision now that we're going to go to trial.

1 We're saying set a trial date, give us an opportunity  
2 to prepare the case for trial, use our best efforts. I  
3 think we can do it, but if something comes up and we  
4 can't do it, you know, we're not asking that this be a  
5 decision that forecloses the defendants from filing a  
6 motion to continue at a later point.

7 So we're asking for a trial date. We're  
8 asking it within 120 days because of the condition of  
9 the widow, and that's what we think is appropriate,  
10 Your Honor.

11 **THE COURT:** And, Counsel, just one thing. I  
12 know that there was mention made in the pleadings about  
13 the final police report has been done. Do we have any  
14 status of when that stuff's going to be done?

15 **MR. KEMP:** No, Your Honor. But remember the  
16 police report is probably not going to be admissible in  
17 this case.

18 **THE COURT:** No, I understand that. But I  
19 understand that they just want to know --

20 **MR. KEMP:** Yeah.

21 **THE COURT:** -- whether or not Metro comes to  
22 a decision as to who's the cause or whether anyone's  
23 going to be cited or anyone's going to be charged.

24 **MR. KEMP:** Your Honor, I think we're so far  
25 ahead of Metro at this this point it's -- because I

1 know the witnesses Metro's identified and I know some  
2 of the other witnesses. And I have given a list of all  
3 the fact witnesses to defense counsel. I'm ready to  
4 schedule the first six fact depositions starting on  
5 August 14th. We've got the notices ready to go, the  
6 subpoenas. We've talked to a couple of the witnesses  
7 about convenient dates for them.

8 So we expect that, no matter what Metro does,  
9 we're going to be --

10 **THE COURT:** Okay.

11 **MR. KEMP:** And Metro -- you know, Metro works  
12 on their own schedule.

13 **THE COURT:** I understand. That's why I  
14 wanted to know if anybody had spoken with them and got  
15 a general idea. Because I know, from the defense  
16 standpoint, that was one of the issues that they were  
17 talking about is no one's ever been cited or anything  
18 and the final report hasn't even been completed, the  
19 accident report.

20 **MR. KEMP:** Well, unfortunately, the bicyclist  
21 didn't get a chance to tell his side of the story, Your  
22 Honor. And what I would view as the key witness has  
23 not been interviewed by Metro.

24 So I would think that we are substantially  
25 ahead of Metro at this point, and, you know, perhaps

1 Metro would write the report after we've given  
2 depositions, Your Honor.

3 **THE COURT:** Thank you, Counsel.

4 And would anyone like to respond?

5 And does everybody from the defense side have  
6 the reply in this case? Because I know a lot of people  
7 made arguments in regards to that they had not met the  
8 first prong that the likelihood of the widow surviving  
9 would be past six months, and there was the affidavits  
10 that were included in the reply. So I just wanted to  
11 make sure everyone has those.

12 **MR. ROBERTS:** We do, Your Honor.

13 **THE COURT:** Okay.

14 **MR. ROBERTS:** And when you mention the things  
15 that you had reviewed, the defendants did file a  
16 supplemental brief yesterday.

17 **THE COURT:** I reviewed that as well. It came  
18 in at 4:00 o'clock yesterday. I have reviewed that.

19 **MR. ROBERTS:** Thank you. We sent a courtesy  
20 copy to Judge Escobar's chambers --

21 **THE COURT:** Yes. And her law clerk is  
22 phenomenal and brought that directly to me.

23 **MR. ROBERTS:** Thank you, Your Honor.

24 The argument that I'd like to emphasize is  
25 something that we did raise in the supplemental brief,



1 and that is just the practicality of meeting the  
2 120-day schedule that's been proposed by Mr. Kemp.

3 In this case, because there are significant  
4 allegations with regard to product liability of the  
5 bus, product liability of the helmet, in addition to  
6 the standard of care of the bus operator, there will be  
7 a significant number of experts in this case. There'll  
8 probably be at least 10, if not significantly more than  
9 that, if the defendants each retain separate experts on  
10 some of these key issues.

11 Those experts have to be deposed before  
12 trial. We have to do dispositive motions before trial.  
13 We have to do motions in limine before trial. And if  
14 you count back, they're going to be expert disclosures  
15 and then you need at least 30 days to do rebuttal  
16 disclosures and then you need at least 30 days to do  
17 depositions of that many experts after rebuttal  
18 disclosures. So that's 60 days right there just from  
19 the initial disclosure of experts to the completion of  
20 expert depositions which has to happen before  
21 dispositive motions.

22 This is a complex case, and if you actually  
23 look at the scheduling order and you look at the  
24 standard form joint case conference report of the  
25 things that have to happen and the sequence in which

1 they have to happen, 120 days for a complex case, such  
2 as this, simply is not enough time for those things to  
3 happen in such a fashion as to give the defendants a  
4 reasonable opportunity to defend themselves against  
5 these allegations.

6 The suggestion that the Court can simply set  
7 a preferential trial date and then abandon it if we  
8 aren't making progress makes no sense under the  
9 statute. The Court should determine now, today,  
10 whether the interest of justice can be served with an  
11 expedited trial setting in a case such as this.

12 And once the Court sets a setting, under  
13 section 3(b) under the statute, the Court shall not  
14 continue the date for the trial of the action beyond  
15 120 days after the hearing on the motion except for  
16 physical disability of a party or an attorney in the  
17 action or other good cause entered on the record. So  
18 this is the time at which the Court should determine  
19 whether or not it's likely we can get ready for a trial  
20 in 120 days, not just see what happens over the next 90  
21 days and decide at 30 days before trial whether we're  
22 actually going to go forward.

23 If Mr. Kemp wants to embark upon his  
24 aggressive schedule where we're talking about deposing  
25 60 fact witnesses and a dozen experts and doing that

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1 all over the summer so we can get ready for trial, the  
2 thing to do is to allow him to be as aggressive as he  
3 can in accordance with the schedule of the witnesses  
4 and the attorneys, and if he can get it done and we're  
5 making progress, then he can come in and ask for an  
6 expedited setting in 90 days. But it's unlikely he's  
7 going to be able to make the showing in 90 days, and  
8 it's certainly unlikely that the interest of justice  
9 would be served by forcing the defendants with all of  
10 these lawyers and all of these experts to try to get  
11 ready for a trial in such a short period of time.

12 We have proposed a schedule, as the Court  
13 knows from our submission, where we are prepared to  
14 expedite this twice as fast as normally happens in a  
15 products liability case. Products liability cases over  
16 the last five years which have gone to verdict have  
17 generally taken 48 months from filing of the complaint  
18 to verdict. We're prepared to try to get this done in  
19 a year so that Mr. Kemp can get a trial and make it  
20 more likely that the widow can participate. Of course  
21 the widow, we understand, we have sympathy, we  
22 understand why she wants to participate in this trial,  
23 but she's not a key fact witness to the merits of the  
24 case, and her testimony can be adequately preserved for  
25 trial through video.

1           We don't even know, based on these  
2 affidavits -- and the Court noted the doctor's  
3 affidavit is significantly stronger than the one which  
4 was filed with the initial motion, and it's tragic how  
5 this has metastasized. But the -- even the possibility  
6 that I would think there's a substantial doubt of four  
7 months as well as six months given the prognosis. So,  
8 Your Honor --

9           **THE COURT:** Let me ask you this question. If  
10 we were to set this trial just ordinarily how we would  
11 normally set trials, when would you guys begin the  
12 experts, deposing all these people? When would you  
13 anticipate beginning that if this trial was set as it  
14 ordinarily would be set?

15           **MR. ROBERTS:** The proposed joint case  
16 conference report, Section 5, which we've submitted --

17           **THE COURT:** Mm-hmm.

18           **MR. ROBERTS:** -- we would -- according to  
19 Mr. Kemp, we'd begin deposing the expert -- the fact  
20 witnesses in August. He could move forward with  
21 deposing fact witnesses. We would start discovery  
22 immediately. And initial expert disclosures under our  
23 proposed schedule would be due in March, discovery  
24 would be completed by July, and we could be ready to  
25 try the case late summer/early fall next year.

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1           **THE COURT:** All right.

2           **MR. ROBERTS:** That would be a significantly  
3 expedited trial setting over what would normally happen  
4 in a complex product liability case such as this, and  
5 we think that's reasonable and we're prepared to do  
6 what's necessary to complete the case in that period of  
7 time. But 50 witnesses, 60 witnesses, this many  
8 lawyers, this many parties, that's a lot to accomplish  
9 in such a short period of time, Your Honor. And then  
10 we'll have to identify witnesses.

11           And I can't speak to the helmet manufacturer,  
12 but Mr. Kemp is a little bit confused about the prior  
13 case which he cited to the court, the *Chin* case. That  
14 was actually a transit bus case, not a Motor Coach case  
15 and it was a case against New Flyer. And although New  
16 Flyer recently acquired MCI earlier, within just prior  
17 to 2017, they are different companies and they are  
18 different buses and there will be different witnesses.  
19 So it's not simply a do-over of another case. And even  
20 in that case the jury found that the product  
21 manufactured by New Flyer was not defective because of  
22 the blind spot issue pointed out by Mr. Kemp. There's  
23 been an issue raised that's inconsistent with their  
24 finding of negligence, and it's currently on appeal.

25           This is not the same case. That was a blind

1 spot dealing with an A-Pillar which allegedly would  
2 have prevented the driver from seeing a pedestrian  
3 crossing the street when the bus was making a left-hand  
4 turn. This is an allegation that we should have  
5 proximity sensors so that the driver would have been  
6 alerted to the bicyclist on the passenger side of the  
7 bus. Completely different issue, completely different  
8 technology, different company. This is not a do-over  
9 from our point of view and will take significant  
10 preparation to defend against these allegations.

11 **THE COURT:** Thank you, Counsel.

12 **MR. ROBERTS:** Thank you, Your Honor.

13 **THE COURT:** Does anyone else wish to respond?

14 **MR. STOBERSKI:** Yes, Your Honor. Michael  
15 Stoberski for Bell Sports. The second part of the  
16 statute is the important part of the statute. That's  
17 the part where, "And the Court determines that the  
18 interest of justice would be served by granting" --  
19 excuse me -- "by granting the motion."

20 The unfair prejudice that will result to the  
21 defendants in granting this motion is so extreme it's  
22 unheard of in my career, in my fine co-counsel's  
23 careers. There's never been a complex product  
24 liability case prepared and tried in 120 days. So  
25 they're asking the Court to make a ruling that they

1 can't point to any other case that this has ever  
2 happened. So because in a complex product liability  
3 case it takes a lot of time, unfortunately, and with  
4 multiple experts and schedules -- this is not the  
5 experts' only case, this is not the defendants' only  
6 case, it's not counsels' only case. So, you know, the  
7 defendants had agreed to this 12-month schedule.

8 But I'll give the Court another possibility.  
9 If the Court is not familiar with how complex the  
10 discovery schedule can be, plaintiffs mentioned in  
11 their paper that they would be okay with having a  
12 special master appointed. Perhaps having a special  
13 master give input to the Court of how long we really  
14 need to conduct discovery in a complex liability case  
15 would be a fair compromise here rather than all of us  
16 just throwing things up in the air and having the Court  
17 try to decide which one's correct. These are very  
18 complex issues, and having someone like a special  
19 master who's done complex product liability cases give  
20 input on how quickly and aggressively we can get this  
21 done may be the fairest compromise.

22 Thank you, Your Honor.

23 **THE COURT:** Thank you.

24 **MR. FREEMAN:** Eric Freeman on behalf of  
25 Michelangelo Leasing and Edward Hubbard. I agree with

1 everything these gentlemen have said. I just wanted to  
2 add that, you know, plaintiff keeps saying we're ready  
3 to go, they've been working on it for months. All the  
4 defendants here only made their first appearance  
5 mid-June, end of June. This is -- we've just started.  
6 And that the list of witnesses that they've given, they  
7 have witnesses -- I believe it's incomplete. I believe  
8 there are other fact witnesses that haven't been added  
9 on this, but there's witnesses that don't have any  
10 addresses or contact information. There are witnesses  
11 identified as unidentified (inaudible) for Metro and  
12 the other entities that responded. So they're still  
13 just trying to find out who these witnesses are. They  
14 don't even know. And we're just getting involved. And  
15 so I think that weighs heavily on the interest of  
16 justice evaluation.

17 **THE COURT:** Thank you, Counsel.

18 **MR. NUNEZ:** Your Honor, Michael Nuñez for  
19 Sevenplus. I think all points have been raised in  
20 opposition to it.

21 There are two prongs under this statute. The  
22 second prong is what we're talking about here. There  
23 have already been delays that have manifested in this  
24 case, Your Honor. You pointed out the police report;  
25 we don't have that yet. For what it appears, there's



1 already been months of pre-litigation discovery in this  
2 case. It was represented to us that that would be  
3 turned over immediately. We still don't have it.  
4 That's not a criticism or a fault of anybody. That's  
5 just the nature of this type of complex claim. They're  
6 going to be delays inherent at every phase of it, and  
7 to accomplish 60 fact witnesses in 120 days is not  
8 realistic.

9           There was a suggestion in the reply brief,  
10 Your Honor, that perhaps a status check be set in 90  
11 days. If the Court's not inclined to deny this motion  
12 in its entirety, which it should today, I would suggest  
13 that we continue the hearing on this matter for 90  
14 days. We'll have a much better sense of where the  
15 claims are and how the discovery is proceeding and as  
16 to if and when this case can realistically be ready for  
17 trial.

18           **THE COURT:** Thank you, Counsel.

19           Does anyone else wish to respond? Plaintiff,  
20 do you have any response to that?

21           **MR. KEMP:** Judge, I don't know how in depth  
22 you looked at our case conference disclosures, but  
23 we've listed all the witnesses. And with regards to  
24 counsel's last statement that we haven't give them  
25 anything yet, we had our first part of the case

1 conference meeting last week. We're going to resume it  
2 as soon as we get done here over at Mr. Christiansen's  
3 office. And at that time I'm going to give them a  
4 thumb drive that has the Red Rock video on it, which  
5 they all want, the video from the Red Rock Hotel camera  
6 of the accident. It has a couple other videos on it.  
7 I'm going to give them all the documents we have.

8           So I think in some of the stuff Mr. -- hasn't  
9 been subpoenaed by the defense, but I'm going to give  
10 it to them. That's my obligation. I'm going to give  
11 it to them. So they'll have everything that I have by  
12 noon today.

13           With regards to preparing the case for trial,  
14 this is not a complex case, Your Honor. I've done  
15 complex cases. Big pharmaceutical cases. I was on the  
16 Fen-Phen National Committee. That was a complex case  
17 because we had, you know, 5,000 plaintiffs spread  
18 nationwide. We had five different defendants. That  
19 was a very complex case. That's why we got a big MDL.  
20 This is a simple bus accident case, which I've already  
21 said is a motor vehicle accident, and it's got a blind  
22 spot theory -- and, by the way, Mr. Roberts said our  
23 theory is proximity sensors. Our theory is that there  
24 was a blind spot, and in the alternative we're arguing  
25 that there should have been proximity sensors. So it

1 is pretty much like the *Chin* case.

2 But in any event, Your Honor, it's a motor  
3 vehicle accident. We can take the fact witnesses. As  
4 far as I can tell, there's five fact witnesses, all of  
5 whom I'm going to take in the week of August 14th  
6 unless one of them has a significant hardship and has  
7 to go back the next week. We've identified three of  
8 the first responders; two ambulance people, one police  
9 officer. We're trying to set those up the following  
10 week, the week of August 21st. I'm hopeful that by the  
11 week of August 25th we will have the fact depositions  
12 done of the people that had knowledge of the accident  
13 scene. The reason we set it up that way or we are  
14 setting it up that way is we anticipate that they're  
15 going to want to give those fact witness depositions to  
16 their accident reconstruction experts just like we are,  
17 and that way they can't say, oh, we couldn't get the  
18 accident reconstruction guy ready. We're trying to  
19 front-load the fact witnesses for that reason.

20 I've already talked about their employees.  
21 I've got their prior trial transcript. I've got their  
22 deposition. I do want to depose them. I would suggest  
23 I could probably do three a day because I know what I  
24 want out of them. You know, I don't waste a lot of  
25 time in depositions, as Mr. Roberts knows. You know, I

1 get to it. I can do three a day. It's not that big of  
2 a deal. And in the MGM case we did 40 a day  
3 cross-country, Your Honor. I'm not even suggesting  
4 that. I'm suggesting a serial deposition schedule, and  
5 by that I mean one a day rather than multitrack, and I  
6 think it can get done. But all I'm asking is a chance  
7 to get it done.

8           You know, with all respect to Mr. Roberts,  
9 you know, the suggestion that we wait 12 months for  
10 discovery when the widow has got six months left to  
11 live according to the doctor, all that is saying is he  
12 wants to try the case without the widow present.  
13 That's really what their suggestion is.

14           And I'm not asking you to make a final  
15 decision, Your Honor. It may well be -- and I pray to  
16 God this is true -- that the widow makes a miraculous  
17 recovery. I may come in here a month or two from now  
18 or Mr. Roberts may take the widow's deposition and, you  
19 know, you read about these amazing cancer discoveries  
20 in the paper every day. It may be they found something  
21 for the widow and now, all of the sudden, her prognosis  
22 is she's got 5 or 10 years to live. And I pray that's  
23 the case. That would be a changed situation, Your  
24 Honor, and I'd be the first one to say let's go back to  
25 a more traditional schedule. But I don't know that

1 that's going to be the case. You don't know that's  
2 going to be the case.

3 What they're really asking you to do is look  
4 into a crystal ball and say, oh, can we determine what  
5 the health of the widow is? Can't do that at this  
6 point more than the cancer doctor has done, Your Honor.  
7 Oh, can Mr. Kemp get the fact depositions? We can't  
8 determine that. I think I can do it, but I'm the first  
9 one to say that some circumstances may come up. Can we  
10 get the experts deposed? I think we can do it.

11 That's why I suggest we set a trial date,  
12 give us an opportunity to get the case ready for trial,  
13 and then come back here like counsel said on the status  
14 conference some time in October and make a decision  
15 with more facts and more reasoning. To do it the other  
16 way just guarantees that we cannot try the case in six  
17 months. Because if we don't set a trial date, we won't  
18 work back from that. What we will do is we will do all  
19 the fact witnesses, and then we'll come in here and  
20 they'll argue, oh, we need 90 more fact witnesses or  
21 something. But that's why you got to set the trial  
22 date and work back from it.

23 And I'm in agreement to a special master. I  
24 think Mr. Roberts initially proposed it. Mr. Stoberski  
25 and I have talked about it. I'm in agreement to have

1 someone. And, you know, we had talked about Floyd  
2 Hale. I don't know if a final decision has been made  
3 on that, and I don't know what his availability is.  
4 But I think that would greatly expedite things because  
5 we won't have to be filing motions to compel and have  
6 hearings five weeks later. We will get -- you know,  
7 we'll write a letter to Floyd and we'll have a decision  
8 the next week. So that should expedite things greatly.

9 So for that reason, Your Honor -- and  
10 especially we need this statute. And the statute -- we  
11 cited the legislative history. The statute was  
12 intended for a situation just like this where there's a  
13 key plaintiff in a case -- and no one said the widow is  
14 not a key plaintiff, and I don't think they could -- a  
15 key plaintiff in the case will not get her day in court  
16 because she has a medical condition. And that's why we  
17 would ask that the Court grant the motions, set the  
18 trial date some time in six months, and we would  
19 proceed.

20 **THE COURT:** Thank you, Counsel.

21 And in light of -- I've reviewed everything,  
22 and if you guys were to get this special hearing  
23 master, would you guys be able to stipulate as to who  
24 that was going to be or were you guys looking to the  
25 Court to determine who that person would be?

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1           **MR. ROBERTS:** I believe the defense has all  
2 agreed to ask Floyd Hale to serve as special master.

3           **THE COURT:** Okay.

4           **MR. ROBERTS:** Whether he would be acceptable  
5 to all the defendants, we don't know if he's available  
6 to handle things on an expedited manner as Mr. Kemp  
7 would want. But I believe, other than his schedule,  
8 Mr. Kemp was in agreement that he'd be fine.

9           **MR. KEMP:** I have no problem. He's in our  
10 building, Your Honor.

11           **THE COURT:** Okay. And I know just yesterday  
12 I signed the stipulation for him to be a special  
13 hearing master in one of my cases. So if you guys were  
14 to be able to get him, is that how you wanted to  
15 proceed with that?

16           **MR. ROBERTS:** Yes, Your Honor.

17           **THE COURT:** So I've reviewed everything, and  
18 I do believe that the victim is a substantial plaintiff  
19 in this case. And I believe that the compromise that  
20 was put forth by the plaintiffs in this case would  
21 actually expedite this case as well as would give  
22 everyone the opportunity to examine what needs to  
23 happen. So I'm going to set a trial date in 120 days  
24 with a very clear understanding there is no guarantee  
25 that that trial date is going forward. I would like

1 everyone to give it their best efforts to see how close  
2 you can be to getting ready, but I would also like a  
3 status check in 60 days when Judge Escobar is here to  
4 review with her how much progress has been made and  
5 whether or not that trial date will stand. Because I  
6 believe, underneath the statute, Judge Escobar could  
7 make a finding of good cause to continue that trial  
8 date.

9 **THE CLERK:** The status check will be on  
10 September 21st at 9:30, and then the trial, 120 days is  
11 the second week in November. For November, our  
12 calendar call is November 2nd with trial starting  
13 November 14th. So the calendar call will be November  
14 2nd at 9:30, and the trial will be November 14th at  
15 9:30.

16 **THE COURT:** And you guys can revisit with her  
17 if there's any issues that come up, and if you can  
18 agree on the hearing master, you can submit the order  
19 to the Court for signature.

20 **MR. ROBERTS:** Thank you, Judge.

21 I believe the plaintiff had asked for  
22 November 20th. When we're talking about preparing, I  
23 think every week counts. Would it be possible for the  
24 Court to accommodate November 20th?

25 **THE COURT:** Is that an available date?



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1           **THE CLERK:** November 20th is the week of  
2 Thanksgiving.

3           How long will this trial last, do we know?

4           **MR. KEMP:** I'd say three weeks.

5           **MR. ROBERTS:** We were thinking four weeks  
6 based on other trials with Mr. Kemp.

7           **THE CLERK:** Our stack is four weeks. So if  
8 you need four weeks, we'd have to start -- and then  
9 you're getting into December. There's a lot of  
10 holidays. So, I mean, if you want to start the second  
11 week of the stack, we can do that.

12           **THE COURT:** What's the second week of the  
13 stack?

14           **THE CLERK:** November 20th. You can only go  
15 three days, and then there's Thanksgiving.

16           **THE COURT:** Yes.

17           **THE CLERK:** And then the next stack starts  
18 December 12th.

19           **MR. KEMP:** Yeah, the November 20th is fine  
20 with us.

21           **THE CLERK:** Okay. Let's start over.  
22 Calendar call, November 2nd. Is that all right?

23           **MR. KEMP:** Yes.

24           **THE COURT:** And then the trial will be  
25 November 20th at 9:30.

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1           **MR. ROBERTS:** Your Honor, could we have also  
2 dates for motion in limine, dispositive motions so that  
3 we can plan --

4           **MR. KEMP:** Your Honor, can we work that out  
5 with defense? I think --

6           **THE COURT:** I was going to say, I think you  
7 guys can prepare an order and submit it to the Court if  
8 you guys can agree upon it. And if not, then the Court  
9 will pick the dates and give an order.

10          **MR. KEMP:** Judge, I have an order prepared  
11 that has everything except the date of the trial and  
12 the status check hearing for the discovery in it. So  
13 if you can sign it?

14          **THE COURT:** Okay.

15          **MR. ROBERTS:** And Your Honor?

16          **THE COURT:** Just one second.

17                 And I apologize. Counsel?

18          **MR. ROBERTS:** I just wanted to bring the  
19 Court's attention to the fact I have a special setting  
20 which I believe counsel -- before Judge Denton for  
21 November 17th.

22          **THE COURT:** Okay.

23          **MR. ROBERTS:** And I would request that the --  
24 if the Court is going to make this jump a much older  
25 case, that the Court talk to Judge Denton and see if

1 that case can be continued. Because I can't be both  
2 places at once.

3 **THE COURT:** Understood. Well, let's do this.  
4 When you have your status check in September, maybe  
5 something happens in the Judge Denton case -- we can't  
6 even predict what happens with trials -- so you'll  
7 probably have more information on that case as well  
8 when you appear on September 21st, and then we can make  
9 a better decision on whether or not Judge Escobar needs  
10 to talk to Judge Denton or how that works.

11 **MR. ROBERTS:** Okay. Thank you.

12 **THE COURT:** Thank you.

13 *(Whereupon, the proceedings concluded at*  
14 *10:00 a.m.)*

15 -o0o-

16 ATTEST: I hereby certify that I have truly and  
17 correctly transcribed the audio/video proceedings in  
18 the above-entitled case to the best of my ability.

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Amber M. McClane, CCR No. 914

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|--|---|--|
| <p><b>MR. CHRISTIANSEN:</b> [1]<br/>4/12</p> <p><b>MR. FREEMAN:</b> [2] 4/24<br/>17/23</p> <p><b>MR. KEMP:</b> [14] 4/10<br/>5/13 8/14 8/19 8/23<br/>9/10 9/19 19/20 25/8<br/>27/3 27/18 27/22 28/3<br/>28/9</p> <p><b>MR. NUNEZ:</b> [2] 5/4<br/>18/17</p> <p><b>MR. ROBERTS:</b> [19]<br/>4/16 10/11 10/13<br/>10/18 10/22 14/14<br/>14/17 15/1 16/11<br/>24/25 25/3 25/15<br/>26/19 27/4 27/25<br/>28/14 28/17 28/22<br/>29/10</p> <p><b>MR. STOBERSKI:</b> [2]<br/>4/22 16/13</p> <p><b>MS. WORKS:</b> [1] 4/14</p> <p><b>THE CLERK:</b> [6] 26/8<br/>26/25 27/6 27/13<br/>27/16 27/20</p> <p><b>THE COURT:</b> [37]</p> | <p><b>20</b> [2] 1/21 4/1</p> <p><b>200</b> [2] 3/9 5/25</p> <p><b>2000</b> [1] 2/20</p> <p><b>2017</b> [3] 1/21 4/1<br/>15/17</p> <p><b>20th</b> [6] 26/22 26/24<br/>27/1 27/14 27/19<br/>27/25</p> <p><b>21st</b> [3] 21/10 26/10<br/>29/8</p> <p><b>228-7717</b> [1] 3/10</p> <p><b>25th</b> [1] 21/11</p> <p><b>2nd</b> [3] 26/12 26/14<br/>27/22</p> <p><b>3</b></p> <p><b>30</b> [3] 11/15 11/16<br/>12/21</p> <p><b>320</b> [1] 3/15</p> <p><b>350</b> [1] 3/15</p> <p><b>360-3956</b> [1] 3/16</p> <p><b>361</b> [1] 2/21</p> <p><b>3800</b> [1] 2/5</p> <p><b>3838</b> [1] 2/16</p> <p><b>384-4012</b> [1] 3/5</p> <p><b>385-6000</b> [1] 2/6</p> <p><b>3956</b> [1] 3/16</p> <p><b>3993</b> [1] 3/9</p> | <p><b>8</b></p> <p><b>800</b> [1] 2/20</p> <p><b>8000</b> [1] 2/21</p> <p><b>810</b> [1] 2/10</p> <p><b>866-8000</b> [1] 2/21</p> <p><b>87</b> [1] 5/24</p> <p><b>89101</b> [1] 2/10</p> <p><b>89118</b> [1] 2/15</p> <p><b>89129</b> [1] 3/5</p> <p><b>89145</b> [1] 3/15</p> <p><b>89169</b> [2] 2/6 3/10</p> <p><b>9</b></p> <p><b>90</b> [6] 12/20 13/6<br/>13/7 19/10 19/13<br/>23/20</p> <p><b>914</b> [2] 1/25 29/20</p> <p><b>9262</b> [1] 2/11</p> <p><b>938-3838</b> [1] 2/16</p> <p><b>9950</b> [1] 3/4</p> <p><b>9:30</b> [4] 26/10 26/14<br/>26/15 27/25</p> <p><b>9:31</b> [1] 4/1</p> <p><b>A</b></p> <p><b>A-17-755977-C</b> [1] 1/9</p> <p><b>A-Pillar</b> [1] 16/1</p> <p><b>a.m</b> [2] 4/1 29/14</p> <p><b>abandon</b> [1] 12/7</p> <p><b>ability</b> [1] 29/17</p> <p><b>able</b> [3] 13/7 24/23<br/>25/14</p> <p><b>about</b> [11] 8/12 9/7<br/>9/17 12/24 15/12<br/>18/22 21/20 22/19<br/>23/25 24/1 26/22</p> <p><b>above</b> [1] 29/17</p> <p><b>above-entitled</b> [1]<br/>29/17</p> <p><b>acceptable</b> [1] 25/4</p> <p><b>accident</b> [10] 6/13<br/>6/14 9/19 20/6 20/20<br/>20/21 21/3 21/12<br/>21/16 21/18</p> <p><b>accommodate</b> [1] 26/24</p> <p><b>accomplish</b> [2] 15/8<br/>19/7</p> <p><b>accordance</b> [1] 13/3</p> <p><b>according</b> [2] 14/18<br/>22/11</p> <p><b>acquired</b> [1] 15/16</p> <p><b>action</b> [2] 12/14</p> |
| <p><b>-</b></p> <p><b>-AND</b> [1] 2/18</p> <p><b>-o0o</b> [1] 29/15</p> <p><b>1</b></p> <p><b>10</b> [4] 7/18 7/18 11/8<br/>22/22</p> <p><b>104</b> [1] 2/10</p> <p><b>10:00</b> [1] 29/14</p> <p><b>12</b> [1] 22/9</p> <p><b>12-month</b> [1] 17/7</p> <p><b>120</b> [8] 8/8 12/1<br/>12/15 12/20 16/24<br/>19/7 25/23 26/10</p> <p><b>120-day</b> [1] 11/2</p> <p><b>12th</b> [1] 27/18</p> <p><b>14th</b> [4] 9/5 21/5<br/>26/13 26/14</p> <p><b>17th</b> [2] 2/5 28/21</p> <p><b>1982</b> [2] 6/1 6/4</p> <p><b>1983</b> [1] 6/6</p> <p><b>2</b></p> <p><b>2,000</b> [1] 5/24</p>                                      | <p><b>4</b></p> <p><b>40</b> [2] 6/7 22/2</p> <p><b>400</b> [1] 2/15</p> <p><b>4012</b> [1] 3/5</p> <p><b>48</b> [1] 13/17</p> <p><b>4:00 o'clock</b> [1]<br/>10/18</p> <p><b>5</b></p> <p><b>5,000</b> [1] 20/17</p> <p><b>50</b> [1] 15/7</p> <p><b>570-9262</b> [1] 2/11</p> <p><b>6</b></p> <p><b>60</b> [5] 11/18 12/25<br/>15/7 19/7 26/3</p> <p><b>6000</b> [1] 2/6</p> <p><b>6385</b> [1] 2/15</p> <p><b>7</b></p> <p><b>702</b> [6] 2/6 2/11 2/16<br/>3/5 3/10 3/16</p> <p><b>7717</b> [1] 3/10</p> <p><b>78401</b> [1] 2/20</p>   | <p><b>000201</b></p>   |

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| <b>A</b>   | <b>ANDERSON [1]</b> 1/24  | <b>audio/video [1]</b> 29/16  |
| <b>action...</b> [1] 12/17   | <b>ANGULO [1]</b> 3/4   | <b>August [5]</b> 9/5 14/20 21/5 21/10 21/11  |
| <b>actually [4]</b> 11/22<br>12/22 15/14 25/21   | <b>another [2]</b> 15/19<br>17/8  | <b>August 14th [2]</b> 9/5<br>21/5  |
| <b>add [2]</b> 5/13 18/2   | <b>anticipate [2]</b> 14/13<br>21/14  | <b>August 21st [1]</b> 21/10  |
| <b>added [1]</b> 18/8  | <b>any [6]</b> 8/13 17/1<br>18/9 19/20 21/2 26/17   | <b>August 25th [1]</b> 21/11  |
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| <b>event [1]</b> 21/2        | <b>Fen-Phen [1]</b> 20/16    | 26/2 27/9                        |
| <b>ever [3]</b> 7/4 9/17     | <b>file [1]</b> 10/15        | <b>Giro [1]</b> 3/2              |
| 17/1                         | <b>filed [4]</b> 5/10 5/11   | <b>give [17]</b> 5/22 7/11       |
| <b>every [3]</b> 19/6 22/20  | 7/4 14/4                     | 8/1 12/3 17/8 17/13              |
| 26/23                        | <b>filing [3]</b> 8/5 13/17  | 17/19 19/24 20/3 20/7            |
| <b>everybody [1]</b> 10/5    | 24/5                         | 20/9 20/10 21/15                 |
| <b>everyone [4]</b> 4/8      | <b>final [6]</b> 7/14 7/25   | 23/12 25/21 26/1 28/9            |
| 10/11 25/22 26/1             | 8/13 9/18 22/14 24/2         | <b>given [4]</b> 9/2 10/1        |
| <b>everyone's [1]</b> 4/9    | <b>find [1]</b> 18/13        | 14/7 18/6                        |
| <b>everything [6]</b> 6/2    | <b>finding [2]</b> 15/24     | <b>go [8]</b> 7/15 7/25 9/5      |
| 18/1 20/11 24/21             | 26/7                         | 12/22 18/3 21/7 22/24            |
| 25/17 28/11                  | <b>fine [3]</b> 16/22 25/8   | 27/14                            |
| <b>exact [2]</b> 6/18 7/6    | 27/19                        | <b>God [1]</b> 22/16             |
| <b>examine [1]</b> 25/22     | <b>fire [1]</b> 5/23         | <b>going [28]</b> 5/2 6/1        |
| <b>example [1]</b> 7/17      | <b>first [8]</b> 6/12 9/4    | 6/24 7/15 7/25 8/14              |
| <b>except [2]</b> 12/15      | 10/8 18/4 19/25 21/8         | 8/16 8/23 8/23 9/9               |
| 28/11                        |                              |                                  |



|                              |                              |                                 |
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| <b>G</b>                     | <b>have [55]</b>             | <b>I</b>                        |
| <b>going... [18]</b> 11/14   | <b>haven't [2]</b> 18/8      | <b>I'd [3]</b> 10/24 22/24 27/4 |
| 12/22 13/7 19/6 20/1         | 19/24                        | <b>I'll [2]</b> 5/14 17/8       |
| 20/3 20/7 20/9 20/10         | <b>having [4]</b> 17/11      | <b>I'm [16]</b> 6/22 9/3        |
| 21/5 21/15 23/1 23/2         | 17/12 17/16 17/18            | 20/3 20/7 20/9 20/10            |
| 24/24 25/23 25/25            | <b>hdbdlaw.com [1]</b> 2/21  | 21/5 21/10 22/3 22/4            |
| 28/6 28/24                   | <b>he [7]</b> 13/2 13/4 13/5 | 22/6 22/14 23/8 23/23           |
| <b>gone [1]</b> 13/16        | 14/20 15/13 22/11            | 23/25 25/23                     |
| <b>good [10]</b> 4/8 4/15    | <b>he'd [1]</b> 25/8         | <b>I've [8]</b> 5/9 20/14       |
| 4/16 4/17 4/23 4/25          | <b>he's [5]</b> 4/20 5/2     | 20/20 21/20 21/21               |
| 5/5 6/25 12/17 26/7          | 13/6 25/5 25/9               | 21/21 24/21 25/17               |
| <b>GORMLEY [1]</b> 3/4       | <b>health [1]</b> 23/5       | <b>idea [2]</b> 6/25 9/15       |
| <b>got [10]</b> 6/8 9/5 9/14 | <b>hearing [8]</b> 5/25 6/4  | <b>identified [3]</b> 9/1       |
| 20/19 20/21 21/21            | 12/15 19/13 24/22            | 18/11 21/7                      |
| 21/21 22/10 22/22            | 25/13 26/18 28/12            | <b>identify [1]</b> 15/10       |
| 23/21                        | <b>hearings [1]</b> 24/6     | <b>immediately [2]</b> 14/22    |
| <b>grant [1]</b> 24/17       | <b>heavily [1]</b> 18/15     | 19/3                            |
| <b>granting [3]</b> 16/18    | <b>hell [1]</b> 7/15         | <b>important [1]</b> 16/16      |
| 16/19 16/21                  | <b>helmet [6]</b> 7/2 7/3    | <b>inappropriate [1]</b>        |
| <b>greatly [2]</b> 24/4 24/8 | 7/4 7/6 11/5 15/11           | 6/15                            |
| <b>guarantee [1]</b> 25/24   | <b>her [6]</b> 10/21 13/24   | <b>inaudible [1]</b> 18/11      |
| <b>guarantees [1]</b> 23/16  | 22/21 24/15 26/4             | <b>INC [8]</b> 1/11 1/12        |
| <b>GUNN [1]</b> 2/14         | 26/16                        | 2/13 3/2 3/7 3/12 4/7           |
| <b>guy [1]</b> 21/18         | <b>here [11]</b> 4/18 4/21   | 4/24                            |
| <b>guys [8]</b> 14/11 24/22  | 5/18 17/15 18/4 18/22        | <b>inclined [1]</b> 19/11       |
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| 26/16 28/7 28/8              | 23/19 26/3                   | <b>incomplete [1]</b> 18/7      |
| <b>H</b>                     | <b>hereby [1]</b> 29/16      | <b>inconsistent [1]</b>         |
| <b>hac [2]</b> 4/20 5/3      | <b>high [1]</b> 7/16         | 15/23                           |
| <b>had [13]</b> 6/2 6/2 6/4  | <b>him [3]</b> 13/2 25/12    | <b>individually [1]</b> 1/6     |
| 9/14 10/7 10/15 17/7         | 25/14                        | <b>INDUSTRIES [4]</b> 1/11      |
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| 21/12 24/1 26/21             | 12/23 24/3 25/7              | <b>information [2]</b> 18/10    |
| <b>Hale [2]</b> 24/2 25/2    | <b>history [3]</b> 5/24 6/9  | 29/7                            |
| <b>hand [1]</b> 16/3         | 24/11                        | <b>inherent [1]</b> 19/6        |
| <b>handle [1]</b> 25/6       | <b>hmm [1]</b> 14/17         | <b>initial [3]</b> 11/19        |
| <b>happen [6]</b> 11/20      | <b>holidays [1]</b> 27/10    | 14/4 14/22                      |
| 11/25 12/1 12/3 15/3         | <b>Honor [33]</b>            | <b>initially [1]</b> 23/24      |
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| 6/23 8/13 9/22 10/11         | <b>Howard [2]</b> 2/5 3/9    | <b>involving [1]</b> 7/6        |
| 11/20 14/5 17/1 20/4         | <b>HUBBARD [4]</b> 1/14 3/7  | <b>is [72]</b>                  |
| 20/6 21/6 21/6 22/10         | 5/1 17/25                    | <b>is significantly [1]</b>     |
| 23/6 24/2 24/16 25/1         | <b>HUDGINS [1]</b> 2/14      | 14/3                            |
| 26/4 28/11                   | <b>Hughes [2]</b> 2/5 3/9    | <b>issue [5]</b> 5/18 5/19      |
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| <b>I</b>   | <b>KEON [2]</b> 1/4 2/2<br><b>key [6]</b> 9/22 11/10<br>13/23 24/13 24/14<br>24/15<br><b>KHIABANI [7]</b> 1/4 1/4<br>1/7 1/8 2/2 2/2 2/8<br><b>killed [1]</b> 5/24<br><b>know [34]</b><br><b>knowledge [1]</b> 21/12<br><b>knows [2]</b> 13/13 21/25<br><b>kworks [1]</b> 2/12  | <b>little [1]</b> 15/12<br><b>live [2]</b> 22/11 22/22<br><b>LLC [1]</b> 2/14<br><b>LLP [3]</b> 2/5 3/9 3/14<br><b>load [1]</b> 21/19<br><b>long [2]</b> 17/13 27/3<br><b>look [3]</b> 11/23 11/23<br>23/3<br><b>looked [1]</b> 19/22<br><b>looking [1]</b> 24/24<br><b>lot [5]</b> 10/6 15/8<br>17/3 21/24 27/9<br><b>lroberts [1]</b> 2/16   |
| <b>issues [4]</b> 9/16 11/10<br>17/18 26/17<br><b>it [45]</b><br><b>it's [14]</b> 5/21 8/25<br>12/19 13/6 13/8 14/4<br>15/19 15/24 16/21<br>17/6 18/7 20/21 21/2<br>22/1<br><b>its [2]</b> 6/12 19/12  | <b>J</b>  | <b>M</b>   |
| <b>January [1]</b> 6/6<br><b>January 1983 [1]</b> 6/6<br><b>joint [2]</b> 11/24 14/15<br><b>JONES [3]</b> 1/20 2/5<br>4/12<br><b>judge [14]</b> 4/20 6/2<br>6/4 10/20 19/21 26/3<br>26/6 26/20 28/10<br>28/20 28/25 29/5 29/9<br>29/10<br><b>JULY [3]</b> 1/21 4/1<br>14/24<br><b>jump [1]</b> 28/24<br><b>June [4]</b> 6/1 6/4 18/5<br>18/5<br><b>June 1982 [2]</b> 6/1 6/4<br><b>jury [1]</b> 15/20<br><b>just [22]</b> 4/9 6/18<br>8/11 8/19 10/10 11/1<br>11/18 12/20 14/10<br>15/16 17/16 18/1 18/5<br>18/13 18/14 19/5<br>21/16 23/16 24/12<br>25/11 28/16 28/18<br><b>justice [4]</b> 12/10<br>13/8 16/18 18/16 | <b>L</b><br><b>largest [1]</b> 6/9<br><b>Las [7]</b> 2/6 2/10 2/15<br>3/5 3/10 3/15 4/1<br><b>last [4]</b> 13/16 19/24<br>20/1 27/3<br><b>late [1]</b> 14/25<br><b>later [2]</b> 8/6 24/6<br><b>law [1]</b> 10/21<br><b>lawyers [2]</b> 13/10<br>15/8<br><b>lead [1]</b> 5/22<br><b>LEASING [4]</b> 1/12 3/7<br>5/1 17/25<br><b>least [3]</b> 11/8 11/15<br>11/16<br><b>LEE [2]</b> 2/14 4/17<br><b>left [2]</b> 16/3 22/10<br><b>left-hand [1]</b> 16/3<br><b>legislative [1]</b> 24/11<br><b>Let [1]</b> 14/9<br><b>let's [4]</b> 7/24 22/24<br>27/21 29/3<br><b>letter [1]</b> 24/7<br><b>liability [9]</b> 11/4<br>11/5 13/15 13/15 15/4<br>16/24 17/2 17/14<br>17/19<br><b>light [1]</b> 24/21<br><b>like [9]</b> 10/4 10/24<br>17/18 21/1 21/16<br>23/13 24/12 25/25<br>26/2<br><b>likelihood [1]</b> 10/8<br><b>likely [2]</b> 12/19<br>13/20<br><b>limine [2]</b> 11/13 28/2<br><b>list [2]</b> 9/2 18/6<br><b>listed [1]</b> 19/23<br><b>litigation [1]</b> 19/1 | <b>M.D [3]</b> 1/7 1/8 2/2<br><b>made [5]</b> 8/12 10/7<br>18/4 24/2 26/4<br><b>make [13]</b> 5/2 7/14<br>7/23 7/24 10/11 13/7<br>13/19 16/25 22/14<br>23/14 26/7 28/24 29/8<br><b>makes [2]</b> 12/8 22/16<br><b>making [3]</b> 12/8 13/5<br>16/3<br><b>manifested [1]</b> 18/23<br><b>manner [1]</b> 25/6<br><b>manufactured [1]</b><br>15/21<br><b>manufacturer [2]</b> 6/16<br>15/11<br><b>many [3]</b> 11/17 15/7<br>15/8<br><b>March [1]</b> 14/23<br><b>Marissa [1]</b> 4/19<br><b>mass [2]</b> 5/23 6/9<br><b>master [8]</b> 17/12<br>17/13 17/19 23/23<br>24/23 25/2 25/13<br>26/18<br><b>matter [2]</b> 9/8 19/13<br><b>may [6]</b> 17/21 22/15<br>22/17 22/18 22/20<br>23/9<br><b>maybe [1]</b> 29/4<br><b>McCLANE [2]</b> 1/25<br>29/20<br><b>MCI [1]</b> 15/16<br><b>MDL [2]</b> 6/2 20/19<br><b>me [5]</b> 4/19 7/19<br>10/22 14/9 16/19<br><b>mean [2]</b> 22/5 27/10 |
| <b>K</b><br><b>KATAYOUN [5]</b> 1/5 1/5<br>1/6 2/8 4/6<br><b>Kayvan [3]</b> 1/7 1/8<br>2/2<br><b>keeps [1]</b> 18/2<br><b>KEMP [14]</b> 2/4 2/5<br>4/11 4/11 11/2 12/23<br>13/19 14/19 15/12<br>15/22 23/7 25/6 25/8<br>27/6<br><b>kempjones.com [1]</b> 2/7<br><b>KENDELEE [2]</b> 2/9 4/14   |   |  |

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|--|--|---|--------|
| <b>M</b>   | 6/23 7/17 11/2 12/23<br>13/19 14/19 15/12<br>15/22 20/2 20/22<br>21/25 22/8 22/18 23/7<br>23/24 23/24 25/6 25/8<br>27/6<br><b>Mr. Christiansen's</b> [1]<br>20/2<br><b>Mr. Darrell</b> [1] 4/19<br><b>Mr. Kemp</b> [10] 11/2<br>12/23 13/19 14/19<br>15/12 15/22 23/7 25/6<br>25/8 27/6<br><b>Mr. Roberts</b> [8] 6/17<br>6/23 7/17 20/22 21/25<br>22/8 22/18 23/24<br><b>Mr. Stoberski</b> [1]<br>23/24<br><b>mstoberski</b> [1] 3/6<br><b>much</b> [4] 19/14 21/1<br>26/4 28/24<br><b>multiple</b> [3] 6/19 7/5<br>17/4<br><b>multitrack</b> [1] 22/5<br><b>MURCHISON</b> [1] 3/14<br><b>murchisonlaw.com</b> [2]<br>3/16 3/17<br><b>my</b> [5] 16/22 16/22<br>20/10 25/13 29/17 | 8/15 8/18 9/8 9/17<br>12/8 24/13 25/9 25/20<br>29/20<br><b>noon</b> [1] 20/12<br><b>normally</b> [3] 13/14<br>14/11 15/3<br><b>North</b> [1] 2/20<br><b>not</b> [37]<br><b>noted</b> [1] 14/2<br><b>notices</b> [1] 9/5<br><b>November</b> [15] 7/12<br>26/11 26/11 26/12<br>26/13 26/13 26/14<br>26/22 26/24 27/1<br>27/14 27/19 27/22<br>27/25 28/21<br><b>November 14th</b> [2]<br>26/13 26/14<br><b>November 17th</b> [1]<br>28/21<br><b>November 20th</b> [6]<br>26/22 26/24 27/1<br>27/14 27/19 27/25<br><b>now</b> [4] 7/25 12/9<br>22/17 22/21<br><b>number</b> [1] 11/7<br><b>NUNEZ</b> [1] 3/13<br><b>Nuñez</b> [2] 5/6 18/18<br><b>NV</b> [1] 1/25 | 000208 |
| <b>N</b>   | <b>O</b>   |   |        |
| <b>National</b> [1] 20/16<br><b>nationwide</b> [1] 20/18<br><b>natural</b> [1] 1/5<br><b>nature</b> [1] 19/5<br><b>necessary</b> [1] 15/6<br><b>need</b> [6] 11/15 11/16<br>17/14 23/20 24/10<br>27/8<br><b>needs</b> [2] 25/22 29/9<br><b>negligence</b> [1] 15/24<br><b>NEVADA</b> [11] 1/3 1/14<br>2/6 2/10 2/15 3/5<br>3/10 3/15 4/1 5/24<br>6/9<br><b>never</b> [1] 16/23<br><b>New</b> [3] 15/15 15/15<br>15/21<br><b>next</b> [7] 2/25 7/2<br>12/20 14/25 21/7 24/8<br>27/17<br><b>no</b> [12] 1/9 1/10 1/25  | <b>o'clock</b> [1] 10/18<br><b>oOo</b> [1] 29/15<br><b>obligation</b> [1] 20/10<br><b>ocgas.com</b> [1] 3/6<br><b>October</b> [2] 7/24<br>23/14<br><b>office</b> [1] 20/3<br><b>officer</b> [1] 21/9<br><b>oh</b> [4] 21/17 23/4<br>23/7 23/20<br><b>okay</b> [12] 4/22 5/4<br>5/7 9/10 10/13 17/11<br>25/3 25/11 27/21<br>28/14 28/22 29/11<br><b>older</b> [1] 28/24<br><b>OLSON</b> [1] 3/4<br><b>once</b> [2] 12/12 29/2<br><b>one</b> [11] 8/11 9/16<br>14/3 21/6 21/8 22/5<br>22/24 23/9 24/13<br>25/13 28/16  |   |        |
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| <b>O</b>                     | <b>perspective [1]</b> 5/22  | 26/22                        | 000209 |
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| <b>only [7]</b> 7/3 7/21     | <b>PETER [1]</b> 2/9         | <b>preserved [1]</b> 13/24   |        |
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| 27/14                        | 20/15                        | 21/1                         |        |
| <b>operator [1]</b> 11/6     | <b>phase [1]</b> 19/6        | <b>prevented [1]</b> 16/2    |        |
| <b>opportunity [4]</b> 8/1   | <b>Phen [1]</b> 20/16        | <b>prior [3]</b> 15/12 15/16 |        |
| 12/4 23/12 25/22             | <b>phenomenal [1]</b> 10/22  | 21/21                        |        |
| <b>opposition [1]</b> 18/20  | <b>Philadelphia [1]</b> 6/20 | <b>pro [3]</b> 3/12 4/20 5/3 |        |
| <b>oppositions [1]</b> 5/10  | <b>physical [1]</b> 12/16    | <b>probably [4]</b> 8/16     |        |
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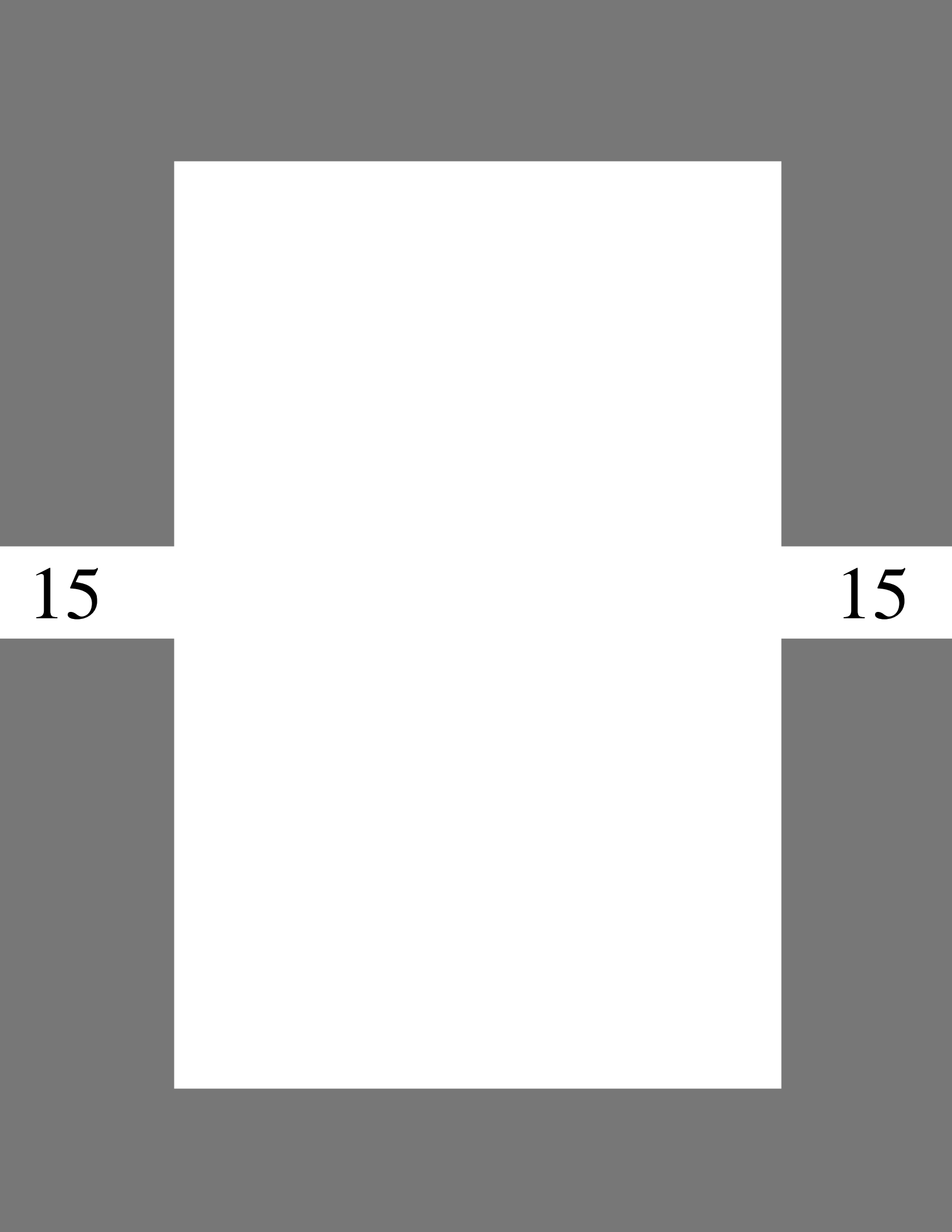
|                              |                               |                              |
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| <b>statute [12]</b> 5/15     | <b>taking [1]</b> 6/7        | 18/9 18/25 21/4 24/12        |        |
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| <b>Stephan [1]</b> 5/2       | 12/24 18/22 26/22            | 18/1 18/13 22/19             |        |
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| 18/12 19/3                   | <b>tell [2]</b> 9/21 21/4    | 10/7 12/1 15/17 15/17        |        |
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| <b>stipulation [1]</b> 25/12 | <b>Texas [2]</b> 2/20 4/21   | 18/13 20/5 21/17             |        |
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| <b>three</b> [5] 21/7 21/23<br>22/1 27/4 27/15  | <b>U</b>  | <b>was</b> [24] 5/11 5/22<br>5/25 8/12 9/16 10/9<br>14/4 14/13 15/14<br>15/15 15/21 15/25<br>16/3 19/2 19/9 20/15<br>20/16 20/19 20/24<br>24/11 24/24 25/8<br>25/20 28/6   |
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| <b>tracks</b> [1] 5/17  | <b>unique</b> [1] 7/3   | <b>weeks</b> [5] 24/6 27/4<br>27/5 27/7 27/8   |
| <b>traditional</b> [1] 22/25  | <b>unless</b> [1] 21/6  | <b>weeks later</b> [1] 24/6  |
| <b>tragic</b> [1] 14/4  | <b>unlikely</b> [2] 13/6<br>13/8                              | <b>weighs</b> [1] 18/15  |
| <b>TRAN</b> [1] 1/1   | <b>up</b> [8] 6/5 8/3 17/16<br>21/9 21/13 21/14 23/9<br>26/17 | <b>WEINBERG</b> [1] 2/14   |
| <b>transcribed</b> [2] 1/25<br>29/16  | <b>upon</b> [2] 12/23 28/8                                    | <b>well</b> [8] 5/10 9/20  |
| <b>transcript</b> [3] 6/22<br>6/23 21/21  | <b>us</b> [6] 7/11 8/1 17/15<br>19/2 23/12 27/20              |  |
| <b>TRANSCRIPTION</b> [1]<br>1/18  | <b>use</b> [1] 8/2  |  |
| <b>transcripts</b> [1] 7/5  | <b>V</b>  |  |
| <b>transit</b> [1] 15/14  | <b>Vegas</b> [7] 2/6 2/10<br>2/15 3/5 3/10 3/15<br>4/1        |  |
| <b>trial</b> [47]   | <b>vehicle</b> [4] 6/13 6/14<br>20/21 21/3                    |  |
| <b>trials</b> [3] 14/11 27/6<br>29/6  | <b>verdict</b> [3] 6/20<br>13/16 13/18                        |  |
| <b>tried</b> [3] 6/19 7/5<br>16/24  | <b>versus</b> [1] 4/6   |  |
| <b>true</b> [1] 22/16   | <b>very</b> [3] 17/17 20/19<br>25/24                          |  |
| <b>truly</b> [1] 29/16  | <b>vice</b> [2] 4/20 5/3                                      |  |
|   | <b>victim</b> [1] 25/18                                       |  |
|   | <b>video</b> [4] 13/25 20/4                                   |  |

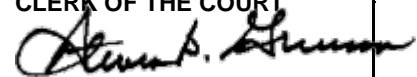
|                              |                              |        |
|------------------------------|------------------------------|--------|
| <b>W</b>                     | <b>wish [2]</b> 16/13 19/19  | 000213 |
| <b>well... [6]</b> 10/17     | <b>within [2]</b> 8/8 15/16  |        |
| 14/7 22/15 25/21 29/3        | <b>without [1]</b> 22/12     |        |
| 29/7                         | <b>witness [3]</b> 9/22      |        |
| <b>were [8]</b> 5/10 9/16    | 13/23 21/15                  |        |
| 10/10 14/10 24/22            | <b>witnesses [27]</b> 6/24   |        |
| 24/24 25/13 27/5             | 7/19 9/1 9/2 9/3 9/6         |        |
| <b>West [1]</b> 3/4          | 12/25 13/3 14/20             |        |
| <b>what [17]</b> 5/20 6/24   | 14/21 15/7 15/7 15/10        |        |
| 8/9 9/8 9/22 12/20           | 15/18 18/6 18/7 18/8         |        |
| 15/3 18/22 18/25             | 18/9 18/10 18/13 19/7        |        |
| 21/23 22/13 23/3 23/4        | 19/23 21/3 21/4 21/19        |        |
| 23/18 24/3 25/22 29/6        | 23/19 23/20                  |        |
| <b>what's [2]</b> 15/6 27/12 | <b>won't [2]</b> 23/17 24/5  |        |
| <b>WHEELER [1]</b> 2/14      | <b>word [2]</b> 5/17 5/18    |        |
| <b>when [11]</b> 8/14 10/14  | <b>work [3]</b> 23/18 23/22  |        |
| 14/11 14/12 16/3             | 28/4                         |        |
| 19/16 22/10 26/3             | <b>working [1]</b> 18/3      |        |
| 26/22 29/4 29/8              | <b>works [4]</b> 2/9 4/14    |        |
| <b>whenever [1]</b> 7/13     | 9/11 29/10                   |        |
| <b>where [5]</b> 12/24 13/13 | <b>would [39]</b>            |        |
| 16/17 19/14 24/12            | <b>write [2]</b> 10/1 24/7   |        |
| <b>Whereupon [1]</b> 29/13   | <b>wwhgd.com [1]</b> 2/16    |        |
| <b>whether [10]</b> 5/19     | <b>X</b>                     |        |
| 5/20 8/21 8/22 12/10         | <b>XIV [2]</b> 1/10 1/20     |        |
| 12/19 12/21 25/4 26/5        | <b>Y</b>                     |        |
| 29/9                         | <b>Yeah [2]</b> 8/20 27/19   |        |
| <b>which [14]</b> 7/22 11/20 | <b>year [2]</b> 13/19 14/25  |        |
| 11/25 12/18 13/16            | <b>years [2]</b> 13/16 22/22 |        |
| 14/3 14/16 15/13 16/1        | <b>Yes [5]</b> 10/21 16/14   |        |
| 17/17 19/12 20/4             | 25/16 27/16 27/23            |        |
| 20/20 28/20                  | <b>yesterday [3]</b> 10/16   |        |
| <b>while [1]</b> 6/1         | 10/18 25/11                  |        |
| <b>who [4]</b> 4/19 18/13    | <b>yet [2]</b> 18/25 19/25   |        |
| 24/23 24/25                  | <b>you [64]</b>              |        |
| <b>who's [2]</b> 8/22 17/19  | <b>you'll [1]</b> 29/6       |        |
| <b>whom [1]</b> 21/5         | <b>you're [1]</b> 27/9       |        |
| <b>why [6]</b> 9/13 13/22    | <b>your [34]</b>             |        |
| 20/19 23/11 23/21            |                              |        |
| 24/16                        |                              |        |
| <b>widow [11]</b> 5/16 8/9   |                              |        |
| 10/8 13/20 13/21             |                              |        |
| 22/10 22/12 22/16            |                              |        |
| 22/21 23/5 24/13             |                              |        |
| <b>widow's [1]</b> 22/18     |                              |        |
| <b>will [17]</b> 4/11 11/6   |                              |        |
| 15/18 16/9 16/20             |                              |        |
| 21/11 23/18 23/18            |                              |        |
| 24/6 24/15 26/5 26/9         |                              |        |
| 26/13 26/14 27/3             |                              |        |
| 27/24 28/9                   |                              |        |
| <b>WILLIAM [1]</b> 2/4       |                              |        |





15

15



NEOJ  
FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702)-457-5267  
Special Master

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as Executrix  
of the Estate of Kayvan Khiabani, M.D. (Decedent)  
and the Estate of Kayvan Khiabani, M.D.  
(Decedent),

CASE NO. A-17-755977-C  
DEPT. NO. XIV

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING, INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California corporation;  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery,  
a Nevada corporation; DOES 1 through 20; and  
ROE CORPORATIONS 1 through 20,

Defendants.

NOTICE OF ENTRY OF ORDER

TO: All Parties, and

TO: Their Counsel

YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Case Management  
Order was filed on August 16, 2017, a copy of which is attached hereto.

DATED this 18<sup>th</sup> day of August, 2017.

By: /s/ Floyd A. Hale  
FLOYD A. HALE, Special Master  
Nevada Bar No. 1873  
3800 Howard Hughes Pkwy. 11<sup>th</sup> Fl.  
Las Vegas, NV 89169

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2017, I served a true and correct copy of the foregoing through the Court's efilings system, to:

Will Kemp, Esq.  
Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, NV 89169  
Attorneys for Plaintiffs

Peter Christiansen, Esq.  
Christiansen Law Offices  
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Las Vegas, NV 89101  
Attorneys for Plaintiffs

D. Lee Roberts, Jr.  
Weinberg, Wheeler, Hudgins,  
Gunn & Dial, LLC  
6385 S. Rainbow Blvd. Suite 400  
Las Vegas, NV 89118  
Attorneys for Motor Coach Industries, Inc.

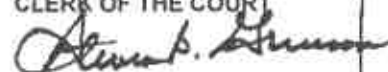
Eric Freeman, Esq.  
Selman Breitman, LLP  
3993 Howard Hughes Pkwy. Suite 200  
Las Vegas, NV 89169-0961  
Attorneys for Michelangelo Leasing, Inc.; Edward Hubbard

Michael Stoberski, Esq.  
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Las Vegas, NV 89129  
Attorneys for Bell Sports, Inc.

Michael Nunez, Esq.  
Murchison & Cumming, LLP  
350 S. Rampart Blvd., Suite 320  
Las Vegas, NV 89145  
Attorneys for SevenPlus Bicycles, Inc.

By: /s/ Debbie Holloman  
Employee of JAMS

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8/16/2017 10:41 AM  
Steven D. Grierson  
CLERK OF THE COURT



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Las Vegas, NV 89169  
(702)-457-5267  
Special Master

# DISTRICT COURT

## CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as Executrix  
of the Estate of Kayvan Khiabani, M.D. (Decedent)  
and the Estate of Kayvan Khiabani, M.D.  
(Decedent),

CASE NO. A-17-755977-C  
DEPT. NO. XIV

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
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Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California corporation;  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery,  
a Nevada corporation; DOES 1 through 20; and  
ROE CORPORATIONS 1 through 20,

Defendants.

## CASE MANAGEMENT ORDER

### 1. GENERAL PURPOSE

1.1 Purpose. This litigation involves the Plaintiff's Complaint for damages related to a motor vehicle - bicycle accident that occurred on April 18, 2017 in Clark County, Nevada in which Dr. Kayvan Khiabani was killed. This action has been deemed complex by the District Court which included the appointment of a Special Master. This Case Management Order (the "Order") is entered to reduce the costs of litigation, to assist the parties in scheduling discovery before the trial date and to resolve their disputes if possible, and if not, to reduce the costs and difficulties of

1 discovery and trial.

2 1.2 **Code Governs Where Silent.** On any matter as to which this Order is silent, the  
3 Nevada Revised Statutes and the Nevada Rules of Court shall be controlling.

4 **2. APPOINTMENT OF SPECIAL MASTER**

5 2.1 **Scope of Appointment.** Floyd Hale, Esq. is appointed as the Special Master and  
6 shall have the power and authority to:

7 1. Review all pleadings, papers or documents filed with the court or served  
8 on counsel concerning the action, and coordinate the entry of this Order and any amendments  
9 thereto.

10 2. Coordinate and make orders concerning the discovery of any photographs,  
11 records, papers, expert reports, or other documents by the parties, including the disclosure of  
12 witnesses, and the taking of the deposition of any party.

13 6. Refer to the presiding judge of the court in which the cause of action is  
14 filed any matter requiring assistance from the court.

15 7. Hear all discovery and/or scheduling motions.

16 2.2 **Law and Motion.** The Special Master will hear discovery motions under the  
17 same meet and confer and notice procedures that apply to the Discovery Commissioner. The form  
18 of discovery motions and oppositions may be made in letter form and shall be filed with the Special  
19 Master and properly served on all parties with proper notice. The parties must make an effort to  
20 resolve discovery disputes prior to submitting those issues to the Special Master by a personal  
21 conference or a telephone conference with adverse counsel. Unless a specific briefing schedule is  
22 issued by the Special Master: Opposition briefs are due 10 days after receipt of a Motion; Reply  
23 briefs are due 7 days after receipt of the Opposition.

24 **2.3 Objections to Special Master Order or Special Master Recommendations.**

25 The parties may submit objections to Special Master Orders or to Special Master  
26 Recommendations under the same procedures that apply to the Discovery Commissioner  
27 Recommendations, as specified at EDCR 2.34 (f) except that the objections may be served 10 days  
28 after the service of the Special Master Order. The inclusion of an executed District Court Order with

1 the Special Master Recommendations when initially served shall be considered an interlocutory  
2 Order for 10 days and does not effect the time for submitting objections and does not affect the  
3 standard for judicial review.

4       **2.4 Compensation.** The compensation of the Special Master shall be paid by the following  
5 parties: 20% by Plaintiffs; 20% by Motor Coach Industries, Inc.; 20% by Michelangelo Leasing Inc.  
6 and Edward Hubbard; 20% by Bell Sports, Inc.; and 20% by Sevenplus Bicycles,, Inc.. The Special  
7 Master shall have the power to recommend a different allocation, depending upon the actual  
8 participation of a party, ability to pay or the nature and purpose of the particular proceedings before  
9 the Special Master. Payment shall be made within 45 days of receipt of an invoice for services. A  
10 party will be responsible for compensating the Special Master until serving him with a written order  
11 removing that party from the litigation. As to discovery disputes, each party shall contribute to the  
12 compensation of the Special Master, subject to a recommendation for reallocation of such expense.

13 **3. NEW PARTIES**

14       When a party subsequently makes an appearance in the case, the party who sued the  
15 subsequently appearing party is responsible for serving a copy of this Order within 10 days after the  
16 subsequently appearing party files its first responsive pleading or answer. The compensation of the  
17 Special Master may be adjusted to consider new parties.

18 **4. EXPERT REPORTS**

19       The Special Master will schedule the designation of experts and the service of expert reports.  
20 Expert reports shall be provided as required by NRCP 16.1(a)(2). All expert reports must be  
21 provided as required under the Case Agenda. An expert failing to deposit a timely report meeting  
22 the requirements of N.R.C.P. 16.1(a)(2) is subject to being stricken as a designated expert. Unless  
23 the Case Agenda provides a specific date for an expert designation, the production of an expert  
24 report shall constitute a designation of an expert identified as the author of the report. The additional  
25 disclosures regarding that expert required pursuant to N.R.C.P. 16.1(a)(2) must also be provided.

26       Unless another date is provided in the Case Agenda, an expert's job file, including any  
27 summaries or compilations to be used a trial, must be deposited seven days after the deadline for that  
28 expert's report. The job file must contain all the information required to be produced pursuant to

1 N.R.C.P. 16.1(a)(2) unless already deposited with that expert's report.

2 **5. NON-PARTY DISCOVERY**

3 Any party shall be allowed to conduct non-party document discovery upon proper notice to  
4 all parties, and are required to serve any documents obtained from such discovery within fourteen  
5 (14) days of obtaining such discovery or, alternatively, provide a detailed list of the discovery.

6 **6. DEPOSITION PROCEDURES**

7 Expert depositions shall be scheduled to commence in accordance with the dates set forth in  
8 the Case Agenda. Custodial depositions, percipient witness depositions and persons most  
9 knowledgeable depositions may be conducted at anytime, unless the Special Master is requested to  
10 schedule those depositions in the Case Agenda. The initial Case Agenda is attached as Exhibit "A".

11 Expert deponents may charge a reasonable fee for the time expended in the deposition but  
12 may not charge for: preparation time; travel time; or for "minimum billing periods." Each party is  
13 responsible to pay the expert for the time that party's counsel questioned the expert. Payment of the  
14 expert's fee is due 30 days after a party's counsel receives a billing statement for those expert  
15 services.

16 If a witness that has previously been deposed is scheduled for a continuation of a deposition  
17 or an additional deposition, counsel questioning that witness are required to have reviewed the prior  
18 deposition transcripts.

19 **7. EFFECT OF THIS ORDER ON SUBSEQUENTLY APPEARING PARTIES**

20 This Order shall be applicable to all subsequently appearing parties.

21 **8. ELECTRONIC FILING AND SERVICE**

22 The parties to this matter stipulate to allow this case to be part of the Clark County District  
23 Court Electronic Filing Program. Parties appearing subsequent to entry of this Order shall have two  
24 (2) weeks (after making their initial appearance) to object to said stipulation and to request a District  
25 Court Hearing, with notice of said objection circulated to all parties.

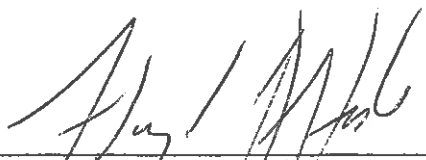
26 **9. CASE AGENDA**

27 The initial discovery schedule or Case Agenda was discussed with counsel during a July 24,  
28 2017, Special Master Hearing. Another Special Master Hearing was conducted on August 7, 2017,

1 at which time changes were made to the previous draft of the Case Agenda. The current Case  
2 Agenda, as drafted following the August 7, 2017, Special Master Hearing is attached hereto as  
3 Exhibit "A." It is being Recommended that the Court adopt and approve the Case Agenda attached  
4 hereto as Exhibit "A."


5 **IT IS SO RECOMMENDED**

6 8/7/17  
7 DATED

  
FLOYD A. HAZE, Special Master  
Nevada Bar No. 1873

9 **IT IS SO ORDERED**

10 8/11/2017  
11 DATED

  
HONORABLE JUDGE ADRIAM ESCOBAR  
DISTRICT COURT JUDGE, DEPT. 14 *es*

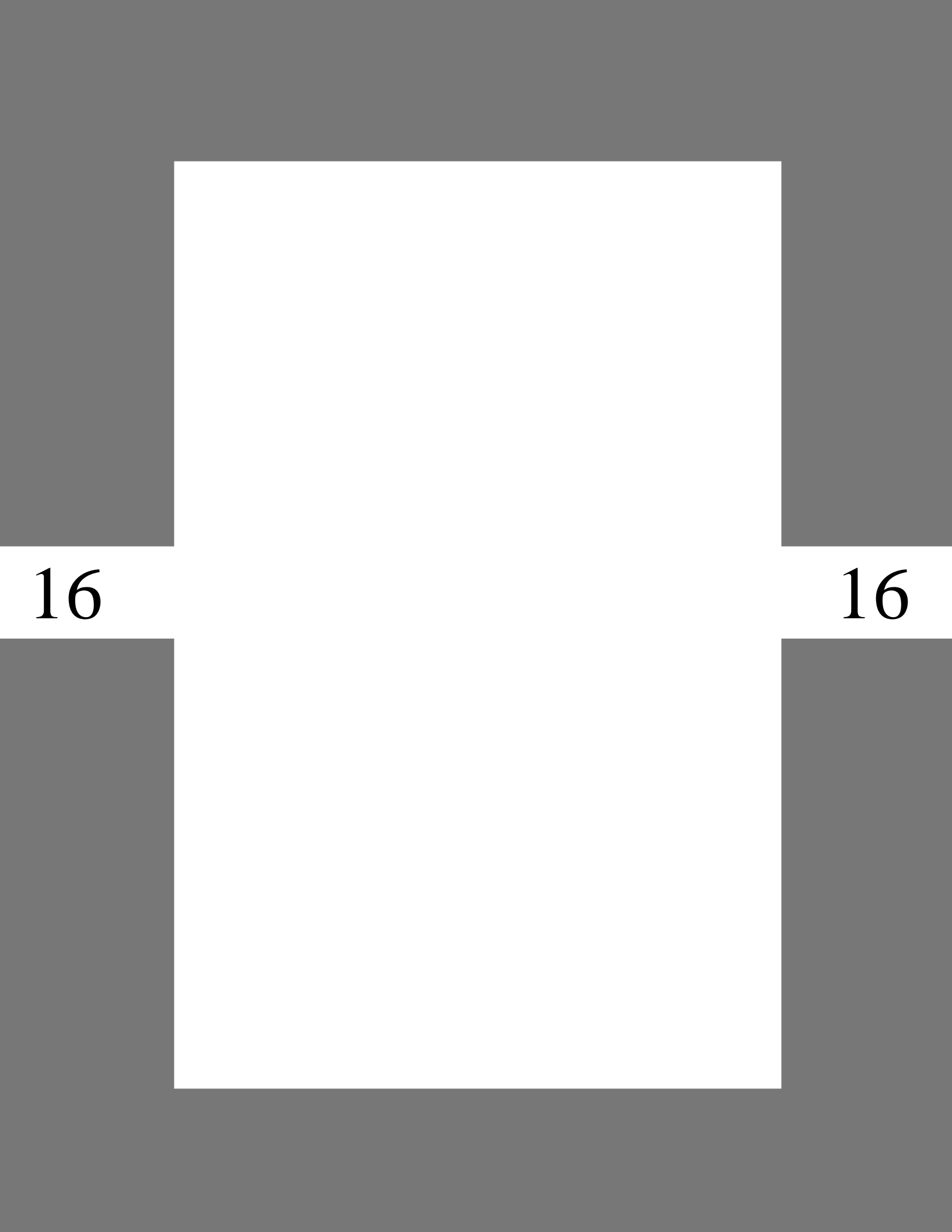


**KHIABANI v. MOTOR COACH CASE AGENDA**  
**Case No. A-17-755977-C**  
**(Pursuant to August 7, 2017, Hearing)**

|                       |   |
|-----------------------|---|
| 7/24/17<br>11:00 a.m. | Telephonic Special Master Hearing   |
| August 2017           | Commencement of percipient witness depositions  |
| 8/7/17<br>11:00 a.m.  | Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor,<br>Las Vegas, Nevada  |
| 8/22/17<br>2:00 p.m.  | Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor,<br>Las Vegas, Nevada  |
| 9/21/17<br>9:30 a.m.  | Court Status Check  |
| 9/29/17               | Plaintiff to provide expert reports regarding damages providing<br>information that is required to be disclosed pursuant to NRCP<br>16.1(a)(2), expert designation, expert resumes and expert job files |
| 10/2/17               | Defending parties may commence depositions of Plaintiffs' damages<br>experts  |
| 10/6/17               | Plaintiff to provide remaining expert reports providing information<br>that is required to be disclosed pursuant to NRCP 16.1(a)(2), expert<br>designation, expert resumes and expert job files         |
| 10/9/17               | Defending parties may commence depositions of Plaintiffs' non-<br>damages experts   |
| 10/13/17              | Defending parties to provide expert reports providing information<br>that is required to be disclosed pursuant to NRCP 16.1(a)(2), expert<br>designation, expert resumes and expert job files           |
| 10/20/17              | Plaintiff to provide rebuttal expert reports providing information that<br>is required to be disclosed pursuant to NRCP 16.1(a)(2), expert<br>designation, expert resumes and expert job files          |
| 11/2/17<br>9:30 a.m.  | Calendar call   |

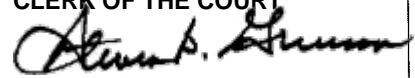
**EXHIBIT "A"**  
**(Page 1 of 2)**

|           |                        |
|-----------|------------------------|
| 11/10/17  | Discovery cut-off date |
| 11/20/17  | Trial                  |
| 9:30 a.m. |                        |



16

16



1 **NEO**  
2 ERIC O. FREEMAN  
3 NEVADA BAR NO. 6648  
4 SELMAN BREITMAN LLP  
5 3993 Howard Hughes Parkway, Suite 200  
6 Las Vegas, NV 89169-0961  
7 Telephone: 702.228.7717  
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9 Email: efreeman@selmanlaw.com

10 Attorneys for Defendants MICHELANGELO  
11 LEASING INC. d/b/a RYAN'S EXPRESS and  
12 EDWARD HUBBARD

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 KEON KHIABANI and ARIA KHIABANI,  
16 minors by and through their natural mother,  
17 KATAYOUN BARIN; KATAYOUN BARIN,  
18 individually; KATAYOUN BARIN as  
19 Executrix of the Estate of Kayvan Khiabani,  
20 M.D. (Decedent), and the Estate of Kayvan  
21 Khiabani, M.D. (Decedent),

22 Plaintiffs,

23 v.

24 MOTOR COACH INDUSTRIES, INC. a  
25 Delaware corporation; MICHELANGELO  
26 LEASING INC. d/b/a RYAN'S EXPRESS, an  
27 Arizona corporation; EDWARD HUBBARD, a  
28 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware  
corporation; SEVENPLUS BICYCLES, INC.  
d/b/a PRO CYCLERY, a Nevada corporation,  
DOES 1 through 20; and ROE  
CORPORATIONS 1 through 20,

Defendants.

Case No. A-17-755977-C  
Dept.: XIV

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Admitting to Practice for Paul E. Stephan, Esq.,  
Jerry C. Popovich, Esq., and William J. Mall, Esq. of the law firm of Selman Breitman LLP was

1 entered on the 23<sup>rd</sup> day of August, 2017, a copy of which is attached hereto.

2  
3 DATED: August 23, 2017

SELMAN BREITMAN LLP

4  
5 By: /s/ Eric O. Freeman

6 ERIC O. FREEMAN

7 NEVADA BAR NO. 6648

8 3993 Howard Hughes Parkway, Suite 200

9 Las Vegas, NV 89169-0961

10 Telephone: 702.228.7717

11 Facsimile: 702.228.8824

12 Attorneys for Defendants MICHELANGELO

13 LEASING INC. d/b/a RYAN'S EXPRESS and

14 EDWARD HUBBARD

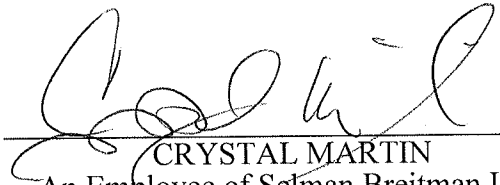
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Selman Breitman LLP  
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:

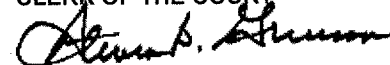
☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing document to be served upon the persons designated by the parties in the E-Service master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER**, this 23 day of August 2017.

  
CRYSTAL MARTIN  
An Employee of Selman Breitman LLP

Selman Breitman LLP  
ATTORNEYS AT LAW

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Steven D. Grierson  
CLERK OF THE COURT



**ORDR**

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Attorneys for Defendants MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS and  
EDWARD HUBBARD

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Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
Khiabani, M.D. (Decedent),

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC. a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware  
corporation; SEVENPLUS BICYCLES, INC.  
d/b/a PRO CYCLERY, a Nevada corporation,  
DOES 1 through 20; and ROE  
CORPORATIONS 1 through 20,

Defendants.

Case No. A-17-755977-C  
Dept.: XIV


**ORDER ADMITTING TO PRACTICE**

Paul E. Stephan, Esq., Jerry C. Popovich, Esq. and William J. Mall, Esq. having filed a  
Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified  
Applications for Association of Counsel, Certificates of Good Standing, and the State Bar of

1 Nevada Statements, said application having been noticed, the Court having considered this matter,  
2 and the Court being fully apprised in the premises, and good cause appearing;


3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said application is  
4 granted and Paul E. Stephan, Jerry C. Popovich, and William J. Mall are hereby admitted to  
5 practice in the above-entitled matter only.

6 DATED this 21 day of July, 2017.

7  
8   
9 DISTRICT COURT JUDGE 

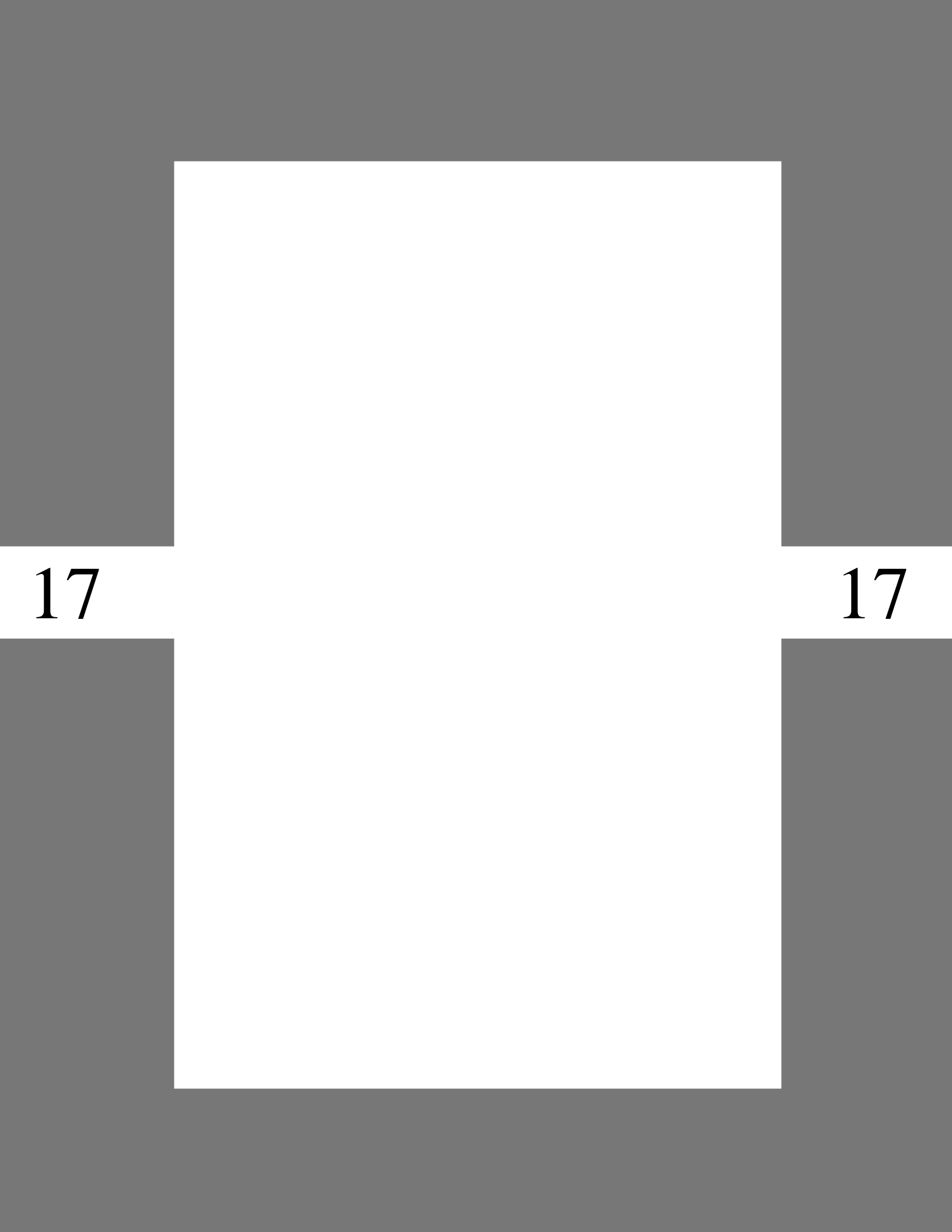
10 Submitted by:

11 SELMAN BREITMAN LLP

12   
13 Eric O. Freeman, Esq.  
14 Nevada Bar No: 6648  
15 3993 Howard Hughes Parkway, Suite 200  
16 Las Vegas, NV 89169

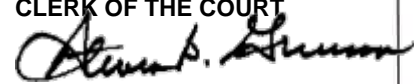
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17

17



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## DISTRICT COURT

## CLARK COUNTY, NEVADA

16 KEON KHIABANI and ARIA KHIABANI,  
 17 minors by and through their natural mother,  
 18 KATAYOUN BARIN; and KATAYOUN  
 19 BARIN, individually; KATAYOUN BARIN as  
 20 Executrix of the Estate of Kayvan Khiabani,  
 21 M.D. (Decedent), and the Estate of Kayvan  
 22 Khiabani, M.D. (Decedent),

23 Plaintiffs,

24 v.

25 MOTOR COACH INDUSTRIES, INC., a  
 26 Delaware corporation; MICHELANGELO  
 27 LEASING INC. d/b/a RYAN'S EXPRESS, an  
 28 Arizona corporation; EDWARD HUBBARD, a  
 Nevada resident; BELL SPORTS, INC. d/b/a  
 GIRO SPORT DESIGN, a Delaware corporation;  
 SEVENPLUS BICYCLES, INC. d/b/a PRO  
 CYCLERY, a Nevada corporation, DOES 1  
 through 20; and ROE CORPORATIONS 1  
 through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

## STIPULATED PROTECTIVE ORDER

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

1       Whereas PLAINTIFFS, Defendant MOTOR COACH INDUSTRIES, INC., Defendant  
2 MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS, Defendant EDWARD  
3 HUBBARD, Defendant BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN, and Defendant  
4 SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY (hereinafter the "Parties), will be required  
5 to exchange, and will exchange, certain documents pursuant to NRCP 16.1 and NRCP 34, as well  
6 as serve interrogatories, notices of depositions and similar discovery requests, the responses to  
7 which counsel will submit may include the disclosure of trade secrets, proprietary data and/or  
8 confidential business information or confidential information of employees or third parties  
9 ("Confidential Information" as defined in paragraph 1 herein); and

10       Whereas the Parties, by and through their counsel, have agreed to produce such information  
11 for inspection, copying and use in the present action, subject to the terms and conditions of this  
12 Stipulated Protective Order ("Protective Order");

13       Subject to the approval of this Court, the Parties hereby stipulate to the following Protective  
14 Order:

15       1.     In connection with this action, the Parties may designate any document, thing,  
16 material, testimony or other information derived there from as "Confidential Information" under  
17 the terms of this Protective Order. Confidential Information means:

18       Trade secrets, proprietary data, and/or confidential business information including a  
19 formula, pattern, compilation, program, device, method, technique, or process that:

- 20       (a)    Derives independent economic value, actual or potential, from not being generally  
21              known to the public or to other persons who can obtain economic value from its  
22              disclosure or use; and  
23       (b)    Is the subject of efforts that are reasonable under the circumstances to maintain its  
24              secrecy.

25       By designating a document, thing, material, testimony or other information derived there  
26 from as "Confidential" under the terms of this Protective Order, the Party making the designation  
27 is certifying to the Court that there is a good faith basis both in law and in fact for the designation.

28     ///

1           2.       Confidential documents shall be so designated by stamping copies of the document  
2 produced to a Party with the legend "CONFIDENTIAL." Stamping the legend  
3 "CONFIDENTIAL" on the cover of any multipage document shall designate all pages of the  
4 document as confidential, unless otherwise indicated by the producing Party.

5           3.       Testimony taken at a deposition, conference, hearing or trial may be designated as  
6 confidential by making a statement to that effect on the record at the deposition or other  
7 proceeding. Arrangements shall be made with the court reporter taking and transcribing such  
8 proceeding to separately bind such portions of the transcript containing information designated as  
9 confidential, and to label such portions appropriately.

10          4.       Material designated as CONFIDENTIAL under this Protective Order, the  
11 information contained therein, and any summaries, copies, abstracts, or other documents derived in  
12 whole or in part from material designated as confidential (hereinafter "Confidential Material")  
13 shall be used only for the purpose of the prosecution, defense, or settlement of this action, and for  
14 no other purpose.

15          5.       Confidential Material produced pursuant to this Protective Order may be discussed  
16 or made available only to the Court, to counsel for a Party (including the paralegal, clerical, and  
17 secretarial staff employed by such counsel), and to the "qualified persons" designated below:

- 18           (a)       a Party, or an officer, director, member of the Board of Governors, shareholder, or  
19                      employee, or independent contractor of a Party reasonably deemed necessary by  
20                      counsel for that Party to aid in the prosecution, defense, or settlement of this action;  
21           (b)       a Party's liability insurer and its directors, officers, and employees;  
22           (c)       experts or consultants (together with their staff) retained by such counsel to assist  
23                      in the prosecution, defense, or settlement of this action;  
24           (d)       certified shorthand court reporter(s) engaged in this action;  
25           (e)       a witness at any deposition or other proceeding in this action reasonably deemed  
26                      necessary by counsel for that Party to aid in the prosecution, defense, or settlement  
27                      of this action; and  
28           (f)       any other person as to whom the Parties in writing agree.

1 Prior to receiving any Confidential Material, each “qualified person” shall be provided with  
2 a copy of this Protective Order.

3 6. Depositions likely to contain Confidential Information shall be taken only in the  
4 presence of qualified persons.

5 7. The Parties may further designate certain discovery material or testimony of a  
6 highly confidential and/or proprietary nature as “CONFIDENTIAL—ATTORNEY’S EYES  
7 ONLY” (hereinafter “Attorney’s Eyes Only Material”), in the manner described in paragraphs 2  
8 and 3 above. Attorney’s Eyes Only Material, and the information contained therein, shall be  
9 disclosed only to the Court, to counsel for the Parties (including in-house counsel, paralegal,  
10 clerical and secretarial staff employed by such counsel), but shall not be disclosed to a Party, or to  
11 an officer, director, member of the Board of Governors, or employee, or independent contractor of  
12 a Party, unless otherwise agreed or ordered. If disclosure of Attorney’s Eyes Only Material is  
13 made pursuant to this paragraph, all other provisions in this Protective Order with respect to  
14 confidentiality shall also apply.

15 8. A Party that files or intends to file Confidential Information with the Court for the  
16 purposes of adjudication or to use at trial will follow the procedures set forth by the Nevada Rules  
17 of Civil Procedure and the Eighth Judicial District Court Rules for obtaining Court approval for  
18 filing such records under seal. All Confidential Information submitted in connection with  
19 discovery motions will be submitted under seal.

20 9. Nothing herein shall impose any restrictions on a Party from disclosing its own  
21 Confidential Material as it deems appropriate, nor from using or disclosing material that is in the  
22 public domain.

23 10. This Protective Order shall be without prejudice to the right of the Parties (i) to  
24 bring before the Court at any time the question of whether any particular document or information  
25 is confidential or whether its use should be restricted or (ii) to present a motion to the Court for a  
26 separate protective order as to any particular document or information, including restrictions  
27 differing from those as specified herein. This Protective Order shall not be deemed to prejudice  
28 the Parties in any way in any future application for modification of this Protective Order.

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838


1           11. This Protective Order is entered solely for the purpose of facilitating the exchange  
2 of documents and information between the Parties to this action without involving the Court  
3 unnecessarily in the process. Nothing in this Protective Order nor the production of any  
4 information or document under the terms of this Protective Order nor any proceedings pursuant to  
5 this Protective Order shall be deemed to have the effect of an admission or waiver by any Party or  
6 of altering the confidentiality or non-confidentiality of any such document or information or  
7 altering any existing obligation of any Party or the absence thereof.

8           12. This Protective Order shall survive the final termination of this action, to the extent  
9 that the information contained in Confidential Material is not or does not become known to the  
10 public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of  
11 information disclosed hereunder. Unless otherwise agreed by the Parties in writing, upon the  
12 “Return/Destruction Deadline” for a given party, that party shall either assemble and return to each  
13 originating party all documents, material and deposition transcripts designated as confidential and  
14 all copies of same in their custody or in the custody of any “qualified persons” in their control, or  
15 shall certify the destruction thereof. For Plaintiffs, the Return/Destruction Deadline will be within  
16 90 days of (i) a given Plaintiff’s dismissal of their action or (ii) final judgment as to that Plaintiff,  
17 following appellate matters if any. For defendants, the Return/Destruction Deadline will be within  
18 90 days of (i) the dismissal of all actions and cross-actions against a given Defendant or (ii) final  
19 judgment as to that Defendant, following appellate matters if any.

Case: A-17-755977-C  
Case Name: *Khiabani v. Motor Coach Industries, Inc.*  
Document: *Stipulation and Protective Order*

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated this 16<sup>th</sup> day of August, 2017.


  
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Dated this 14 day of August, 2017.

  
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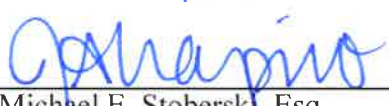
*Attorneys for Plaintiffs*

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Las Vegas, Nevada 89118  
(702) 938-3838



Case: A-17-755977-C  
Case Name: *Khiabani v. Motor Coach Industries, Inc.*  
Document: *Stipulation and Protective Order*

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

|  |  |
|--|--|
| <p>Dated this <u>18th</u> day of August, 2017.</p> <p></p> <p>Michael E. Stoberski, Esq.<br/> Joslyn Shapiro, Esq.<br/> OLSON CANNON GORMLEY ANGULO &amp;<br/> STOBERSKI<br/> 9950 W. Cheyenne Ave.<br/> Las Vegas, NV 89129</p> <p>Keith Gibson, Esq.<br/> LITTLETON JOYCE UGHETTA PARK &amp; KELLY<br/> LLP<br/> The Centre at Purchase<br/> 4 Manhattanville Rd., Suite 202<br/> Purchase, NY 10577</p> <p><i>Attorneys for Defendant Bell Sports, Inc.<br/> d/b/a Giro Sport Design</i></p> | <p>Dated this _____ day of August, 2017.</p> <p>Eric O. Freeman, Esq.<br/> SELMAN BREITMAN LLP<br/> 3993 Howard Hughes Pkwy., Suite 200<br/> Las Vegas, NV 89169<br/> <a href="mailto:efreeman@selmanlaw.com">efreeman@selmanlaw.com</a></p> <p><i>Attorney for Defendants Michelangelo Leasing<br/> Inc. d/b/a Ryan's Express and Edward<br/> Hubbard</i></p> |
| <p>Dated this _____ day of August, 2017.</p> <p>Michael J. Nunez, Esq.<br/> MURCHISON &amp; CUMMING, LLP<br/> 6900 Westcliff Dr., Suite 605<br/> Las Vegas, NV 89145<br/> <a href="mailto:mnunez@murchisonlaw.com">mnunez@murchisonlaw.com</a></p> <p><i>Attorney for Defendant SevenPlus Bicycles,<br/> Inc. d/b/a Pro Cyclery</i></p>  |  |



Case: A-17-755977-C  
Case Name: *Khiabani v. Motor Coach Industries, Inc.*  
Document: *Stipulation and Protective Order*

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.


Dated this \_\_\_\_ day of August, 2017.

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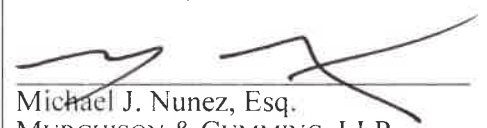
*Attorneys for Defendant Bell Sports, Inc.  
d/b/a Giro Sport Design*

Dated this 14 day of August, 2017.

  
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Hubbard*

Dated this 15 day of August, 2017.

  
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*Attorney for Defendant SevenPlus Bicycles,  
Inc. d/b/a Pro Cyclery*

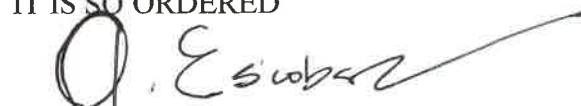
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Case: A-17-755977-C  
Case Name: Khiabani v. Motor Coach Industries, Inc.  
Document: Stipulation and Protective Order

**ORDER**

Based on the foregoing, it is hereby ORDERED, ADJUDGED AND DECREED that the above noted **STIPULATION AND PROTECTIVE ORDER** is hereby approved and adopted.

IT IS SO ORDERED



Hon. Adriana Escobar

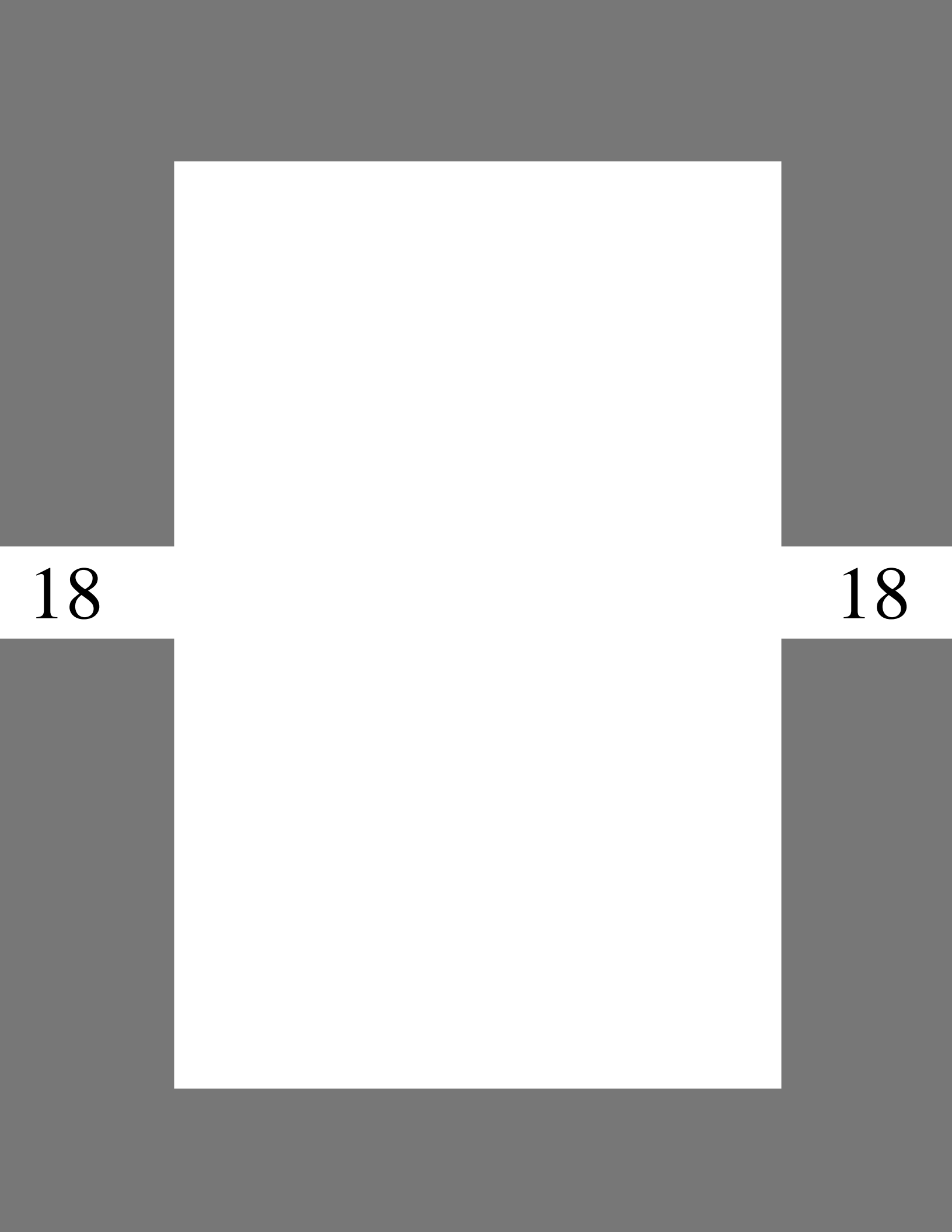
Dated: 23 August<sup>5</sup>, 2017

Submitted by:



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*Attorneys for Defendant*  
*Motor Coach Industries, Inc.*



18

18

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA )  
KHIABANI, minors by and )  
through their natural mother, )  
KATAYOUN BARIN; KATAYOUN )  
BARIN, individually; KATAYOUN )  
BARIN as Executrix of the )  
Estate of Kayvan Khiabani, )  
M.D. (Decedent) and the Estate )  
of Kayvan Khiabani, M.D. )  
(Decedent), )

Plaintiffs,

CASE NO.: A-17-755977-C

DEPT. NO.: XIV

vs.

MOTOR COACH INDUSTRIES, INC., )  
a Delaware corporation; )  
MICHELANGELO LEASING, INC. )  
d/b/a RYAN'S EXPRESS, an )  
Arizona corporation; EDWARD )  
HUBBARD, a Nevada resident, et )  
al., )

Defendants.

*REPORTER'S TRANSCRIPTION OF MOTION OF STATUS CHECK AND  
MOTION FOR RECONSIDERATION WITH JOINDER*

BEFORE THE HONORABLE ADRIANA ESCOBAR

DEPARTMENT XIV

DATED THURSDAY, SEPTEMBER 21, 2017

RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: AMBER M. McCLANE, NV CCR No. 914

A-17-755977-C • 09/21/2017

## 1 APPEARANCES:

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(Cont. on next page)

A-17-755977-C • 09/21/2017

1 APPEARANCES CONTINUED:

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3 Giro Sport Design:

4 *BY: MICHAEL E. STOBERSKI, ESQ.*  
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10 -AND-

11 *BY: C. SCOTT TOOMEY, ESQ.*  
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14 *Radnor, Pennsylvania 19087*  
15 *(484) 254-6220*  
16 *scott.toomey@littletonpark.com*

17 For the Defendants Michelangelo Leasing, Inc., doing  
18 business as Ryan's Express and Edward Hubbard:

19 *BY: ERIC FREEMAN, ESQ.*  
20 *BY: PAUL E. STEPHAN, ESQ.*  
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25 *efreeman@selmanbreitman.com*  
*pstephan@selmanlaw.com*

\* \* \* \* \*

A-17-755977-C • 09/21/2017

1           **LAS VEGAS, NEVADA; THURSDAY, SEPTEMBER 21, 2017**  
2                           **9:43 A.M.**

3                           \* \* \* \* \*  
4                   **P R O C E E D I N G S**  
5                           \* \* \* \* \*

6           **THE MARSHAL:** A755977.

7           **MR. CHRISTIANSEN:** Good morning, Your Honor.  
8           Pete Christiansen and Kendelea Works for plaintiff.

9           **THE COURT:** I'm sorry. Can you speak a  
10           little bit louder? I didn't get that.

11           **MR. CHRISTIANSEN:** Pete Christiansen and  
12           Kendelea Works for plaintiffs.

13           **THE COURT:** Thank you.

14           **MR. KEMP:** Your Honor, Will Kemp for  
15           plaintiffs.

16           **THE COURT:** Good morning.

17           **MR. PEPPERMAN:** Good morning, Your Honor.  
18           Eric Pepperman for plaintiffs as well.

19           **MR. STOBERSKI:** Good morning, Your Honor.  
20           Michael Stoberski for Bell Sports, Inc. Also here with  
21           me is Mr. Scott Toomey. Your Honor has admitted him  
22           pro hac vice.

23           **THE COURT:** Good morning.

24           **MR. STEPHAN:** Good morning, Your Honor. Paul  
25           Stephan, pro hac vice. I'm here on behalf of

A-17-755977-C • 09/21/2017

1 Michelangelo and Edward Hubbard.

2 **MR. FREEMAN:** Eric Freeman also for  
3 Michelangelo Leasing and Edward Hubbard.

4 **THE COURT:** Good morning.

5 **MR. ROBERTS:** Good morning, Your Honor. Lee  
6 Roberts for Motor Coach Industries. And also with me  
7 is Michael Terry admitted pro hac vice on behalf of the  
8 same client.

9 **THE COURT:** Very good.

10 I have today on calendar defendants' motion  
11 for reconsideration regarding preferential trial  
12 setting. Go ahead. We'll just make sure I have --  
13 we're in trial right now so -- okay. I have a -- go  
14 on.

15 **MR. STOBERSKI:** Your Honor, Michael Stoberski  
16 for Bell Sports, Inc., and this also bleeds over into  
17 the status check of where discovery is today.

18 **THE COURT:** Actually, today is really a  
19 status check day. Right?

20 **MR. STOBERSKI:** Yes.

21 **THE COURT:** That's really where we are.

22 **MR. STOBERSKI:** That's right, Your Honor.

23 **THE COURT:** Okay. I understand that.

24 **MR. STOBERSKI:** That's what I'm going to  
25 focus my comments on, the status of discovery.



A-17-755977-C • 09/21/2017

1           **THE COURT:** Okay.

2           **MR. STOBERSKI:** Your Honor, it's Bell Sports'  
3 position that it is impossible to complete discovery in  
4 a reasonable manner in this case and to properly  
5 prepare for trial. The right to a fair trial also  
6 includes the right to fair pretrial proceedings. The  
7 manner of discovery in this case has prejudiced Bell  
8 and will continue to prejudice Bell as we get into the  
9 expert discovery of this case.

10           The claims in this case are significant. The  
11 plaintiffs are seeking a billion dollars in punitive  
12 damages from the defendants and tens of millions of  
13 dollars in compensatory damages. There will be  
14 significant heightened appellate review in this case.  
15 There is no reason or justification to rush this case  
16 towards an early trial date.

17           This is -- against Bell Sports is a product  
18 liability action, as well as against MCI. Product  
19 liability actions typically, when there's one product  
20 and one defendant, will take 12 months of discovery.  
21 If there's multiple products and multiple defendants,  
22 they take even longer. It is unheard of to have a  
23 product liability case prepared for trial in such a  
24 short time.

25           In the plaintiffs' supplement they listed

1 that there are currently six depositions scheduled and  
2 that there are 10 more fact witnesses. One of the  
3 depositions scheduled is Dr. Barin, and it's not really  
4 a deposition. They're preserving her trial testimony  
5 regarding damages. We've asked to take a discovery  
6 deposition of Dr. Barin, but with her medical condition  
7 we've not been able to work that out with the  
8 plaintiffs. So it's going to be more than just those 6  
9 and the 10 additional fact witnesses.

10 The first week in October the expert  
11 disclosures will be held. The plaintiffs, we  
12 anticipate, will disclose at least three experts,  
13 perhaps more. Bell Sports does not know currently what  
14 theory of liability that the plaintiffs will be  
15 seeking. Is it a design case? Is it a manufacturing  
16 case? Is it a warranties case? And so once we get  
17 these theories of liability, Bell will only have one  
18 week to turn around with its own expert report. And if  
19 there's any testing that's required, it's going to be  
20 impossible to schedule testing, coordinate the experts,  
21 and then crank out a report in one week's time.

22 So if you count those six scheduled  
23 depositions and the 10 more fact witnesses, the three  
24 or four plaintiffs' experts, now we're up to 19  
25 depositions. Bell will disclose three or four experts.

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1 We're up to 23. MCI will disclose three or four.  
2 We're up to 27. Michelangelo will disclose perhaps  
3 three. We're up to 30. We anticipate approximately 40  
4 depositions will be -- still have to be taken before  
5 trial. Guess what, Your Honor? Starting tomorrow  
6 there's 39 court days before trial. We're going to try  
7 to do 40 depositions with 39 court days.

8           What about the pretrial practice? There will  
9 be a mountain of paperwork coming Your Honor's way. In  
10 a typical product liability/wrongful death case, 30,  
11 50, 70 motions in limine? Most courts set aside  
12 several days just to argue motions in limine.

13           Motions for summary judgment are going to be  
14 filed. When are we going to do those? We're going to  
15 still be taking expert depositions and having to file  
16 motions for summary judgment.

17           With 39 days, if it was perfect, no missed  
18 schedules, nobody's sick, nobody missed the flight,  
19 flights weren't canceled, it would be impossible. So  
20 this doesn't allow -- this schedule currently doesn't  
21 allow any time for reasonable completion of discovery  
22 and properly prepare the case for trial.

23           The prejudice to Bell has been extreme, and  
24 it's going to get even worse. Again, we don't even  
25 know what theories are being alleged against Bell yet.

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1           We also have a lot of missing information.  
2       When Judge Jones granted the conditional preferential  
3       trial setting, she was concerned about the fact that  
4       Metro -- this is back in July -- Metro had not yet  
5       released all of its records. We still don't have all  
6       of the Metro's records because they haven't completed  
7       their investigation. The lead investigator was on  
8       paternity leave. Maybe he still is. When he gets  
9       back, he'll complete his investigation, then release  
10      the report.

11           **THE COURT:** He was due back in September.

12           **MR. STOBERSKI:** Right. So, you know, that's  
13      a starting point for accident reconstruction. They  
14      were out on the scene. They have physical marks.  
15      Forcing experts to recreate this accident before they  
16      have the Metro records is only going to lead to  
17      supplementation once those reports from Metro are  
18      received.

19           We just learned that the Coroner's office,  
20      there's records that we didn't get from the Coroner's  
21      office; that the Coroner responded to everybody's  
22      subpoenas but the investigator said, oh, no, there  
23      should be other additional records that are available.

24           The cause of death is still at issue. A full  
25      autopsy wasn't performed on the decedent so -- yet, he

1 had cracked ribs. So if the cause of death was his  
2 heart failure from being crushed by the bus, that has  
3 nothing to do with the helmet. So, again, we need more  
4 time to develop the discovery and prepare this case for  
5 trial.

6 So we need to put an end to the Guinness Book  
7 of World Records attempt of preparing a product  
8 liability case for trial, and we suggest that the Court  
9 refer the matter to Special Master Hale for a  
10 recommendation of -- given the amount of discovery  
11 we've done to date and what needs to be done, what is a  
12 reasonable schedule and allowing the Court to have a  
13 reasonable pretrial proceedings in this case, including  
14 the pretrial motions.

15 There's, you know, like 15 of us and only one  
16 of you, Your Honor. There's going to be so much work  
17 coming your way. 16.025 requires the Court to look at  
18 that interest of justice. It's not the interest of  
19 justice only in this case. What about all the other  
20 cases Your Honor has? You can't just dump your  
21 caseload and focus on this case.

22 So the interest of justice not only for Bell  
23 Sports and the other defendants but for the other  
24 litigants before Your Honor, and there's no  
25 justification to force this case to trial in November.

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1           **THE COURT:** Thank you.

2           **MR. STEPHAN:** Good morning, Your Honor. Paul  
3 Stephan. I represent Michelangelo Leasing we're the  
4 bus operator as opposed to MCI which is the  
5 manufacturer of the bus. I also represent Edward  
6 Hubbard who is the driver, in fact, who was deposed  
7 yesterday in this case.

8           I'm not going to add to counsel's statements.  
9 I just want to give the Court a little bit of an idea  
10 of our position on this. We have a traffic accident  
11 that was investigated in April, and in that  
12 investigation things such as fresh rubber marks on the  
13 side of the coach, transfer marks from the bicycle, the  
14 analysis of where the impact between the bike and the  
15 bus occurred are critical evaluation items which we do  
16 not have. We don't have the basic information from a  
17 traffic accident perspective on a death case that we  
18 would typically have several months down stream.

19           And I can say I understand that the detective  
20 was away. But, unfortunately, the clock is ticking.  
21 And some of those things are important. For example,  
22 we know now that a recorded statement was made of our  
23 bus driver by the detectives at the scene on the day of  
24 the accident but nobody's seen it. We also know that a  
25 critical witness on the bus had a recorded statement

1 taken in a police car the day of the accident at the  
2 scene, and we haven't seen that. And while we've had  
3 depositions, we have nothing to compare it to, and  
4 that's an important factor. We'd like to be able to  
5 test the evidence before we go to trial.

6 The other thing is, is that there were  
7 photographs taken at the scene. I presume that Metro  
8 took photographs at the scene, but I have not seen  
9 Metro's photographs at the scene nor have I seen how  
10 they diagram the intersection nor have I seen how they  
11 measured and used electronic equipment to describe the  
12 intersection so that other people can then rely on  
13 that. As you probably know, the police sectioned off  
14 the intersection and didn't allow anybody to do  
15 anything while they conducted their investigation, and  
16 that was for several hours. We have no fruits of that  
17 investigation.

18 The other important factor for my client as  
19 the driver of the bus and the employer, of course,  
20 deals with an item that's in the complaint which is a  
21 Nevada statute dealing with bicycles and vehicles on  
22 the roadway. That statute, of course, is the basis of  
23 one of the causes of action against both of my clients,  
24 which is distinct and different than the products  
25 allegations. Now, that statute itself calls for an

1 interpretation, and my client would like to have the  
2 trained professionals who regularly interpret the  
3 statute, that law enforcement entity in -- in Clark  
4 County that investigates accidents, to tell us what  
5 their opinion is based on whatever set of facts they  
6 have as to whether or not this statute applies.  
7 Secondly, whether or not there is a conclusion by an  
8 expert investigator in law enforcement that the statute  
9 was violated and was that the proximate causation of  
10 the accident. Those are three essential elements. I  
11 have no information on all three of them, and I don't  
12 anticipate I'll have that in the next -- in the  
13 foreseeable future.

14 And so I think that a deposition of the  
15 investigating detective is a fundamental right my  
16 client has and an ability to test the evidence, both  
17 the forensic evidence and the non-forensic such as a  
18 recorded statement. And I think all those things  
19 really cry out for an ability to do that in light of  
20 the number of days that counsel points out that we have  
21 left to go.

22 And I appreciate the Court listening to me.  
23 Thank you.

24 **THE COURT:** Certainly.

25 **MR. ROBERTS:** Good morning, Your Honor.



1           **THE COURT:** Good morning.

2           **MR. ROBERTS:** Lee Roberts for Motor Coach  
3 Industries.

4           We would join in and support the arguments  
5 made this morning by Bell and Michelangelo Leasing.  
6 Also in support of our joinder, I'll try not to repeat  
7 any arguments but I do want to clarify a few issues as  
8 they relate to my client, Motor Coach Industries.

9           At the time of the motion hearing where the  
10 Court granted the preferential trial setting, what was  
11 not yet before the Court was an exact schedule for how  
12 everything necessary to prepare for trial could  
13 possibly be accomplished within 120 days.

14           Subsequent to the hearing, Special Master  
15 Floyd Hale was given the task of not setting a  
16 reasonable schedule but for setting a schedule which  
17 would allow the parties to go to trial by  
18 November 20th. He was constrained by that trial date,  
19 and he had to set deadlines which would allow the  
20 parties to proceed on that trial date and it was very  
21 difficult to do.

22           The schedule, at least the basics of it, are  
23 set forth on page 3 of 8 of the plaintiffs' opposition.  
24 The disclosure of damages experts are due  
25 September 29th by the plaintiff; liability experts,