

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.

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APPEAL

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

**APPELLANT'S APPENDIX
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26	Motion for Summary Judgment on Punitive Damages	12/01/17	3	642–664
117	Motion to Retax Costs	04/30/18	47 48	11743–11750 11751–11760
58	Motions in Limine Transcript	01/29/18	12 13	2998–3000 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 33	7994–8000 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 7	1491–1500 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

120	Motor Coach Industries, Inc.'s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	05/07/18	48 49	11963–12000 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

	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

	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

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

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 2	237–250 251–312
65	Reporter's Transcription of Proceedings	02/13/18	16 17	3818–4000 4001–4037
66	Reporter's Transcription of Proceedings	02/14/18	17 18	4038–4250 4251–4308

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

102	Reporter's Transcription of Proceedings	03/21/18	40	9800–9880
103	Reporter's Transcription of Proceedings	03/22/18	40 41	9881–10000 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 15	3492–3500 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 4	665–750 751–989
28	Volume 2: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	4 5	990–1000 1001–1225
29	Volume 3: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	5 6	1226–1250 1251–1490

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1 October 6th; defendants' disclosure of all experts,
2 October 13th.

3 So our rebuttal experts and our initial
4 experts are due one week after we get the expert
5 reports setting forth the theories of product liability
6 against our client. In 16 years, I've never seen a
7 scheduling order in this jurisdiction where the
8 defendants had one week to prepare expert reports after
9 the theories against them were disclosed.

10 At the last hearing plaintiffs argued that
11 Motor Coach Industries, they've had two other cases
12 against them alleging product liability due to blind
13 spots and that we should already be prepared to simply
14 regurgitate those reports. I argued at the time that
15 those, to my understanding, were blind spots to the
16 front and to the left of the bus, and this was an
17 alleged blind spot to the side and to the rear, the
18 right side, and that it was a different issue.

19 Well, since that time, it's become clear that
20 the blind spot, although it's still proceeding as one
21 of the theories of liability, has been overtaken by a
22 different theory, a brand-new theory. And as far as I
23 know, there's never been a case alleging this theory
24 against the bus manufacturer. There's a device called
25 an S-1 Gard, which is placed in front of the rear

1 double wheels of a bus and is designed to knock someone
2 out of the way of the bus so that they're not run over
3 by the rear wheels if they fall under the bus.

4 As far as we know, there's never been any
5 studies of the effect of S-1 Gard if it hits someone
6 lying on the ground at 35 miles an hour. And
7 complicating that, what happens if that happens with a
8 bicycle helmet on their head? This is a very complex
9 issue both as to liability and causation. It's brand
10 new. And one week certainly does not give us adequate
11 time to prepare a defense to this new and unique theory
12 being advanced by the plaintiffs.

13 The proposal to have Special Master Hale
14 consider and issue a reasonable schedule without the
15 constraint of the trial date seems to me to be very
16 reasonable and would allow Special Master Hale to set
17 the most expeditious schedule which would provide
18 substantial justice and a reasonable opportunity to
19 prepare a case.

20 The second issue which I would like to get
21 into this morning is whether there is evidence meeting
22 the requirement of the statute that is evidence which
23 raises a substantial medical doubt that the party will
24 survive more than six months.

25 In the original motion in which the

1 plaintiffs were required to meet this burden of proof,
2 they submitted a letter from Dr. Anthony Nguyen dated
3 May 30, 2017, which simply set forth the fact that
4 Dr. Katayoun Barin or Katie Barin is a patient
5 diagnosed with stage IV metastatic adenocarcinoma of
6 the colon. It rendered no opinion as to her life
7 expectancy and no opinion as to the likelihood that she
8 would survive for more than six months. We opposed the
9 motion on that grounds, that it simply did not meet
10 their burden of proof. And in their reply brief for
11 the first time five days before the hearing the
12 submitted new evidence which was in the form of a
13 conclusory declaration from Dr. Nguyen that there was a
14 substantial medical doubt that she would survive for
15 more than six months, but there was no foundation for
16 that opinion. There was no life expectancy given with
17 that opinion. There were no statistics on survival
18 rates that were provided.

19 And we've pointed out that if you read their
20 original motion carefully, they never argue that
21 Dr. Katie Barin is unlikely to survive for six months.
22 What they argue is everyone knows the survival rates
23 for people with this type of disease. So they're
24 relying only on survival rates which were not before
25 the Court for the Court to take judicial notice of.

1 That flaw remains in their papers. They have not met
2 the burden. Simply having a doctor say that there's
3 substantial medical doubt without any evidence or
4 foundation to explain or support that opinion is
5 inadmissible ipse dixit. Simply because he says so,
6 that's what they want the Court to believe. It does
7 not satisfy their burden.

8 We obtained medical authorization. We asked
9 for medical records. Over a month after the Court
10 issued its decision expediting the trial and the Friday
11 before the Labor Day Weekend we did get those medical
12 records, and we provided them to a life expectancy
13 expert who has examined them. And I don't know if the
14 Court saw the supplemental briefing that we filed
15 yesterday. And I have another copy here for the Court
16 if --

17 **THE COURT:** I did not see that. I've read
18 everything else, but I did not see that.

19 **MR. ROBERTS:** May I approach, Your Honor?

20 **THE COURT:** Yes.

21 **MR. ROBERTS:** And I apologize for the late
22 filing. We were trying to get it done. Last week the
23 plaintiffs and Michelangelo and Motor Coach Industries
24 all stipulated to continue this hearing to the 28th,
25 and we thought we had more time to get that done. Bell

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1 Sports opposed that, and because of the status check
2 that was also scheduled for today, they did have
3 standing to oppose. So we had to scramble to get that
4 in earlier than we thought we would have to get it in.

5 But what we have now are statistics before
6 the Court for the very first time as far as what are
7 the actual survival rates of a person with the illness
8 that Dr. Barin has. Based on which database you use,
9 someone with just metastatic stage IV cancer, the
10 survival rate at six months would be 84 percent for a
11 woman between the age 40 and 60, and Dr. Barin falls in
12 that category.

13 If you tunnel down even further, if you look
14 at just the subset of stage IV metastatic colon cancer
15 that is metastasized to more than one distant organ
16 system, that rate falls but it only falls to about
17 79 percent, I believe. So what we have is a very small
18 chance that Dr. Barin would not be alive in six months.
19 Somewhere around 16 percent, 20 percent at most. And
20 that's not a more likely than not situation that she
21 would not survive, and I don't believe that it meets
22 the substantial medical doubt.

23 If you think about in a construction case,
24 what is substantial completion? Substantial completion
25 means you're almost done. Substantial means more than

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1 just a chance, and I don't believe that this
2 constitutes the clear and convincing evidence that she
3 will not survive for six months that was recited in the
4 order granting the preferential trial setting.

5 I believe it's also relevant to look at what
6 is her more than likely life expectancy. So from
7 August 7, 2017, the last day of the records we
8 received, she had survived for eight months from
9 initial diagnosis. So if you look at the subset of
10 patients who had survived for eight months from initial
11 diagnosis, her life expectancy, given that the cancer
12 is metastasized to more than one distant organ system,
13 is 1.7 years which means that more likely than not
14 Dr. Barin will survive until April of 2019.

15 What do the plaintiffs say in their original
16 legal argument supporting their preferential trial
17 setting? As Nevada has long recognized, plaintiffs
18 with potentially terminal illnesses are entitled to a
19 trial on their claims within their expected lifetimes.
20 That is how they've interpreted the statute. Those are
21 their words from their motion. Her expected lifetime
22 is April of 2019. That expected lifetime simply cannot
23 justify forcing these defendants to trial in 2017 with
24 an inadequate time to prepare their defense. And
25 although we've asked for a year of discovery -- and I

1 know none of the other defendants are joining me in
2 this -- we would propose a compromise to the Court this
3 morning. Instead of a year of discovery, motion
4 practice, and a trial setting some time in the --
5 shorter than the normal course but still closer to her
6 expected lifetime, we would suggest setting a trial
7 setting within six months of today, well within her
8 expected lifetime in a period of time where she's
9 highly likely to have survived and a time which,
10 although still pressing and compressing deadlines, we
11 believe that Special Master Hale would be able to come
12 up with a new schedule within that time period that did
13 not deny the defendants substantial justice.

14 Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 **MR. KEMP:** Your Honor, let's start with
17 Mr. Roberts' argument which I'm shocked that he's
18 making today because he --

19 **MS. COURT RECORDER:** Court's indulgence. I'm
20 sorry, Your Honor.

21 **THE COURT:** Okay. I need to inform you of
22 this. I know this courtroom has seen many trials, but
23 we've had IT out here numerous times and our mics are
24 not very strong. So sometimes I'm asked to speak up.
25 We're in trial right now, and the witnesses can't be

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1 heard. So I'm not --

2 **MR. KEMP:** Can you hear me?

3 **THE COURT:** -- trying to be difficult. I
4 just want to make sure that it's picked up. It's not
5 picking up?

6 **MS. COURT RECORDER:** Now I am, Your Honor.

7 **MR. KEMP:** Let me start over again, Your
8 Honor.

9 **THE COURT:** Yes, please.

10 **MR. KEMP:** Will Kemp on behalf of plaintiffs.

11 **THE COURT:** Just I want all plaintiffs to
12 keep that in mind -- or all plaintiffs, defendants,
13 parties. This is going -- doing a trial has been
14 very -- remind each witness and each person
15 testifying --

16 **MR. KEMP:** Your Honor, as I started --

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

18 **MR. KEMP:** -- I'm very surprised that
19 Mr. Roberts dumped this letter on me at 3:33 yesterday,
20 and the reason I'm surprised is he conceded on the
21 record in front of Judge Jones that we met the
22 requirements of the statute. He argued to Judge Jones
23 that there was just too much to do and they couldn't
24 get it done under the -- and made it some big due
25 process argument, but he conceded on that record the

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1 point he spent 15 minutes arguing that we met the
2 requirements of the statute. And given that he dumped
3 it on me at 3:33 last night, I think I should be
4 allowed at least a brief period of time to get that
5 transcript printed up and provided to the Court to show
6 you how he's flip-flopped his position.

7 In any event, it's pretty clear that we do
8 meet the requirements of the statute. When we filed
9 the initial motion, we had a letter from Dr. -- I
10 pronounce his name Nguyen. It's N-g-u-w-e-n [sic]. So
11 that's who I'm referring to, Dr. Nguyen. We had a
12 letter from Dr. Nguyen. All the defendants complained,
13 oh, the letter's not sufficient, you have to have an
14 affidavit. So we supplemented with an affidavit in the
15 reply. That affidavit says pretty, pretty clearly --
16 and this was before the cancer further metastasized.
17 This was back on April -- excuse me, August 17th, I
18 believe. This is before the cancer further
19 metastasized, and he said in that particular affidavit
20 that the plaintiff in this case, Mrs. Barin, Dr. Barin,
21 has six months to live. I mean, it's -- like, no one
22 knows for sure, Your Honor. I'm not a mind reader.
23 Mr. Roberts isn't a mind reader. I can't tell you that
24 she's going to live six months and a day. I can't tell
25 you she's going to live three months and a day. None

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1 of the doctors can tell you that. But he clearly met
2 the requirements of the statute. So that's where we
3 were.

4 So at the hearing in front of Judge Jones,
5 the argument didn't have anything to do with
6 Dr. Barin's condition. And by the way, I point out
7 that after we filed that letter, they had two months to
8 go to depose Dr. Nguyen. They don't want to do that
9 because they don't want to know her true condition.
10 They want to run and waive these statistics in front of
11 the Court, which I'll get into in a minute.

12 So they have not deposed Dr. Nguyen. I've
13 offered to make Dr. Nguyen available to Mr. Roberts.
14 He doesn't want to hear what Dr. Nguyen, the treating
15 cancer doctor, has to say. He hasn't yet seen
16 Dr. Barin, which he'll see tomorrow. And I told him
17 last week, I said, "Go and look at the woman yourself.
18 Tell me with a straight face that you think you can
19 make an argument that she's going to live a year and a
20 half." Okay?

21 In any event, Your Honor, I don't even think
22 that should be an issue here because that wasn't part
23 of the initial motion for reconsideration. When
24 Michelangelo filed this six-page motion for
25 reconsideration, there is not one single word about the

1 medical condition, about whether we made -- met our
2 burden of proof on the medical condition, about whether
3 there's a substantial likelihood that she's going to
4 live. This all got added back in at 3:33 last night.
5 Okay? And my point is you cannot -- they're
6 sandbagging us on this issue, Your Honor.

7 If Mr. Roberts wants to take Dr. Nguyen's
8 deposition and Dr. Nguyen, you know -- and, really, I
9 pray he says this -- says, "Oh, she's going to live for
10 five years. We just found a miracle drug and we're
11 giving it to her and she's going to live for five
12 years," and then comes back to the Court, that's fine
13 with me. But that is not appropriate to file a letter
14 with the reply raising a brand-new issue that was not
15 raised in the motion for reconsideration.

16 So I don't even think it should be heard. I
17 don't contest his right to file another motion raising
18 that point, but it shouldn't be heard at the present
19 time.

20 And in any event, if it is heard, we filed an
21 affidavit of Dr. Nguyen. If you take a look back at
22 their oppositions to the original motion, they go on
23 and on about how the first letter that we filed is
24 incompetent evidence, can't be considered by the Court,
25 is blatant hearsay. And so what did they do? They

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1 filed the exact same letter and Mr. Roberts waives it
2 around like it's a gospel. Okay?

3 The letter they filed yesterday from the
4 so-called doctor, this is a doctor of statistics. He's
5 not a medical doctor. He's a doctor of statistics. He
6 hasn't even examined the patient. So all he has done
7 is plugged in what he thinks is the patient's medical
8 condition from the medical records, entered some
9 statistics that he doesn't attach even to the letter.
10 So, you know, talk about incompetence, Your Honor.

11 But in any event, like I said, not only is he
12 incompetent, that's not an issue before the Court.

13 Now let's go to the Bell Sports argument. In
14 the brief they filed, they make two arguments that
15 aren't made today but let me address them both. They
16 say, oh, Mr. Kemp was sitting on records for seven
17 days. Okay? And they take that statement -- they make
18 that up from a fax that was sent on 8/10 in our
19 production of records on 8/16. Well, the fax sent on
20 8/10 is the Coroner's fax. That's not the day we got
21 the records. We got the records on 8/15, and we gave
22 them to them the very next day. So they have misread
23 that. And if anything's in order, it's an apology.
24 But be that as it may, seven-day delay on records?
25 Even if that happened, that's a reason to continue a

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1 trial date? I don't think so, Your Honor.

2 The second point they say is, oh, Judge, we
3 have to continue the trial date because Mr. Kemp didn't
4 give us the gardener's address before the deposition.

5 In the very next line they say, quote, "He had moved so
6 recently that he did not even know his new address."

7 So I am supposed to give them the address, and at the
8 same time they concede that the gardener didn't even
9 know his new address at the time of the deposition. I
10 think that's inappropriate.

11 They also make some sort of argument in there
12 that we gave them a partial name, not the full Spanish
13 surname. Your Honor, I gave them the name I had, and
14 that is the name he's identified by. And if they can't
15 send an investigator out to Red Rock and say, well,
16 where is the gardener that usually gardens this area?
17 His name is Luis Scukaro (phonetic), well, shame on
18 them, Your Honor. That's not my fault.

19 When we were in front of Judge Jones, they
20 started out telling Judge Jones, Judge, it is
21 impossible, impossible, for Mr. Kemp to get the fact
22 discovery done. There's several witnesses we don't
23 know where they are. You know, there's lots of
24 paramedics. It's just impossible. That's going to
25 take six months to nine months. All right? Here we

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1 are 35 days later, and I have done all those
2 depositions. All 24, counting the two tomorrow, are
3 going to be done. We have done all seven fact
4 witnesses. All seven fact witnesses including the bus
5 driver to the accident. And we have done all the
6 paramedics. We have done all the first responders we
7 can find. We have done the Coroner and the Coroner
8 investigator. You know, basically there's no fact
9 witness left that I can depose now because I've deposed
10 them all. So the ones we have left are primarily
11 moving into the products case because basically the bus
12 case is done. I don't plan on taking any more bus
13 witnesses. So we have products witnesses left.

14 Now, Mr. Roberts says, oh, Judge, we never
15 get seven days to file our expert reports in this
16 jurisdiction. Well, he's right. He's right about
17 that. Usually they have to file them simultaneously.
18 The plaintiff and the defendants file their expert
19 reports at the same time. We did that in the propofol
20 cases. We did that in the HMO cases. I just got done
21 doing it in the Actos cases. So usually they don't
22 even get a week. So he's complaining about getting the
23 extra week to file expert reports.

24 What he's not telling the Court is that we
25 have filed interrogatory answers that set forth the

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1 four theories of liability against his company. One
2 the aerodynamic design; two, the right side blind spot;
3 three, the S-1 Gard; and four, the proximity sensors.
4 That's what we've been doing discovery on.

5 I have already taken the deposition of one of
6 his engineers in Canada, a New Flyer employee, that
7 wrote a letter saying the S-1 Gard is a fantastic
8 safety device and can be used on buses. That's what he
9 says at the lab. Your Honor, I'm paraphrasing a little
10 bit. But he knows the liability theory. I've already
11 deposed his engineer on it.

12 And on Tuesday we are deposing the inventor
13 of the S-1 Gard. So for Mr. Roberts to say, oh, Judge,
14 I can't prepare an S-1 Gard case, is just ridiculous.

15 With regards to the blind spot and the
16 proximity sensor case, proximity sensors are not a
17 difficult thing, Your Honor. I've got one on my car.
18 When a car comes up or a bike comes up next to me,
19 there's a red light that flashes in my mirror. Okay?
20 I have one. A lot of people have them. People know
21 what proximity sensors are, and the bus company knows
22 what proximity sensors are. We have already given to
23 Mr. Roberts e-mails we have culled from their discovery
24 where they had meetings with both Bendix and a place
25 called Wac Pro (phonetic) to make the proximity

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1 sensors. These two companies offered proximity sensors
2 to MCI, the bus company, and they said, no, we don't
3 want them. Okay? And I've asked him for the
4 depositions of the people that were involved in those
5 meetings.

6 The proximity sensor case is a very simple
7 case, Your Honor. There's no reason it can't be
8 prepared.

9 With regards to Bell, okay, you know, for
10 Mr. Stoberski to stand up and pretend there's some big
11 discovery problem here I think is totally
12 inappropriate. Because in front of Special Master
13 Hale, do you know how many motions to compel have been
14 filed the plaintiffs and the defendants in this case so
15 far, Your Honor? None. He has not filed a motion to
16 compel. He hasn't. Nobody's complained at all about
17 the disclosures made by the plaintiffs until we get to
18 court on the motion for preferential trial setting.
19 Then we hear all these complaints. But they'll tell
20 Special Master Hale, oh, Mr. Kemp's not giving me this,
21 that or the other thing. Not one single motion to
22 compel has been filed to date, and I think that's
23 because the parties work well together.

24 Mr. Stoberski did complain about our
25 interrogatory answers to me. We sat down, we had a

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1 meet and confer, and I told him we're going to provide
2 a supplement. I can't remember when we told him we'd
3 get them to him, but we will get them to him. We have
4 not -- we're deposing the first Bell person tomorrow.

5 But the bottom line is here we've taken 24
6 depositions, we've had no significant problems with
7 Judge -- that have been addressed to Special Master
8 Hale, and now all of the sudden discovery is a huge,
9 big problem. Now they say, well, Judge, we can't do
10 Mr. Kemp's experts because, you know, we just won't
11 have time. What they're forgetting to tell you is I
12 already filed the economist report three weeks ago, and
13 I noticed his deposition because he was going to go on
14 vacation for three weeks. And, true, he's going to be
15 back for the regular expert period, but I thought, an
16 economist, let's just knock it out. Okay? They refuse
17 to take his deposition. They don't want to take the
18 expert depositions, and the reason they don't want to
19 take the depositions is so they can stand up here in
20 court and say delay, delay, delay.

21 So not only did I offer them the deposition,
22 I noticed it and they wrote me a letter saying we
23 refuse to take it even though I've already filed the
24 report. And the report's pretty straightforward, Your
25 Honor. It's a wage loss claim. The doctor died. So

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1 they took his projected earnings and they discounted it
2 back down. You know, most of the time I don't even
3 take economist depositions, but it's not a hard
4 deposition to take. The real reason they didn't want
5 to take it is they wanted to stand in front of the
6 Court and say, oh, Judge, we haven't done expert
7 depositions yet.

8 The expert depositions schedule is staggered
9 also. I have to disclose my damages experts first
10 before they do. So not only have I filed the report
11 through this expert, my other damages experts, I will
12 probably file the report early as well, and I will
13 offer the deposition early as well.

14 So here we have people saying things are
15 impossible. The same people that said to Judge Jones
16 it's impossible to do fact discovery are now saying
17 it's possible to do expert discovery. Judge, it's not
18 impossible if you want to do it. I think we've already
19 proven that with the fact discovery.

20 My suggestion to Judge Jones -- and that's
21 why we're having the status check today -- is that we
22 allow Special Master Hale to proceed on the case. If
23 they have a real complaint rather than one they make up
24 to come to a preferential trial hearing, if they have a
25 real complaint, take it to Special Master Hale and

1 let's get it resolved. There hasn't been any appeals
2 to you from Special Master Hale's rulings, if you
3 notice. Not one single one.

4 And to be honest, the biggest argument we got
5 into with Special Master Hale during the entire case
6 was who got to go first at the bus driver's deposition.
7 That is the biggest argument we've gotten into in the
8 whole case.

9 **THE COURT:** I'm sorry. What was what?

10 **MR. KEMP:** Who got to go first. Whether I
11 got to go first or Mr. Roberts got to go first. So
12 Mr. Roberts wins and they say he gets to go first, and
13 he doesn't even come. He sends someone else, which is
14 commentary for another day.

15 But in any event, Your Honor, there have been
16 no significant problems with discovery. We've
17 completed, as I've said already, as of tomorrow we will
18 have done 24 of the fact witness depositions, including
19 Dr. Barin, and I think we're on track. I'm on track to
20 do my experts. And, remember, I have the burden of
21 proof. Okay? I have the burden of proof.

22 Last point I want to make is counsel for the
23 bus company stands up and says, Judge, we need to
24 depose Metro so Metro can tell us what the NRS statute
25 on lane changes means. Well, Metro is not here to

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1 interpret statutes, Your Honor. It's an NRS statute,
2 and the statute says that if a bus is passing a
3 bicyclist and there's two lanes of travel and a bike
4 lane and the bus can do so, it has to move over to the
5 far left lane. I have gotten every one of the seven
6 fact witnesses to say that the bus driver violated that
7 statute in this case, including the bus driver.
8 Yesterday the bus driver said he violated that statute,
9 and the reason he had to admit that is because we have
10 a videotape of the cars before and after the bus from
11 Red Rock. So clearly there's no cars before the bus,
12 there's no cars after the bus. He had a wide open lane
13 he could have moved into and avoided the whole
14 accident, and he admitted that yesterday.

15 Mr. Christiansen got him to admit that the accident
16 wouldn't have happened if he hadn't violated the
17 statute.
18 So now, now, we have a statute that the
19 defendant admits they violated so now counsel says, oh,
20 Judge, don't know what the statute means, it's a lane
21 change, don't know what it means, I have to depose
22 Metro so Metro can tell me what a statute means. Your
23 Honor, that's not Metro's place. That's the Court's
24 place. The Court can read Nevada Revised Statutes.
25 The Court can enter an appropriate jury instruction

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1 based on that statute, and the jury can decide whether
2 the statute's violated or not. Given the fact that the
3 driver himself admitted he violated the statute, I
4 don't think we have much of an issue here, and I intend
5 on filing a motion for summary judgment assuming the
6 bus company's around long enough to see that motion.

7 Last point I'd like to make is the same point
8 I made in front of Judge Jones. Here we are 60 days
9 before trial, Your Honor. When we stood in front of
10 Judge Jones we had five defendants. Now we have four.
11 Okay? The reason is one of them settled out, and I
12 would be surprised if 60 days from now before trial I
13 have four defendants. I've been surprised before, but
14 I would be surprised. Because I just don't think
15 that's going to happen.

16 But in any event, the time to determine
17 whether or not it's realistic to have a trial is not 60
18 days before trial. I would suggest the Court set
19 another status check 30 days out, take a look and see
20 how the expert disclosures have gone. Maybe defendants
21 are right, they're not going to -- they don't have time
22 to prepare expert reports so they're not going to file
23 any reports in this case. You know, that's possible.
24 I don't think so. I think those reports are in the can
25 already, but maybe I'm wrong. But in any event, why

1 are we guessing, Your Honor? We should just wait 30
2 days, do another status check, let Special Master Hale
3 continue to do his thing. If the doctor makes a
4 miraculous recovery, I will be the first one to tell
5 the defendants. If she takes a significant downturn, I
6 trust that the defendants will react accordingly.

7 But in any event, Your Honor, I think that
8 for the motion for reconsideration, that should
9 definitely be denied. There's nothing new or different
10 in that. That should be denied. On the status check,
11 I would suggest we do another status check in 30 days.
12 And I don't know if the Court has had a chance to talk
13 to Special Master Hale, but I encourage that.

14 **THE COURT:** I have not.

15 **MR. KEMP:** I think talking to Special Master
16 Hale you will see that he thinks he's got a handle on
17 this and that he's going to get this thing done. But
18 to suggest we throw out everything that he's done to a
19 point and what Judge Jones has done and the 24
20 depositions because Mr. Stoberski wrongfully thinks
21 that I sat on records for seven days I think is
22 inappropriate.

23 **MR. CHRISTIANSEN:** Judge, so the Court
24 understands, I represent Dr. Katie Barin and one of her
25 sons, one of her and the decedent's sons. And Mr. Kemp

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1 represents the estate and the other son.

2 So I'll be super brief, and this is to give
3 you two particular facts that the defendants just, as a
4 group, ignore. Dr. Katie Barin isn't a statistic.
5 She's a lady. All right? She's a very nice woman who
6 lost her husband because of the fault of the bus and
7 the bus driver, and she's got two teenage boys that she
8 thinks she needs to come to trial and talk to a jury
9 for. We're preserving -- I noticed her depo. I'm
10 going to preserve her testimony tomorrow because she's
11 super, super ill. And she's not just ill by some
12 statistic metastatic colon cancer. She's so sick that,
13 in addition to having ablations, chemotherapy, she
14 about, I'll tell you, 15 days or 18 days ago had to
15 have her gallbladder removed because her tumor is so
16 large it was pressing down on her gallbladder, and that
17 was basically -- you know, a gallbladder is typically,
18 you know, an outpatient procedure. It was a
19 life-or-death situation for Dr. Barin.

20 So she's not a statistic as this letter would
21 suggest. So I point that out to you.

22 And secondly, the effort to latch on to the
23 lack of Metro having a finalized report is absurd.
24 Your Honor knows full and well a Metro report would
25 never, ever in any state of any proceeding in this

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1 state come before a jury. Detective Salisbury, he may
2 have been on paternity leave or maternity leave,
3 whatever the appropriate word is for it. Ask the
4 defense which one of them has noticed his deposition.
5 He's not on Mars. He lives -- he's a Vegas cop.
6 Nobody's noticed his deposition. So this effort that,
7 hey, we can't find anything out, he's vital, we need
8 everything he's got, the fact witnesses were all taken
9 and it is especially disingenuous for Michelangelo,
10 through its counsel, to tell you they need the police
11 report when yesterday, when I'm deposing their driver,
12 I point out to them what the police report says he told
13 the cops, and I -- this is after Mr. Kemp's deposed him
14 for about three hours and it's my turn. And I say,
15 "Well, is this what you told the cops?" And he says,
16 "No, that's not what I told the cops."

17 So according to Mr. Hubbard, Michelangelo's
18 driver and the clients of Mr. Stephan, who's speaking
19 to you today saying Metro's desperately needed,
20 according to his own client, the driver yesterday who
21 he sat next to while he admitted to violating a statute
22 and killing my client -- my client's husband, I'm
23 sorry, he says Metro made it up, what he told him,
24 because it didn't conform to what he had to testify to
25 yesterday.

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1 So those two facts I thought bore mentioning
2 to Your Honor. Thank you very much.

3 **THE COURT:** Go ahead.

4 **MR. STOBERSKI:** Briefly, Your Honor, I'm just
5 going to jump around.

6 With regard to the Metro report, yes, Metro's
7 accident report doesn't come into evidence, but the
8 experts -- the accident reconstruction experts need to
9 rely on that report and they're entitled to rely on
10 that report under 50.085.

11 Why haven't we done motions to compel in
12 front of Special Master Hale? We asked to take a
13 discovery deposition of Dr. Barin. Mr. Christiansen
14 says she's too sick to sit. I'm going to go file a
15 motion to compel in front of Special Master Hale, I
16 don't care how sick she is, she's going to sit for a
17 deposition? No. We're trying to work this out and
18 wait until she's well enough that we can depose her.

19 So, you know, it's been a give-and-take.
20 And, you know, Mr. Kemp has set so many depositions
21 there's no time for the defendants to set anything yet.
22 Mr. Kemp has set everything so far. So our time is
23 coming, and now that it's our time, there's no time
24 left.

25 And in a normal case, yeah, expert

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1 disclosures are generally simultaneous. But then you
2 have 30 days to do your real report that's a rebuttal
3 report. We don't get that opportunity in this case.
4 There was no simultaneous disclosure, but because
5 there's no time in the disclosure schedule, we only
6 have a week to basically give our response. So that --
7 you know, even if we had a little bit more time, that's
8 still not sufficient. 30 days usually isn't sufficient
9 in a products case.

10 So, again, they're trying to fast-track this.
11 And at least as against Bell, we still don't know the
12 theories of liability. We're completely in the dark.
13 How Mr. Kemp can say that our expert reports are in the
14 can when we don't even know what theory they're
15 alleging against us is absolutely prejudice to my
16 client.

17 **MR. STEPHAN:** Your Honor, again, to be brief,
18 we have a preliminary report that was prepared at the
19 scene. The preliminary report shouldn't be the end of
20 the inquiry of course. Now, to be -- if -- we've used
21 this term many times -- to be fair, the preliminary
22 report says that my client was not at fault but that
23 doesn't end the inquiry. We have to go down and find
24 out the real facts around the accident and determine
25 whether or not, if there was a violation of statute,

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1 was that the proximate cause of the death? And that's
2 the critical question. I'm not asking for anything any
3 other defendant would not ask for in a case of such
4 high exposure, and that's the right to conduct the
5 defendants' discovery as to the critical witness and
6 the critical evidence that exists that no one has been
7 able to get. We haven't sat on not asking Metro for a
8 deposition. We have been told -- and obviously
9 everybody in this room, up to the Court staff, knows
10 that we've all been waiting for the deposition. And
11 then when we wanted to take the deposition, the
12 detective was on leave. So, as a courtesy, nobody did
13 anything.

14 So we did everything. In fact, everybody
15 chopped their schedules to do these 24 depositions. I
16 mean, there are people from out of state, all over the
17 place in this case. Everybody dropped what they were
18 doing because we think we had a duty at the last
19 hearing to do it. And Mr. Kemp has agreed, we've all
20 been there and we've done all of the discovery that we
21 could do, and it's the defendants' turn to do some
22 discovery we want to do. And I don't think it's fair
23 under this system that I'm told, well, you don't really
24 need to do your discovery. That's not a court.

25 Thank you.

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1 **THE COURT:** Thank you.

2 **MR. ROBERTS:** Addressing one of the specific
3 issues -- I won't respond to every specific issue, but
4 I do want to inform the Court of more details regarding
5 the economist. On August 31st, the Thursday before the
6 Labor Day holiday weekend, we received a letter
7 regarding the deposition of their economist for the
8 following Wednesday, 9/6. So we're talking about three
9 business days' notice to take the deposition of someone
10 who has just produced a report opining on \$15 million
11 in damages. It would have been malpractice to try to
12 take that deposition with that little notice. Not to
13 mention the fact that by statute we're entitled to 15
14 days' notice. And it wasn't a matter of simply we can
15 take it a week later. He was going to be unavailable
16 for a period of time. So, yes, we refused to take it
17 and waived the right to take it again on three business
18 days' notice. That was fair and reasonable for us to
19 do, and we were entitled to take his deposition with
20 adequate time to prepare to consult our own expert
21 regarding the damages for cross-examination topics and
22 proceed at a reasonable pace.

23 With regard to the one week, Mr. Stoberski
24 has already distinguish this from the typical case, and
25 the seven days compresses our original report and our

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1 rebuttal reports into one deadline.

2 An alternate way to look at this, however, is
3 how long do we have for our initial and rebuttal expert
4 reports from the beginning of fact discovery? Fact
5 discovery commenced on Monday, August 14th. August,
6 September, October. Two months between the beginning
7 of fact discovery and our final expert rebuttal
8 reports. And I repeat that that's never happened
9 before, I don't believe, in any product liability case
10 in the history of Clark County that a party is forced
11 to produce its final rebuttal reports within 60 days of
12 the beginning of discovery. And this isn't simply
13 notice of what the defect is because part of this is
14 causation, as I said.

15 Even if Mr. Kemp proves that the motor coach
16 is unreasonably dangerous without this S-1 Gard, which
17 no manufacturer has put as standard equipment on any
18 motor coach in the United States even though it's been
19 available for probably 20 years, there's still the
20 question of causation. Would it have made a
21 difference? Would he still have died had the S-1 Gard
22 been in place? And every fact witness that we've
23 taken, I don't think it's hyperbole to suggest that
24 every single fact witness has testified differently as
25 to the mechanism of death and how the bus contacted the

1 decedent.

2 So this is a complicated issue, and 60 days
3 from the beginning of fact discovery and notice of
4 their theories is simply not enough time as the facts
5 of how this happened continue to evolve through the
6 depositions that are taken.

7 Moving on to the argument that we don't have
8 standing to raise the issue as far as whether or not
9 the statute is met, Mr. Kemp has misconstrued somewhat
10 our opposition. If the Court will look at our original
11 opposition, page 4 of 7, we discuss the letter from
12 Dr. Anthony Nguyen outlining Dr. Barin's condition, and
13 we state that the letter does not state whether
14 substantial doubt exists that Ms. Barin would survive
15 more than six months. And so they haven't met the
16 statutory requirement. It's right there in our
17 original opposition. We didn't argue that it had to be
18 in the form of a declaration. We argued that the
19 letter did not meet the requirements of the statute.

20 So what happened? Five months before trial
21 in their reply brief they submit a declaration worded
22 exactly as the statute said, and I can see that they've
23 now got this worded as the statute said. But, Your
24 Honor, it's the goose/gander rule. Now I'm not allowed
25 to raise new things in my reply, but in support of

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1 their original motion they're allowed to put in for the
2 first time new evidence of the condition which I have
3 no opportunity at the time of the hearing to rebut and
4 I don't even have the records yet and can't rebut.

5 I do have the records now, and I have
6 submitted this. And if Mr. Kemp needs another week to
7 respond, he can respond and I'll concede that he's
8 entitled to that. I'm not trying to win by default
9 because these statistics come -- they're unrebuttable
10 as far as the statistical evidence goes.

11 And it was not our idea to rely on the
12 statistics rather than the actual condition of
13 Dr. Barin. In their initial motion, their opinion from
14 Dr. Nguyen is this type of illness raises a substantial
15 medical doubt that anyone who suffers from it will
16 survive for more than six months. They are the ones
17 who chose to make the issue whether anyone with this
18 condition would survive for more than six months, and
19 then they argue that we haven't opposed presumably
20 because everyone knows the survival rates for stage IV
21 cancer. So they rely on survival rates for stage IV
22 cancer which are not before the Court.

23 We now have the records to find out what
24 those survival rates are for her condition and they are
25 before the Court, and they simply don't meet their

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1 burden under the statute. If they want to have an
2 evidentiary hearing, if they want to file a rebuttal
3 report, then that's fair. But right now the only thing
4 before the Court is that the survival rate and the life
5 expectancy is 1.7 years from August 7th of 2017, and a
6 short continuance to allow reasonable discovery and
7 reasonable time for preparation of our defense would
8 still allow this trial to proceed well within
9 Dr. Barin's expected life expectancy.

10 Thank you, Your Honor.

11 **THE COURT:** Anyone else? Anyone else from
12 the defense?

13 Do you have anything else, plaintiff, from
14 plaintiffs?

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

16 **THE COURT:** Well, so we are at the status
17 check point. With respect to the statistics, I would
18 like more briefing on that. Okay?

19 **MR. KEMP:** Your Honor, can we have leave to
20 take the cancer doctor's deposition before we submit
21 that brief?

22 **THE COURT:** Absolutely.

23 **MR. KEMP:** Thank you.

24 **THE COURT:** It's tomorrow. Correct?

25 **MR. KEMP:** No. That's Dr. Barin's tomorrow.

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1 **THE COURT:** Okay. Dr. Barin --

2 **MR. KEMP:** They don't want to take the cancer
3 doctor yet. I'll have to set the deposition on his
4 schedule. I imagine I can get it done in two weeks.

5 **THE COURT:** Very good.

6 **MR. KEMP:** He is a doctor, though.

7 **THE COURT:** Anything else on the status
8 check?

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

10 **THE COURT:** Okay. All right. At this point
11 I am taking a look at many things, and with respect to
12 -- I have my notes from reviewing this. All right.
13 This had to do more with a motion to reconsider to be
14 honest with you. I need to speak louder. I know. I
15 apologize.

16 Okay. You have -- I understand that this
17 case is highly challenging and unique. I understand
18 products liability, and I understand the difficulty.
19 So the -- well, we're talking about the status check,
20 so I'm going to put the motion for reconsideration
21 aside. But you have in the hearing master, Mr. Hale, a
22 very competent person, and I'm going to continue to
23 have this trial move forward and discovery move forward
24 as -- as it is in the schedule that it is right now.
25 Okay? I do not believe it's impossible, and without

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1 getting into the legal issues of the motion for
2 reconsideration, I'm going to keep this going. I
3 believe -- especially, too -- and I understand that
4 this doesn't cover everything, but I have here sort of
5 like a grid. With respect to Motor Coach Industries,
6 Inc. their pro hac vice applications, Attorney Darrell
7 L. Barker or Barger?

8 **MR. ROBERTS:** Barger, Your Honor.

9 **THE COURT:** Thank you.

10 John C. Dacus, Brian Rawson, Michael G.
11 Terry, and David A. Dial have all been -- the moment I
12 get these, I review them and sign them as soon as
13 possible in order, from the Court's perspective, to try
14 to help expedite this.

15 Then, with respect to Bell Sports, we have
16 the same, the applications for pro hac vice have been
17 approved, James C. Ughetta, C. Scott Toomey, and Brian
18 Keith Gibson. Those were all done the moment that they
19 came across my desk.

20 And then with respect to Michelangelo Leasing
21 and Edward Hubbard, I've received petitions or a
22 request for pro hac vice by Paul E. Stephan, Jerry C.
23 Popovich, William J. Mall, and all of those went out on
24 July 21st. And, again, I've been trying to -- you
25 know, I have been signing -- reviewing them and signing

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1 them as they come in so that I can do everything
2 possible to make this case go forward.

3 Without getting to the motion for
4 reconsideration, I want this case on track. I want all
5 discovery done. I have fantastic attorneys in this
6 case. Seasoned, experienced, fantastic, and
7 resourceful attorneys in this case. Okay? I believe
8 this can be done, and I expect both parties to work in
9 good faith. For the plaintiff, I expect everything
10 that you are required to give to the defense as soon as
11 you have it. You know, just I expect good faith from
12 you just as I do from the defense to take that
13 information and also follow through with their
14 discovery. It is light speed. I'm not going to
15 pretend like this is easy, but I do believe it can be
16 done. So that is what I expect. In the status check,
17 that is my answer.

18 We are -- we have an order. This is set for
19 preferential setting. The date set follows the
20 required date of the statute, NRS 16.025, No. 2,
21 once -- once that was determined, we go to No. 3, A,
22 the Court shall set a date for the trial action that is
23 not more than 120 days after the hearing on the motion,
24 and the Court shall not continue the date of the trial
25 of the action beyond 120 days after the hearing on the

1 motion except for the physical disability of a party or
2 attorney in the action or for good cause entered on the
3 record.

4 I, at this point, expect everything to move
5 forward. If you'd like -- because I read somewhere in
6 the pleadings -- I don't know who proposed it. Perhaps
7 it was plaintiff, that we have another status check in
8 October. But let me be very clear. It's a status
9 check in this Court's view to understand that the case
10 is moving forward and on track. Okay? And that is
11 what I have to say concerning the status check.

12 **MR. STOBERSKI:** And, Your Honor, I just want
13 to ask for a clarification. You referred to Special
14 Master Hale's schedule. I want to make sure the Court
15 understands he put that schedule in place in light of
16 trial date.

17 **THE COURT:** Yes, I do. I do. And I
18 understand that this is a very unique circumstance and
19 it is -- it's a very difficult circumstance for all
20 parties. But the plaintiff still needs to prove her
21 case, and I expect the defense, all defendants, to move
22 forward and be very thorough. And I believe, given the
23 addition to counsel for all defendants, I believe all
24 expect for the Sevenplus Bicycles, I don't believe I've
25 received a request for pro hac vice from the bicycle --

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1 **MR. KEMP:** Your Honor, they've settled.

2 **THE COURT:** Okay. Then perhaps that's why.
3 But I wanted to be very careful in viewing this. We've
4 added -- the Court has allowed to add very seasoned and
5 very capable lawyers, and I expect them to move
6 forward. That's it.

7 **MR. KEMP:** Thank you, Your Honor.

8 **MR. ROBERTS:** Thank you, Your Honor.

9 **THE COURT:** Have a good day.

10 **MR. CHRISTIANSEN:** Thank you, Your Honor.

11 **THE COURT:** Do you wish a status check date
12 in October?

13 **MR. KEMP:** Yes, Your Honor.

14 **THE COURT:** Our trial is November 20? Okay.
15 So I'm open in October. When would you like to come
16 in?

17 **MR. KEMP:** Judge, we're doing the plaintiffs'
18 depositions starting the week of October 9th and
19 probably continue the week of October 16th. So I would
20 ask that it be after those two-week periods because
21 we're going to be producing the plaintiffs' experts for
22 depositions.

23 **MR. ROBERTS:** October 10th through
24 potentially November I will be with Judge Denton. I
25 understand he's in a jury trial. I understand he's

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1 dark on Mondays and Friday mornings. So if the Court
2 could indulge us with a Monday hearing or a Thursday or
3 a Friday morning hearing?

4 **THE COURT:** I'm happy to -- I don't usually
5 have a calendar on Monday, but I'm happy to make that
6 available in order -- anything this Court can do to
7 help both the defense and the plaintiffs move forward,
8 I'm happy to do but --

9 **MR. CHRISTIANSEN:** How about the 27th, Your
10 Honor? That's a Friday for Mr. Roberts. And it's
11 after the...

12 **THE CLERK:** That's going to be Nevada Day.

13 **MR. CHRISTIANSEN:** Oh, it may be. I'm sorry.

14 **MR. KEMP:** The 26th.

15 **THE COURT:** It would only be --

16 **MR. CHRISTIANSEN:** Are we closed on the 30th?
17 I don't think so. If we're closed on the 27th, we're
18 open the following Monday which Mr. Roberts could also
19 do.

20 **THE CLERK:** And you don't have anything on
21 your calendar.

22 **THE COURT:** 30th of October. Okay?

23 **THE CLERK:** October 30th, 9:30 a.m.

24 **MR. CHRISTIANSEN:** Thank you, Your Honor.

25 *(Whereupon, the proceedings concluded at*

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1 10:46 a.m.)

2 -o0o-

3 ATTEST: I hereby certify that I have truly and
4 correctly transcribed the audio/video proceedings in
the above-entitled case to the best of my ability.

5
6
7 
8 Amber M. McClane, CCR No. 914

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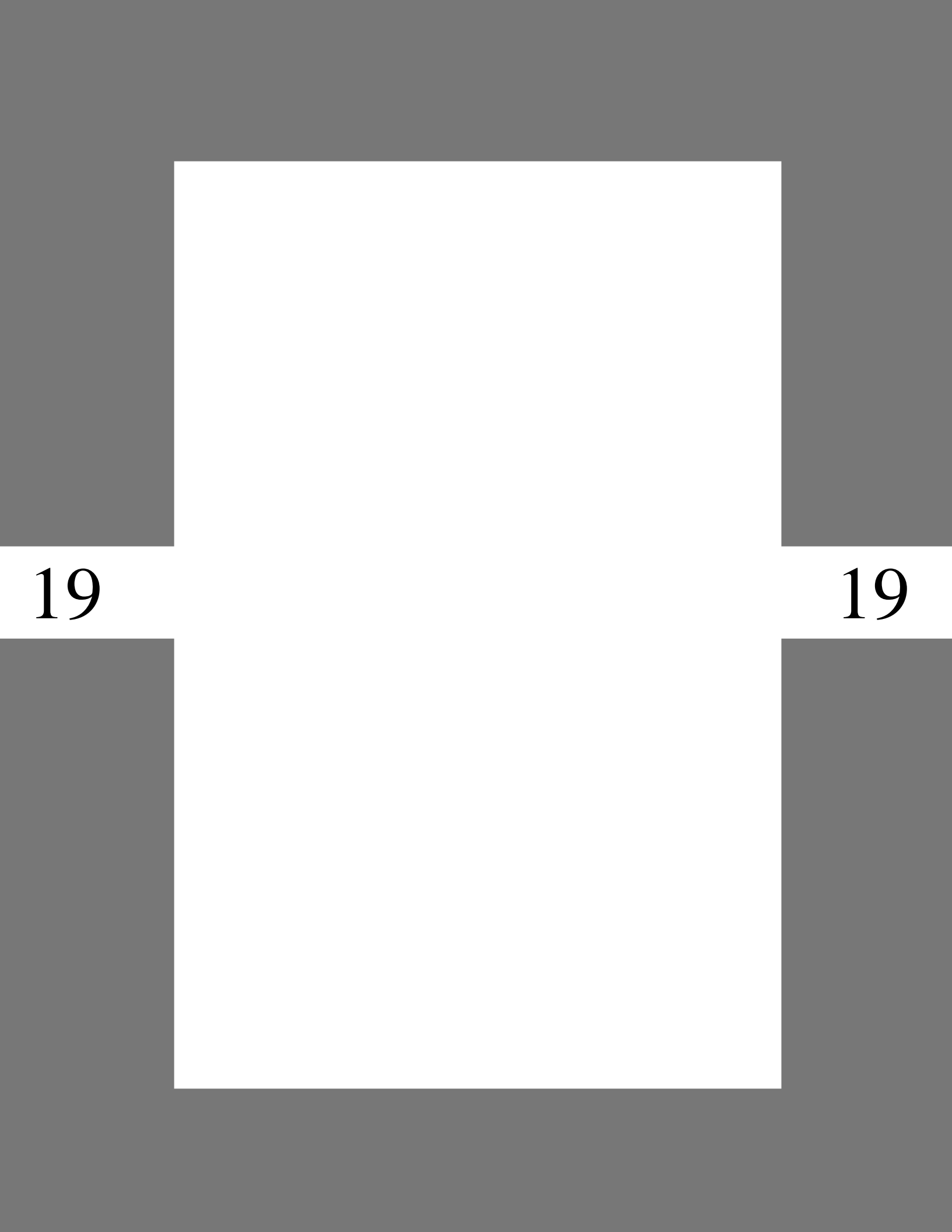
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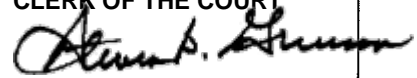
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Attorneys for Defendant,
SEVENPLUS BICYCLES, INC
d/b/a **PRO CYCLERY**

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,

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 NO.: XIV

**DEFENDANT SEVENPLUS BICYCLES,
INC d/b/a PRO CYCLERY'S MOTION
FOR DETERMINATION OF GOOD FAITH
SETTLEMENT**

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DEFENDANT SEVENPLUS BICYCLES, INC d/b/a PRO CYCLERY'S
MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

COMES NOW, Defendant, SEVENPLUS BICYCLES, INC d/b/a PRO CYCLERY (hereinafter "SevenPlus" and/or "Defendant"), by and through its counsel of record, the law offices of Murchison & Cumming, LLP, and hereby files this Motion for Determination of Good Faith Settlement.

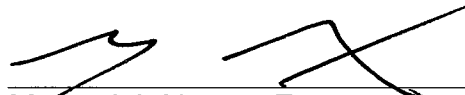
Specifically, Defendant requests that this Court enter an Order affirming that the settlement between Plaintiffs and SevenPlus was entered into in good faith. SevenPlus also request that the Order be certified pursuant to NRCP 54(b), that SevenPlus be dismissed in their entirety from this lawsuit as a party and that all claims which could be made against SevenPlus, including claims to indemnity and contribution, be discharged pursuant to NRS 17.245.

This Motion is made and based upon the pleadings and papers on file herein, the attached memorandum of points and authorities, and any and all arguments of counsel which the Court may entertain at the time of hearing.

DATED: September 22, 2017

MURCHISON & CUMMING, LLP

By



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350 Rampart Blvd., Suite 320
Las Vegas, Nevada 89145
Attorneys for Defendant
SEVENPLUS BICYCLES, INC
d/b/a PRO CYCLERY

///

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the undersigned will bring **DEFENDANT SEVENPLUS BICYCLES, INC d/b/a PRO CYCLERY'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT** on for hearing in Dept. XIV of the above-entitled Court on the 24 day of **OCTOBER**, 2017 at 9:30 a.m./p.m., or as soon thereafter as this matter may be heard.

DATED: September 22, 2017

MURCHISON & CUMMING, LLP

By 

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350 S. Rampart Blvd., Suite 320
Las Vegas, Nevada 89145
Attorneys for Defendant
SEVENPLUS BICYCLES, INC
d/b/a PRO CYCLERY

///

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MEMORANDUM OF POINTS AND AUTHORITIES**I.****STATEMENT OF FACTS****A. Pleadings, Parties and Background Information**

On April 18, 2017, a tour bus owned and operated by Defendant Michelangelo Leasing Inc. (d/b/a Ryan's Express) struck the bicycle operated by 51-year-old Dr. Kayvan Khiabani and caused severe injuries that ultimately killed the doctor. The bus, which was made in 2008 by Defendant Motor Coach Industries, Inc, was being driven by Defendant Edward Hubbard. At the time of the incident, Dr. Khiabani was wearing a Giro helmet made by Defendant Bell Sports, Inc.

Defendant SevenPlus is simply the retail store that sold the decedent his bicycle and helmet, as well as related accessories. Plaintiffs filed their amended complaint on June 6, 2017, citing strict liability, breach of implied warranty and wrongful death against SevenPlus.

Plaintiffs' claims against Defendants Motor Coach Industries, Inc, Michelangelo Leasing Inc. d/b/a Ryan's Express, Edward Hubbard and Bell Sports, Inc d/b/a Giro Sport Design remain active.

B. Settlement

SevenPlus and Plaintiffs have reached a mutual agreement to resolve Plaintiffs' claims against SevenPlus in this matter. That settlement agreement between Plaintiff and SevenPlus is now the subject of this Motion.

Pursuant to the settlement agreement, the Parties have agreed to settle the above-described claims for Ten Thousand Dollars and 00/100 Cents (\$10,000.00). As such, SevenPlus, by and through their counsel, agreed to payment of the above sum in exchange for a full and final release of each and every claim against them.

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II.

LEGAL ARGUMENT

A. Standards Applicable to Motion for Determination of Good Faith Settlement

Given the extensive negotiations between the Plaintiffs and SevenPlus, an Order granting SevenPlus' Motion for Determination of Good Faith Settlement is appropriate. NRS 17.245(1)(b) provides in pertinent part, as follows:

1. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury of the same wrongful death:
 - a. It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater, and
 - b. it discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.
2. As used in this section, "equitable indemnity" means a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

As discussed below, the factors to be considered when applied to this case, demonstrate that the settlement agreement was entered into in good faith and that said amount being paid by SevenPlus falls within the range of its potential exposure in this matter. SevenPlus' Motion, therefore, should be granted.

The Nevada Supreme Court has provided guidelines for the Court to utilize when determining whether a settlement was made in good faith. In *The Doctors Co. v. Vincent*, 120 Nev. 644, 652, 98 P.2d 681, 687 (2004), the Supreme Court stated that the District Court is to consider the factors outlined in *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913 (D. Nev. 1983), as well as to use its discretion, as provided for in *Velsicol Chemical Corp. v. Davidson*, 107 Nev.356, 811 P.2d 561 (Nev. 1991). The Supreme Court, in *The Doctors Co.*, also stated that the Nevada Legislature has addressed the extinguishment of equitable/implied indemnity claims, as well as contribution claims, through the enactment of NRS 17.245. *Id.* at 120 Nev. 650-655, 98 P/3d 686-689.

1 Utilizing the guidance provided by the Nevada Supreme Court, the factors set forth in
2 *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp. at 927, to be considered by the Court are
3 the following:

- 4 1. The amount paid in settlement;
- 5 2. The allocation of the settlement proceeds among plaintiffs;
- 6 3. The insurance policy limits of settlement defendants;
- 7 4. The financial condition of settlement defendants; and
- 8 5. The existence of collusion, fraud or tortuous conduct aimed to injure the
9 interests of non-settling parties.

10 1. The Amount Paid in Settlement:

11 As stated herein, SevenPlus have agreed to pay Plaintiffs Ten Thousand Dollars
12 (\$10,000.00). This agreement was reached after negotiations between the parties. As such,
13 this was not a nuisance value settlement.

14 2. The Allocation of the Settlement Proceeds:

15 There are four Plaintiffs in this case and no Third Party Plaintiffs. As such, the entire
16 settlement amount that SevenPlus have agreed to pay Plaintiffs in this matter, Ten Thousand
17 Dollars (\$10,000.00), should be allocated entirely to Plaintiffs and Plaintiffs' Counsel. Plaintiffs
18 and their counsel will allocate specific settlements amongst the four plaintiffs.

19 3. The Insurance Policy Limits of Settling Third-Party Defendant:

20 The amount of the insurance policy limits of the settlement party is not relevant as there
21 are sufficient limits for the nature of the claims alleged by plaintiffs and a copy of the policy was
22 provided to plaintiffs for consideration during settlement discussions. As such, this particular
23 factor is not relevant to the pending settlement.

24 4. The Financial Condition of Settling Third-Party Defendant:

25 The financial condition of SevenPlus has played a direct role in reaching this settlement
26 and settlement sums are being satisfied through insurance.

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1 5. The Existence of Collusion, Fraud or Tortuous Conduct Aimed to Injure the
2 Interests of Non-Settling Parties:

3 As stated herein, the parties engaged in substantial settlement negotiations. The
4 agreement to settle was based upon a careful analysis of the issues, the evidence, and the
5 costs of further litigation between the settling Parties.

6 The settlement discussions have been at arms length, have not been collusive or
7 fraudulent in any matter nor were they intended to injure the interests of the non-settling
8 parties, Motor Coach Industries, Inc, Michelangelo Leasing Inc. d/b/a Ryan's Express, Edward
9 Hubbard and Bell Sports, Inc d/b/a Giro Sport Design. Instead, the settling party, after careful
10 consideration and consultation with its counsel has determined that a settlement at this time is
11 necessary and appropriate.

12 Based upon all of the above, the settlement in the amount of \$10,000.00 is fair and
13 equitable. As such, the settlement should be approved by this Court as being in good faith
14 and consistent with the purpose and requirements of NRS 17.245.

15 **B. All Necessary Parties Are Joined in the Action According to Blaine**

16 In *Blaine Equipment Company, Inc. v. The State of Nevada*, 138 P.3d 820 (2006), the
17 Nevada Supreme Court held, *sua sponte*, that the District Court erred by not joining a
18 necessary party to the action because complete relief could not be accorded in the necessary
19 party's absence. The Court remanded the case back to the District Court and directed that the
20 party be added so that final resolution of the case could be achieved. The Court based this
21 ruling on the fact that all necessary parties were not involved in the case, so a full and final
22 decision could not be made. In this case, the parties have determined that there are no other
23 parties to be joined on the issues that exist in this case in order to achieve final resolution, as it
24 pertains to SevenPlus. Therefore, the Court should be satisfied that there is no other party that
25 could be jeopardized by a finding of good faith in this case.

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28**III.**
CONCLUSION

SevenPlus has reached a settlement in the amount of \$10,000.00 with Plaintiffs as to Plaintiffs' claims relating injuries that lead to the death of Dr. Kayvan Khiabani on April 18, 2017. As such, SevenPlus respectfully request that this Court grant said Motion and enter an Order affirming that the settlement to be paid by SevenPlus has been made in good faith.

DATED: September 22, 2017

MURCHISON & CUMMING, LLP

By 

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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 350 South Rampart Boulevard, Suite 320, Las Vegas, Nevada 89145.

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 State of Nevada that the foregoing is true and correct.

Executed on September 22, 2017, at Las Vegas, Nevada.


Nicole Garcia

SERVICE LIST**Keon Khiabani, et. al. vs. Motor Coach Industries, et. a l.**

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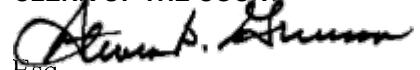
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Steven D. Grierson

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DISTRICT COURT**CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,
 minors by and through their natural mother,
 KATAYOUN BARIN; and 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/v/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'S NOTICE OF FILING
NOTICE OF REMOVAL**

To: Clerk, District Court of Clark County, Nevada **Re: Case Number A-17-755977-C**

To: Will Kemp, Esq.
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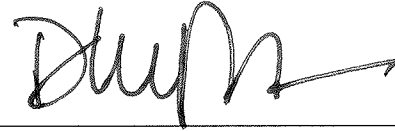
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Attorneys for Plaintiffs

YOU WILL PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1446, Defendant **Motor Coach Industries, Inc. ("MCI")**, properly removed this case to the United States District Court for the District of Nevada. A copy of the Notice of Removal is attached.

DATED this 17 day of October, 2017.



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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2017, a true and correct copy of the foregoing **DEFENDANT'S NOTICE OF FILING NOTICE OF REMOVAL** 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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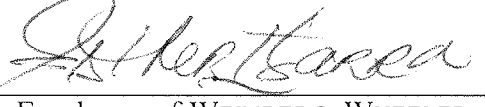
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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

KEON KHIABANI and ARIA KHIABANI,
 minors by and through their natural mother,
 KATAYOUN BARIN; and 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.

Case No.: _____

**MOTOR COACH INDUSTRIES, INC.'S
 NOTICE OF REMOVAL**

1 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that Defendant MOTOR COACH INDUSTRIES, INC. ("MCI")
3 removes this action from the Eighth Judicial District Court for Clark County, Nevada to the
4 United States District Court for the District of Nevada. Federal jurisdiction exists over this
5 proceeding pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because there is complete diversity
6 among the remaining viable parties and because the amount in controversy exceeds \$75,000. In
7 support of removal, MCI states:

8 **BACKGROUND**

9 1. This is an action alleging product liability against MCI.

10 2. Plaintiffs allege that Kayvan Khiabani was fatally injured when he was involved in
11 a collision with a motor coach sold by MCI, while Dr. Khiabani was riding a bicycle. Plaintiffs
12 allege that the motor coach was defective, unfit and unreasonably dangerous for its foreseeable
13 use. Amended Complaint ("Am. Compl.") ¶ 25.

14 3. Plaintiffs further allege that MCI failed to warn of dangers that were known or
15 should have been known by MCI. Am. Compl. ¶ 26. Plaintiffs' claims against MCI are based on
16 strict liability. *Id.*, First Claim for Relief.

17 4. Plaintiffs initially also brought claims against Michelangelo Leasing, Inc. d/b/a
18 Ryan's Express, the owner and operator of the bus; Edward Hubbard, the alleged driver of the bus
19 at the time of the incident; Bell Sports, Inc. d/b/a Giro Sport Design, the manufacturer of the
20 bicycle helmet the decedent was wearing at the time of the incident; and SevenPlus Bicycles, Inc.
21 d/b/a Pro Cyclery, which allegedly sold both the helmet and bicycle involved in the accident.

22 5. Plaintiffs have now settled with Michelangelo Leasing, Inc. d/b/a Ryan's Express,
23 Edward Hubbard, Bell Sports, Inc. d/b/a Giro Sport Design, and SevenPlus Bicycles, Inc. d/b/a Pro
24 Cyclery, for confidential amounts not germane to this Notice. MCI is the only remaining
25 Defendant as explained further below.

26 ///

27 ///

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
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IDENTITIES OF PARTIES

6. Plaintiff Katayoun Barin, the spouse of the decedent, is alleged to be a resident of Nevada. Am. Compl. ¶ 2.

7. Plaintiff Keon Khiabani, a minor son of the decedent, is alleged to be a resident of Nevada. Am. Compl. ¶ 1.

8. Plaintiff Aria Khiabani, a minor son of the decedent, is alleged to be a resident of Nevada. Am. Compl. ¶ 1.

9. Plaintiffs Keon Khiabani and Aria Khiabani claim to bring this action as “minors, by and through their natural mother, KATAYOUN BARIN.” Am. Compl. at Introductory Paragraph, page 2:1-2. Dr. Barin is alleged to be a citizen of Nevada. Am. Compl. ¶ 2. For the purpose of diversity, “the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.” 28 U.S.C. § 1332(C)(2). Although Dr. Barin, the legal representative of the minor children, was also a citizen of Nevada at the time this action was filed, this fact is not relevant to diversity jurisdiction.

10. The Amended Complaint alleges that Plaintiff Katayoun Barin “is a duly authorized Executrix of the Estate of Kayvan Khiabani, M.D. (Decedent).” Am. Compl. ¶ 3. The Amended Complaint further alleges that “[a]s Executrix, Katy Barin is authorized to bring this action on behalf of the Estate of Kayvan Khiabani, M.D. (Decedent). *Id.* Dr. Barin is alleged to be a citizen of Nevada. Am. Compl. ¶ 2.

11. The Amended Complaint does not allege the citizenship of Plaintiff the Estate of Kayvan Khiabani, M.D. (Decedent). The Amended Complaint, however, does allege that the Decedent Kayvan Khiabani, M.D. resided in Clark County, Nevada at the time of his death. Am. Compl. ¶ 2. For the purpose of diversity, “the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent.” 28 U.S.C. § 1332(C)(2). Therefore, the Estate of Kayvan Khiabani, M.D. (Decedent) is a citizen of Nevada. Although Dr. Barin, the legal representative of the Estate of Kayvan Khiabani, M.D. (Decedent), was also a citizen of Nevada at the time this action was filed, this fact is not relevant to diversity jurisdiction.

12. Defendant MCI is a Delaware corporation, Am. Compl. ¶ 4, with its principal place of business in Illinois.

13. The remaining Defendants (collectively the “Settling Defendants”) have all settled Plaintiffs’ claims against them, and therefore their citizenship is irrelevant for purposes of removal. In analyzing complete diversity, the citizenship of nominal or formal parties need not be considered. “Defendants who are nominal parties with nothing at stake may be disregarded in determining diversity, despite the propriety of their technical joinder.” *Strotek Corp. v. Air Transport Ass’n. of America*, 300 F.3d 1129, 1133 (9th Cir. 2002).

14. Although a formal dismissal of the Settling Defendants has not been entered, and administrative approvals of good faith and minor’s compromise remain, the Settling Defendants became only formal and nominal parties once settlement was reached. If necessary, the case can be severed and the nominal parties returned to state court.

15. Plaintiffs have no remaining claims against the Settling Defendants. The citizenship of the Settling Defendants is therefore of no consequence given that the only remaining claims are against MCI, a diverse Defendant.

16. Because all Plaintiffs are citizens of the State of Nevada and MCI is not, complete diversity exists under 28 U.S.C. § 1332.

17. Counsel for Plaintiffs informed MCI yesterday, October 16, 2017, that Plaintiff Katayoun Barin died on October 12, 2017. Plaintiff Katayoun Barin was an individual plaintiff and was also the only representative of the Estate and the minor children as set forth above. No suggestion of death has been filed in the state court action, despite the obligation of the Plaintiffs to do so. Although the unfortunate death of Dr. Barin will require a stay until the proper parties in interest are substituted pursuant to Rule 25(a)(1), it is not relevant to this Notice of Removal.

TIMELINESS OF REMOVAL

18. Plaintiffs filed their Complaint in this matter on May 25, 2017, in the District Court of Clark County, Nevada. Plaintiffs filed an Amended Complaint on June 6, 2017.

///

1 19. Defendant MCI acknowledged service of Plaintiffs' original Complaint on June 1,
2 2017.

3 20. At the time of MCI's acceptance of service, a non-diverse party (Edward Hubbard)
4 was still joined in this action.

5 21. Less than thirty days after MCI's acceptance of service, Plaintiffs added another
6 non-diverse party (SevenPlus Bicycles, Inc. d/b/a Pro Cyclery) by way of Amended Complaint.

7 22. Now that Plaintiffs have settled with all other Defendants, the only claims
8 remaining are against MCI, and all properly joined parties are now diverse.

9 23. MCI was notified of the settlements between Plaintiffs and the Settling Defendants
10 on September 25, 2017, which representation was memorialized by the Special Master in the State
11 Court action. Exhibit 30 attached hereto.

12 24. Out of an abundance of caution, MCI has calculated its time to remove based on
13 the possibility that this Court finds that the attached Special Master Report of September 27, 2017,
14 was an "order or other paper from which it may first be ascertained that the case is one which is or
15 has become removable." 28 U.S.C. § 1446.

16 25. Therefore, this notice of removal is timely filed within thirty (30) days after MCI's
17 receipt of a paper that provided evidence that this case was removable as required by 28 U.S.C.
18 §1446(b).

19 **DIVERSITY OF CITIZENSHIP EXISTS BETWEEN THE PARTIES**
20 **WITH A VIABLE CONTROVERSY**

21 26. The Amended Complaint alleges that Plaintiffs are all citizens of Nevada.

22 27. For the purposes of determining diversity, a corporation is deemed a citizen of both
23 the state of its incorporation and the state where it has its principal place of business. *See* 28
24 U.S.C. § 1332(c)(1).

25 28. The Amended Complaint alleges that MCI is a Delaware corporation.

26 29. MCI maintains its principal place of business outside the State of Nevada, in
27 Illinois.

AMOUNT IN CONTROVERSY

30. Plaintiffs have alleged damages “in excess of” \$15,000.00. Am. Compl., ¶¶ 30-34. The Nevada Rules of Civil Procedure prohibit the stating of a higher amount of damages in the Complaint. *See* NRCP Rule 8(a).

31. It is well-settled among Ninth Circuit courts that, where the amount in controversy is not specifically stated in an *ad damnum* clause, the defendant need only show by a preponderance of the evidence that the complaint alleges damages in excess of \$75,000. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 375-76 (9th Cir. 1997).

32. On July 11, 2017, Plaintiffs filed a Request for Exemption from Nevada’s mandatory arbitration program, and alleged that they sought damages “far in excess of the threshold arbitration amount of \$50,000.00”. *See* Exhibit 14 hereto. In fact, Plaintiffs stated that they sought special and general damages “many millions more” than the presumptive \$50,000.00 recoverable through arbitration. *Id.*

33. Further, on August 28, 2017, Plaintiffs served an expert report from Larry D. Stokes, Ph.D., in which the expert estimated Plaintiffs’ economic losses from the loss of Dr. Khiabani’s earnings *alone* to be in excess of \$15,000,000.00. *See* Exhibit 26 hereto.

34. Based on the amount in controversy, removal is proper 28 U.S.C. 28 § 1332(a).

VENUE

35. Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a)-(b). The state court in which this action was filed lies within the division and district of the United States District Court wherein this Notice of Removal is filed.

WRITTEN NOTICE OF REMOVAL

36. Written notice of the filing of this NOTICE OF REMOVAL is concurrently being served on the Clerk of the District Court of Clark County, and counsel for all parties, as required by 28 U.S.C. § 1446(d).

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COPIES

37. Pursuant to 28 U.S.C. §1446(a), Defendant is required to attach copies of “all process, pleadings and orders served upon” Defendant in this action. Defendant attaches the following:

EX	DOCUMENT	DATE	BATES: EJDC
1	Complaint and Demand for Jury Trial	5/25/2017	001-017
2	Summons to Motor Coach Industries, Inc.	5/26/2017	018-034
3	Amended Complaint and Demand for Jury Trial	6/6/2017	035-037
4	Defendants Michaelangelo Leading, Inc. dba Ryan's Express and Edward Hubbard's Answer to Plaintiffs' Amended Complaint	6/28/2017	038-073
5	Initial Appearance Fee Disclosures (NRS Chapter 19)	6/28/2017	074-077
6	Defendant Sevenplus, Bicycles, Inc. dba Pro Cyclery's Answer to Plaintiffs' Amended Complaint	6/30/2017	078-098
7	Defendant Motor Coach Industries, Inc.'s Answer to Plaintiffs' Amended Complaint	6/30/2017	099-115
8	Defendant Sevenplus Bicycles, Inc. dba Pro Cyclery's Initial Appearance Fee Disclosure	6/30/2017	116-119
9	Defendant Bell Sports, Inc.'s Answer to Plaintiffs' Amended Complaint	7/3/2017	120-134
10	Defendant Bell Sports, Inc.'s Initial Appearance Fee Disclosure	7/3/2017	135-139
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12	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	7/5/2017	144-150
13	Order Admitting to Practice, Darrell L. Barger, John C. Dacus, and Brian Rawson	7/11/2017	151-153
14	Request for Exemption from Arbitration	7/11/2017	154-159
15	Order Granting Plaintiffs' Motion for Preferential Trial Setting	7/20/2017	160-164
16	Commissioner's Decision on Request for Exemption	7/26/2017	165-168
17	Order Admitting to Practice - Brian Keith Gibson	8/11/2017	169-171

EX	DOCUMENT	DATE	BATES: EJDC
18	Order Admitting to Practice - C. Scott Toomey	8/11/2017	172-174
19	Case Management Order	8/16/2017	175-182
20	Special Master Order	8/18/2017	183-185
21	Order Admitting to Practice	8/23/2017	186-189
22	Special Master Report	8/24/2017	190-191
23	Stipulated Protective Order	8/24/2017	192-201
24	Order Admitting to Practice	8/24/2017	202-204
25	Order Admitting to Practice – Ughetta	8/25/2017	205-207
26	L. Stokes Report	8/28/2017	208-221
27	Order Admitting to Practice	9/6/2017	222-224
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29	Special Master Report and Order Allowing Motor Coach Industries to Commence Edward Hubbard Deposition	9/12/2017	232-236
30	Special Master Report	9/27/2017	237-239
31	Special Master Report Regarding Dr. Jack E. Hubbard Deposition	10/3/2017	240-243
32	Special Master Report	10/10/2017	244-246

WHEREFORE, Defendant Motor Coach Industries, Inc. hereby removes the above-captioned action from the Eighth Judicial District Court of Clark County, Nevada to the United States District Court, District of Nevada.

DATED this 17 day of October, 2017.



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13 *Attorneys for Defendant*
14 *Motor Coach Industries, Inc.*
15
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27

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2017, a true and correct copy of the foregoing **MOTOR COACH INDUSTRIES, INC.'S NOTICE OF REMOVAL** was served by e-service, in accordance with the Electronic Filing Procedures of the United States District Court.

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***Attorney for Defendants Michelangelo
Leasing Inc. d/b/a Ryan's Express and
Edward Hubbard***

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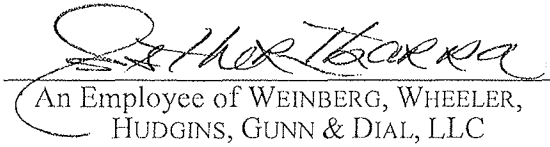
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Pleadings Index			
(Khiabani v. Motor Coach Industries, Inc.; et al.)			
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EXHIBIT 1

000340

000340

EXHIBIT 1

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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 Kendele

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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.

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

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

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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.

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

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

7 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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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.
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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

6 **SECOND CLAIM FOR RELIEF**
7 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**
8 **AND EDWARD HUBBARD)**

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

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

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

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

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

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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.

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

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

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

67. 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).

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

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

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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


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 ERIC PEPPERMAN, ESQ. (#11679)
 3800 Howard Hughes Parkway, 17th Floor
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-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

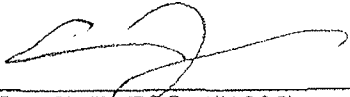
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1 **DEMAND FOR JURY TRIAL**

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

5 DATED this 25 day of May, 2017.

6 KEMP, JONES & COULTHARD, LLP

7 
8
9 WILL KEMP, ESQ. (#1205)
10 ERIC PEPPERMAN, ESQ. (#11679)
11 3800 Howard Hughes Parkway, 17th Floor
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13 -and-

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19 *Attorneys for Plaintiffs*
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EXHIBIT 2

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EXHIBIT 2

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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 Kendele

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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. 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.

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

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

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

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

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

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

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

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

7 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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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.
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28

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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

6 **SECOND CLAIM FOR RELIEF**

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

8 **AND EDWARD HUBBARD)**

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

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

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

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

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

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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

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

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

24 42. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
25 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.
26

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28 ///

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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.

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

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

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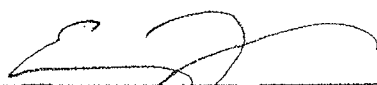
PRAYER FOR RELIEF

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)
 CHRISTIANSEN LAW OFFICES
 810 South Casino Center Blvd.
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Attorneys for Plaintiffs

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DATED this 25 day of May, 2017.



-and-

Attorneys for Plaintiffs

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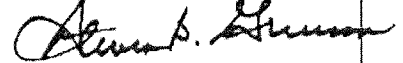
EXHIBIT 2

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EXHIBIT 2

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Steven D. Grierson
CLERK OF THE COURT



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8 Las Vegas, Nevada 89101
Telephone: (702) 240-7979

9 *Attorneys for Plaintiffs*

DISTRICT COURT

COUNTY OF CLARK, NEVADA

12 KEON KHIABANI and ARIA KHIABANI,
13 minors by and through their natural mother,
14 KATAYOUN BARIN; KATAYOUN BARIN,
individually;

15 Plaintiffs,

16 vs.

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

22 Defendants.

Case No. A-17-755977-C

Dept. No. XXXI

SUMMONS

23 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT
24 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

25 TO THE DEFENDANT: MOTOR COACH INDUSTRIES, INC., a Delaware Corporation

26 A civil Complaint has been filed by the plaintiff against you for the relief set forth in the
Complaint.

27 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
28 you exclusive of the day of service, you must do the following:

(a) File with the Clerk of this Court, whose address is shown below, a formal written

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1 response to the Complaint in accordance with the rules of the Court.

2 (b) Serve a copy of your response upon the attorney whose name and address is
3 shown below.

4 2. Unless you respond, your default will be entered upon application of the plaintiff and
5 this Court may enter a judgment against you for the relief demanded in the Complaint, which could
6 result in the taking of money or property or other relief requested in the Complaint.

7 3. If you intend to seek the advice of an attorney in this matter, you should do so
8 promptly so that your response may be filed on time.

9 Issue at the direction of:

CLERK OF COURT

10 KEMP, JONES & COULTHARD, LLP

11 Will Kemp, Esq.
12 Nevada Bar No. 1205
13 m.jacobs@kempjones.com
14 Eric Pepperman, Esq.
15 Nevada Bar No. 11679
16 n.rulis@kempjones.com
17 3800 Howard Hughes Parkway, 17th Floor
18 Las Vegas, Nevada 89169
19 **Attorney for Plaintiffs**

By: 

5/26/2017

Deputy Clerk Date
County Courthouse, Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

20 **NOTE:** When service is by publication, add a brief statement of the object of the action.
21 See Rules of Civil Procedure, Rule 4(b).
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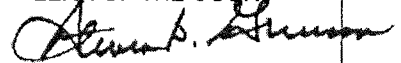
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Attorneys for Plaintiffs

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.

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

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

ARBITRATION EXEMPTION CLAIMED
Damages Exceed \$50,000.00

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

8 **THE PARTIES**

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

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

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

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

24 5. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
25 Defendant MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS ("Ryan's Express")
26 was and is a corporation organized and existing under the laws of the State of Arizona and
27 authorized to do business in the State of Nevada. Ryan's Express is a ground transportation
28

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

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
20

21 **JURISDICTION AND VENUE**

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

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

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27 ///

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

3 **SECOND CLAIM FOR RELIEF**
4 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**
5 **AND EDWARD HUBBARD)**

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

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

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

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

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

26 41. As a direct and proximate result of the negligent acts and omissions of Defendants
27 Ryan's Express and Edward Hubbard, Decedent sustained past, present, and future lost wages,
28

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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 46. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
27 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).
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1 72. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
2 Cyclery, Plaintiffs have suffered general and special damages in an amount far in excess of
3 Fifteen Thousand Dollars (\$15,000.00).

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

9
10 74. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
11 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

12 **SIXTH CLAIM FOR RELIEF**

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

15
16 75. Plaintiffs incorporate by this reference each and every allegation previously made in this
17 Complaint, as if fully set forth herein.

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

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

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

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

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1 80. In carrying out its responsibilities for the design, manufacture, construction, assembly,
2 testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted
3 with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of
4 others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled
5 to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).
6

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

9 **SEVENTH CLAIM FOR RELIEF**

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

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

13 83. Plaintiff minors and Plaintiff Katy Barin are the heirs of Decedent and are entitled to
14 maintain an action for damages against the Defendants for the wrongful death of Dr. Kayvan
15 Khiabani.
16

17 84. Pursuant to NRS 41.085, Katy Barin is the Executrix of the Estates of the Decedent and
18 may also maintain an action for damages against the Defendants for special damages and
19 penalties, including but not limited to exemplary or punitive damages as set forth in NRS
20 41.085(5).
21

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

26 86. As a direct and proximate result of the wrongful death of Dr. Khiabani, Plaintiffs have
27 been damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).
28

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


3 **PRAYER FOR RELIEF**

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

- 5 1. Past and future general damages in an amount in excess of fifteen thousand dollars
6 (\$15,000.00);
7 2. Past and future special damages in an amount in excess of fifteen thousand dollars
8 (\$15,000.00);
9 3. Past and future damages for the wrongful death of Dr. Kayvan Khiabani, as set forth in
10 NRS 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
11 4. Punitive damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
12 5. Prejudgment and post-judgment interest, as allowed by law;
13 6. Costs of suit and reasonable attorneys' fees, as allowed by law, in an amount to be
14 determined; and
15 7. For such other and further relief that the Court may deem just and proper.

16 DATED this 6th day of June, 2017.

17 KEMP, JONES & COULTHARD, LLP

18
19 
20 WILL KEMP, ESQ. (#1205)
21 ERIC PEPPERMAN, ESQ. (#11679)
22 3800 Howard Hughes Parkway, 17th Floor
23 Las Vegas, Nevada 89169

24 -and-

25 PETER S. CHRISTIANSEN, ESQ. (#5254)
26 KENDELEE L. WORKS, ESQ. (#9611)
27 CHRISTIANSEN LAW OFFICES
28 810 South Casino Center Blvd.
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

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



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ERIC PEPPERMAN, ESQ. (#11679)
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-and-

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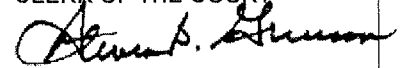
EXHIBIT 4

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EXHIBIT 4

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Steven D. Grierson
CLERK OF THE COURT



1 ANAC
2 ERIC O. FREEMAN
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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

**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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Selman Breitman LLP
ATTORNEYS AT LAW

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
28

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

Selman Breitman LLP
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

1
2
3 ☒ I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:
4 **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing
5 document to be served upon the persons designated by the parties in the E-Service
6 master List for the above-referenced matter in the Eighth Judicial District Court
7 eFiling System in accordance with the mandatory electronic service requirements of
8 Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

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

12 Will Kemp, Esq.
13 Eric Pepperman, Esq.
14 KEMP, JONES & COULTHARD, LLP
15 3800 Howard Hughes Parkway, 17th Floor
16 Las Vegas, NV 89169

Attorneys for Plaintiffs

17 Peter S. Christiansen, Esq.
18 Kendelee L. Works, Esq.
19 CHRISTIANSEN LAW OFFICES
20 810 South Casino Center Blvd.
21 Las Vegas, NV 89101

Attorneys for Plaintiffs


22 
23 CRYSTAL MARTIN
24 An Employee of Selman Breitman LLP
25
26
27
28

EXHIBIT 5

000413

000413

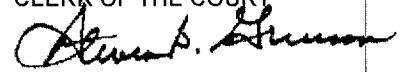
EXHIBIT 5

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Docket 78701 Document 2019-49221

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6/28/2017 4:39 PM
Steven D. Grierson
CLERK OF THE COURT


IAFD

ERIC O. FREEMAN
NEVADA BAR NO. 6648
SELMAN BREITMAN LLP
3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169-0961
Telephone: 702.228.7717
Facsimile: 702.228.8824
Email: efreeman@selmanlaw.com

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

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),

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

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.

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
parties appearing in this matter as indicated below:

1

Selman Breitman LLP
ATTORNEYS AT LAW

1 MICHELANGELO LEASING IN dba RYAN'S EXPRESS \$223.00
2 EDWARD HUBBARD \$30.00
3
4 **TOTAL REMITTED:** **\$253.00**
5

6
7 DATED: June 28, 2017

SELMAN BREITMAN LLP

8
9 By: /s/ Eric O. Freeman

10 ERIC O. FREEMAN
11 NEVADA BAR NO. 6648
12 3993 Howard Hughes Parkway, Suite 200
13 Las Vegas, NV 89169-0961
14 Telephone: 702.228.7717
15 Facsimile: 702.228.8824
16 Attorneys for Defendants MICHELANGELO
17 LEASING INC. d/b/a RYAN'S EXPRESS and
18 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 **INITIAL APPEARANCE FEE**

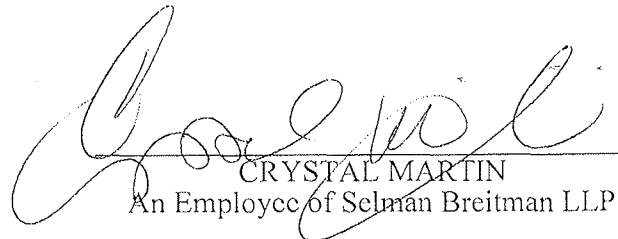
DISCLOSURE, this 28 day of June 2017, addressed as follows:

Will Kemp, Esq.
 Eric Pepperman, Esq.
 KEMP, JONES & COULTHARD, LLP
 3800 Howard Hughes Parkway, 17th 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

Selman Breitman LLP
 ATTORNEYS AT LAW

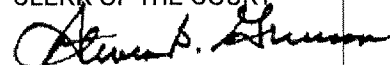
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Attorneys for Defendant SEVENPLUS
BICYCLES, INC d/b/a PRO CYCLERY

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 teh 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:

EJDC - 000079

GENERAL ALLEGATIONS

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

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

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

11 4. Answering Paragraph 4 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 5. Answering Paragraph 5 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 6. Answering Paragraph 6 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 7. Answering Paragraph 7 of Plaintiffs' Amended Complaint, SevenPlus is without
21 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
22 allegations contained therein, and therefore, denies the same.

23 8. Answering Paragraph 8 of Plaintiffs' Amended Complaint, SevenPlus admits it is a
24 Domestic Corporation authorized to do business in the State of Nevada, including Clark County,
25 as to the remaining allegations, SevenPlus is without sufficient knowledge or information upon
26 which to base a belief as to the truth or falsity of the allegations contained therein, and
27 therefore, denies the same.
28

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.

28

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
28

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.

28

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.

1 50. Answering Paragraph 50 of Plaintiffs' Amended Complaint makes no allegations
2 against SevenPlus and, as a result, no response to the allegations of Paragraph 50 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 51. Answering Paragraph 51 of Plaintiffs' Amended Complaint makes no allegations
7 against SevenPlus and, as a result, no response to the allegations of Paragraph 51 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 52. Answering Paragraph 52 of Plaintiffs' Amended Complaint, SevenPlus denies the
12 allegations contained therein.

13 **FOURTH CLAIM FOR RELIEF**

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

15 53. Answering Paragraph 53 of Plaintiffs' Amended Complaint, SevenPlus repeats
16 and realleges its answers to Paragraphs 1 through 52 above as though the same were set forth
17 at length herein.

18 54. Answering Paragraph 54 of Plaintiffs' Amended Complaint makes no allegations
19 against SevenPlus and, as a result, no response to the allegations of Paragraph 54 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 55. Answering Paragraph 55 of Plaintiffs' Amended Complaint makes no allegations
24 against SevenPlus and, as a result, no response to the allegations of Paragraph 55 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.
28

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
28

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 29, 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

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 ANSWER TO PLAINTIFFS' AMENDED COMPLAINT AND CROSSCLAIM** 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
3800 Howard Hughes Parkway
17th Floor
Las Vegas, NV 89169
Telephone: 702-385-6000

Attorneys for Plaintiffs

Peter S. Christiansen
Christiansen Law Offices
810 Casino Center Boulevard
Las Vegas, NV 89101
Telephone: 702-240-7979

Attorneys for Plaintiffs

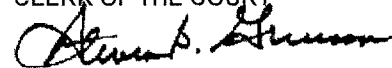
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Steven D. Grierson
CLERK OF THE COURT



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3 Howard J. Russell, Esq.

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6 WEINBERG, WHEELER, HUDGINS,

GUNN & 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,

25 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.

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838

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Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838

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

14. Answering paragraph 14 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.

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. 2M93JMH A28W064555. 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.

///

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

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

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

37. Answering paragraph 37 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.

38. Answering paragraph 38 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.

39. Answering paragraph 39 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. To the extent "Defendants" is meant to apply to MCI, MCI denies any such allegations.

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1 40. Answering paragraph 40 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 41. Answering paragraph 41 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 42. Answering paragraph 42 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 43. Answering paragraph 43 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 44. Answering paragraph 44 of Plaintiffs' Amended Complaint, Defendant is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
15 this paragraph and, therefore, cannot admit or deny these allegations.

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

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

22 **THIRD CLAIM FOR RELIEF**

23 **(NEGLIGENCE PER SE AGAINST DEFENDANTS**

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

25 47. Defendant incorporates by reference its responses and defenses to paragraphs 1
26 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 ///

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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 ///

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1 64. Answering paragraph 64 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 65. Answering paragraph 65 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 66. Answering paragraph 66 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 67. Answering paragraph 67 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 68. Answering paragraph 68 of Plaintiffs' Amended Complaint, Defendant is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
15 this paragraph and, therefore, cannot admit or deny these allegations.

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

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

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

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

28 ///

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 ///

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838

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.
28

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.

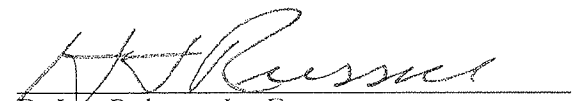
4 **EIGHTEENTH AFFIRMATIVE DEFENSE**

5 Pursuant to NRCP 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 30th 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.*

CERTIFICATE OF SERVICE

I hereby certify that on the 7th 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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Eric Pepperman, Esq.
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e.pepperman@kempjones.com

Attorneys for Plaintiffs

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LITTLETON JOYCE UGHETTA PARK & KELLY
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Keith.Gibson@LittletonJoyce.com

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



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

EXHIBIT 8

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EXHIBIT 8

1 IAFD

Michael J. Nuñez, Esq.

2 Nevada Bar No. 10703

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3 6900 Westcliff Drive, Suite 605

Las Vegas, Nevada 89145

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 teh 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.: XIVDEFENDANT SEVENPLUS BICYCLES,
INC d/b/a PRO CYCLERY'S INITIAL
APPEARANCE FEE DISCLOSURE

26 ///

27 ///

28 ///

EJDC - 000117

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below.

SEVENPLUS BICYCLES, INC d/b/a PRO CYCLERY \$223.00

TOTAL REMITTED: \$223.00

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.

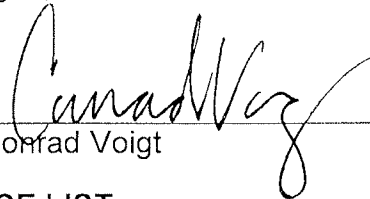
On June 30, 2017, I served true copies of the following document(s) described as **DEFENDANT SEVENPLUS BICYCLES, INC D/B/A PRO CYCLERY'S INITIAL APPEARANCE FEE DISCLOSURE** on the interested parties in this action as follows:

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.

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Attorneys for Plaintiffs

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Attorneys for Plaintiffs

EXHIBIT 9

000459

000459

EXHIBIT 9

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Email: mstoberski@ocgas.com
7 Email: jshapiro@ocgas.com
8 Attorneys for Defendant
9 BELL SPORTS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

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11
12
13 KEON KHIABANI and ARIA KHIABANI,
14 minors by and through their natural mother,
KATAYOUN BARIN; and KATAYOUN
15 BARIN, individually,

Plaintiffs,

vs.

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

Defendants.

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

23
24
25 **DEFENDANT BELL SPORTS, INC'S ANSWER TO**
26 **PLAINTIFF'S AMENDED COMPLAINT**

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1 Defendant BELL SPORTS, INC. ("BSI"),¹ by and through its attorneys, Olson, Cannon,
2 Gormley, Angulo & Stoberski, P.C., as and for its Answer to Plaintiffs' Amended Complaint
3 herein, respond as follows:

4 **THE PARTIES**²

5 1. BSI denies knowledge and information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 1 of Plaintiffs' Amended Complaint.

7 2. BSI denies knowledge and information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 2 of Plaintiffs' Amended Complaint.

9 3. BSI denies knowledge and information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 3 of Plaintiffs' Amended Complaint.

11 4. BSI denies knowledge and information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 4 of Plaintiffs' Amended Complaint.

13 5. BSI denies knowledge and information sufficient to form a belief as to the truth
14 of the allegations in Paragraph 5 of Plaintiffs' Amended Complaint.

15 6. BSI denies knowledge and information sufficient to form a belief as to the truth
16 of the allegations in Paragraph 6 of Plaintiffs' Amended Complaint.

17 7. BSI admits that it is a corporation organized and existing under the laws of the
18 State of California. BSI further admits that it is engaged in the business of designing, marketing
19 and selling certain helmets under the "Giro" brand. BSI denies that it does business as "Giro
20 Sports Design," and BSI further denies the remaining allegations in Paragraph 7 of Plaintiffs'
21 Amended Complaint.

22 8. BSI denies knowledge and information sufficient to form a belief as to the truth
23 of the allegations in Paragraph 8 of Plaintiffs' Amended Complaint.

24 9. BSI denies knowledge and information sufficient to form a belief as to the truth
25

26 ¹ In their Amended Complaint, Plaintiffs refer to BSI as "Giro" based on the erroneous allegation that "Giro Sports
27 Design" is a d/b/a for Bell Sports, Inc. BSI will respond to Plaintiffs' allegations against "Giro" in their Amended
28 Complaint as if they were properly directed at BSI.

² 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

1 **AS AND FOR AN ANSWER TO PLAINTIFFS' FIRST CLAIM FOR RELIEF**
2 **(STRICT LIABILITY: DEFECTIVE CONDITION OR**
3 **FAILURE TO WARN AGAINST DEFENDANT MCI)**

4 22. In response to Paragraph 22 of Plaintiffs' Amended Complaint, BSI repeats,
5 reiterates and realleges each and every response to Paragraph 1 through Paragraph 21 of
6 Plaintiffs' Amended Complaint as though fully set forth at length herein.

7 23. – 35. Paragraphs 23 – 35 of Plaintiffs' Amended Complaint are not directed to BSI
8 and, therefore, no response by BSI is required. To the extent any of the allegations are found to
9 be directed against BSI, such allegations are denied, and BSI specifically denies any liability
10 related to such paragraphs.

11 **AS AND FOR AN ANSWER TO PLAINTIFFS' SECOND CLAIM FOR RELIEF**
12 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**
13 **AND EDWARD HUBBARD)**

14 36. In response to Paragraph 36 of Plaintiffs' Amended Complaint, BSI repeats,
15 reiterates and realleges each and every response to Paragraph 1 through Paragraph 35 of
16 Plaintiffs' Amended Complaint as though fully set forth at length herein.

17 37. – 46. Paragraphs 37 – 46 of Plaintiffs' Amended Complaint are not directed to BSI
18 and, therefore, no response by BSI is required. To the extent any of the allegations are found to
19 be directed against BSI, such allegations are denied, and BSI specifically denies any liability
20 related to such paragraphs.

21 **AS AND FOR AN ANSWER TO PLAINTIFFS' THIRD CLAIM FOR RELIEF**
22 **(NEGLIGENCE PER SE AGAINST DEFENDANTS**
23 **RYAN'S EXPRESS AND EDWARD HUBBARD)**

24 47. In response to Paragraph 47 of Plaintiffs' Amended Complaint, BSI repeats,
25 reiterates and realleges each and every response to Paragraph 1 through Paragraph 46 of
26 Plaintiffs' Amended Complaint as though fully set forth at length herein.

27 48. – 52. Paragraphs 48 – 52 of Plaintiffs' Amended Complaint are not directed to BSI
28 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.

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Law Offices of
OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

SIXTEENTH AFFIRMATIVE DEFENSE

The product that allegedly caused injuries or damage to the Plaintiffs was reasonably fit for the uses for which it was intended.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to recover to the extent any alleged damages or injuries were caused by the misuse, abuse, or failure to properly maintain or care for the products at issue herein.

EIGHTEENTH AFFIRMATIVE DEFENSE

Discovery and investigation are incomplete and BSI does not and cannot reasonably be expected to know whether additional affirmative defenses may be applicable. BSI therefore reserves the right to add additional affirmative and other defenses as may be applicable and appropriate during the pendency of this action.

NINETEENTH AFFIRMATIVE DEENSE

Plaintiffs' Amended Complaint does not contain any allegations, as opposed to conclusory statements of law, that would support any claim for punitive damages and, as such, Plaintiffs' claim for punitive damages against BSI should be stricken.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claim for punitive damages in a product liability action is unconstitutional in that recovery of punitive damages in this case would violate BSI's constitutional rights to due process and equal protection under the Fourteenth Amendment to the Constitution of the United States and similar protections afforded by the Constitution of the State of Nevada.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claim for punitive damages is unconstitutional in that the standards established for granting and assessing punitive damages are vague and ambiguous, thereby violating BSI's constitutional rights to due process under the Eighth and Fourteenth Amendments of the Constitution of the United States and similar protections afforded by the Constitution of the State of Nevada.

///

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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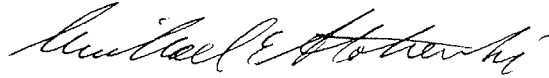
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1 3. For such other and further relief as the Court may deem just and proper in this
2 matter.

3 DATED this 3rd day of July, 2017.

4
5 OLSON, CANNON, GORMLEY,
6 ANGULO & STOBERSKI

7 

8 MICHAEL E. STOBERSKI, ESQ.

9 Nevada Bar No. 004762

10 JOSLYN SHAPIRO, ESQ.

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18 Attorneys for Defendant

19 BELL SPORTS, INC.

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000471

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of OLSON, CANNON, GORMLEY,
 ANGULO & STOBERSKI, and that on the 3rd 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):

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Attorneys for Plaintiffs

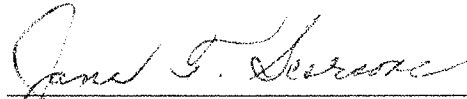
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 Attorneys for Defendant Motor Coach Industries

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8 Attorneys for Defendant Michelangelo Leasing Inc
9 d/b/a Ryan's Express

7 Michael J. Nunez, Esq.
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12 Fax: 702-360-3957
13 E-Mail: mnunez@murchisonlaw.com
14 Attorneys for Defendant SevenPlus Bicycles, Inc.
15 Db a Pro Cyclery



An Employee of OLSON, CANNON, GORMLEY,
ANGULO & STOBERSKI

EXHIBIT 10

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EXHIBIT 10

Electronically Filed
7/3/2017 10:24 AM
Steven D. Grierson
CLERK OF THE COURT

000475

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JOSLYN SHAPIRO, ESQ.
Nevada Bar No. 010754
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Email: jshapiro@ocgas.com
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
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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
INITIAL APPEARANCE FEE
DISCLSURE

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted
for parties appearing in the above entitled action as indicated below:

///

///

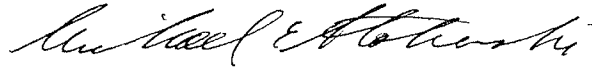
000475

1 BELL SPORTS, INC. \$223.00

2
3 TOTAL REMITTED: \$223.00

4
5 DATED this 3rd day of July, 2017.

6 OLSON, CANNON, GORMLEY,
7 ANGULO & STOBERSKI

8 

9 MICHAEL E. STOBERSKI, ESQ.

10 Nevada Bar No. 004762

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19 Attorneys for Defendant

20 BELL SPORTS, INC.

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000476

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of OLSON, CANNON,
GORMLEY, ANGULO & STOBERSKI, and that on the 3rd day of July 2017, I served a
and correct copy of **DEFENDANT BELL SPORTS, INC'S INITIAL APPEARANCE**
FEE DISCLOSURE 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, 17th Fl
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Phone: 702-385-6000
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Attorneys for Defendant Motor Coach Industries

///

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9 d/b/a Ryan's Express

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18 d/b/a Pro Cyclery

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An Employee of OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI

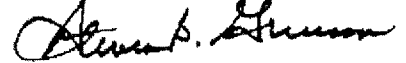
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*Attorneys for Defendant**Motor Coach Industries, Inc.***DISTRICT COURT****CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,
minors by and through their natural mother,
KATAYOUN BARIN; and 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/v/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

**INITIAL APPEARANCE FEE DISCLOSURE
(NRS CHAPTER 19)**

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
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(702) 938-3838

1 Pursuant to NRCP Chapter 19, as amended by Senate Bill 106, filing fees are submitted
2 for parties appearing in the above entitled action as indicated below:

3 Defendant, **MOTOR COACH INDUSTRIES, INC.** \$223.00

4 TOTAL REMITTED: \$223.00

5
6 DATED this 30th day of June, 2017.

7
8 

9 D. Lee Roberts, Jr., Esq.
10 Howard J. Russell, Esq.
11 Michael S. Valiente, Esq.
12 WEINBERG, WHEELER, HUDGINS,
13 GUNN & DIAL, LLC
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16 *Attorneys for Defendant*
17 *Motor Coach Industries, Inc.*
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19
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2017, a true and correct copy of the foregoing **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)** 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

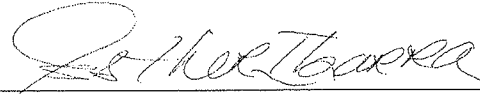

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HUDGINS, GUNN & DIAL, LLC

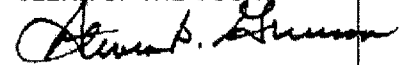
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9 *Attorneys for Plaintiffs*

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.

1 7. In addition to the bus data, Defendant Edward Hubbard shall make the cell phone(s)
2 that he possessed at the time of the incident available in Las Vegas for Plaintiffs' computer expert to
3 copy and the Plaintiffs' expert shall not do anything during the copying process that would erase any
4 information on the cell phone(s). Unless otherwise agreed by Plaintiffs and Defendant Hubbard,
5 such copying shall occur within 5 business days of notice of entry of this order. Plaintiffs' expert
6 shall make six copies of the cell phone(s), if any (one copy for each party and one copy for the
7 court). Plaintiffs' expert shall provide one of these copies to counsel for Defendant Edward
8 Hubbard, but it shall not provide copies to any other party or retain a copy for itself. The remaining
9 five copies shall be submitted to the Court. Although Plaintiffs may copy the entire cell phone data,
10 Plaintiffs and/or Plaintiffs' expert shall not access the same. At the appropriate time in the future,
11 the parties shall conduct a meet and confer regarding an agreed upon access protocol that protects
12 potential privileges and avoids the review of materials that are not relevant (e.g., personal phone
13 numbers, messages, etc.).

14 8. This Temporary Restraining Order will expire by its own terms in 30 days from the
15 date that it is entered. Good cause exists to extend the expiration date from 15 to 30 days because
16 the additional time will give the parties greater flexibility in scheduling the matters contemplated by
17 this order before it expires.

18 9. Given the benefit of this order to all parties, the Court finds good cause to waive any
19 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 30 day of June, 2017.


DISTRICT COURT JUDGE

Submitted by:

/s/ Eric Pepperman

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-and-

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Approved as to form and content:

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and EDWARD HUBBARD

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1 Approved as to form and content:

2 OLSON, CANNON, GORMLEY,
3 ANGULO & STOBERSKI

4 /s/ Michael Stoberski

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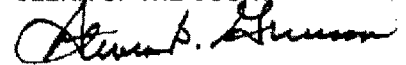
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*Attorneys for Defendant
Motor Coach Industries, Inc.*

DISTRICT COURT**CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,
minors by and through their natural mother,
KATAYOUN BARIN; and 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/v/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

ORDER ADMITTING TO PRACTICE

Darrell L. Barger, John C. Dacus and Brian Rawson having filed a Motion to Associate
Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for
Association of Counsel, "Certificate of Good Standing"; and the State Bar of Nevada Statement;

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
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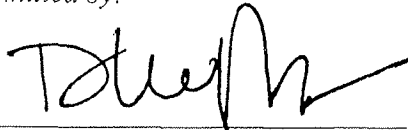
1 said application having been noticed, the Court having considered this matter, and the Court being
2 fully apprised in the premises, and good cause appearing:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said applications are
4 granted and Darrell L. Barger, John C. Dacus and Brian Rawson are hereby admitted to practice in
5 the above-entitled Court for the purposes for the above-entitled matter only.

6
7 DATED this 7 day of July, 2017.

8
9
10 
11 _____
12 DISTRICT COURT JUDGE 5

13 Submitted by:

14 
15 _____

16 D. Lee Roberts, Jr., Esq.
17 Howard J. Russell, Esq.
18 Michael S. Valiente, Esq.
19 WEINBERG, WHEELER, HUDGINS,
20 GUNN & DIAL, LLC
21 6385 S. Rainbow Blvd., Suite 400
22 Las Vegas, Nevada 89118

23 *Attorneys for Defendant*
24 *Motor Coach Industries, Inc.*
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26
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28

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EXHIBIT 14

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EXHIBIT 14

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9 *Attorneys for Plaintiffs*

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

**REQUEST FOR EXEMPTION FROM
ARBITRATION**

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Las Vegas, Nevada 89169
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1 Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors by and through their natural
 2 mother, KATAYOUN BARIN; KATAYOUN BARIN, individually; KATAYOUN BARIN as Executrix
 3 of the Estate of Kayvan Khiabani, M.D. (Decedent), and the Estate of Kayvan Khiabani, M.D.
 4 (Decedent), hereby request the above entitled matter be exempted from arbitration pursuant to Nevada
 5 Arbitration Rules 3 and 5, as this case:

- 6 1. _____ presents a significant issue of public policy;
- 7 2. X involves an amount in excess of \$50,000 per Plaintiff,
 8 exclusive of interest and costs;
- 9 3. _____ presents unusual circumstances which constitute good cause
 for removal from the program.

10 A specific summary of the facts which supports my contention for exemption is as follows:

11 This wrongful death case arises from a fatal bus accident at the intersection of S. Pavilion Center
 12 Drive and Griffith Peak Drive near the Red Rock Resort and Casino in Las Vegas, Nevada. On or about
 13 April 18, 2017, Kayvan Khiabani, M.D. was riding his Scott Solace 10 Disc road bicycle southbound
 14 in a designated bicycle lane on S. Pavilion Center. At approximately 10:34 AM, as he approached the
 15 intersection of S. Pavilion Center and Griffith Peak, Dr. Khiabani was overtaken on his left side by a
 16 large tour bus. As it passed Dr. Khiabani, the tour bus veered right, crossed into the designated bicycle
 17 lane, and struck Dr. Khiabani while Dr. Khiabani was driving straight in the bicycle lane into the
 18 intersection. As a direct and proximate cause of this collision, Dr. Khiabani suffered catastrophic
 19 internal and external injuries, including to his head, severe shock to his nervous system, and great pain
 20 and suffering. Dr. Khiabani was transported from the scene of the accident and ultimately died from
 21 his injuries.

22 Plaintiffs assert strict product liability and negligence claims against Motor Coach Industries,
 23 Inc., the manufacturer of the subject tour bus, Bell Sports, Inc., the manufacturer of the helmet that Dr.
 24 Khiabani was wearing at the time that he was struck by the buss, Michelangelo Leasing, Inc. (D/b/a
 25 Ryan's Express), the owner and operator of the subject tour bus, and Edward Hubbard, the Ryan's
 26 Express employee who was driving the subject bus at the time that it struck and killed Dr. Khiabani
 27 ("Decedent").
 28

1 This matter should be exempted from arbitration because Plaintiffs seek damages far in excess
2 of the threshold arbitration amount of \$50,000.00. Upon information and belief, prior to his death,
3 Decedent incurred tens of thousands of dollars in medical costs as a result of the injuries that he
4 sustained in the subject incident. In addition to these past medical costs, as a direct and proximate cause
5 of the acts and omissions of Defendants, Decedent sustained past, present, and future lost wages, which
6 would have otherwise been gained in his employment and used to provide care and support for his wife
7 and two minor children—plaintiffs herein—if not for his wrongful death. Prior to his death, Decedent was
8 a world-renowned surgeon and earned a significant income. He had the capacity to earn millions of
9 dollars each year for decades.

10 As a further direct and proximate cause of the acts and omissions of Defendants, Decedent's
11 minor children, Keon and Aria Khiabani, each have been deprived of their father's comfort, support,
12 companionship, society, and consortium, and each has suffered great grief, sorrow, and extreme
13 emotional distress as a result of their father's death. In this action, the minor children seek special and
14 general damages many millions more than the threshold arbitration amount of \$50,000.00. The minor
15 children also seek to recover for the pain, suffering, and disfigurement of their father, which also
16 exceeds the threshold arbitration amount.

17 As an additional direct and proximate cause of the acts and omissions of Defendants, Decedent's
18 wife, Katayoun Barin ("Katy"), has been deprived of her husband's comfort, support, companionship,
19 society, and consortium, and has suffered great grief, sorrow, and extreme emotional distress as a result
20 of her husband's death. In this action, Katy seeks special and general damages many millions more than
21 the threshold arbitration amount of \$50,000.00. She also seeks to recover for the pain, suffering, and
22 disfigurement of her husband, which also exceeds the threshold arbitration amount. As Executrix of the
23 Estate of Kayvan Khiabani, Katy has also seeks to recover funeral, burial, and other expenses related
24 to the administration of the Estate, as well as punitive damages from Defendants.

25 While Defendants deny liability at this time, there is no question that this case involves multi-
26 million-dollar claims for damages. Accordingly, and for all of the forgoing reasons, this matter should
27 be exempted from arbitration.

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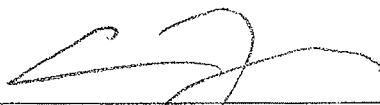
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1 I hereby certify pursuant to N.R.C.P. 11 this case to be within the exemption(s) marked above
 2 and am aware of the sanctions which may be imposed against any attorney or party who without good
 3 cause or justification attempts to remove a case from the arbitration program.

4 I further certify pursuant to NRS Chapter 239B and NRS 603A.040 that this document and any
 5 attachments thereto do not contain personal information including, without limitation, home
 6 address/phone number, social security number, driver's license number or identification card number,
 7 account number, PIN numbers, credit card number or debit card number, in combination with any
 8 required security code, access code or password that would permit access to the person's financial
 9 account.

10 DATED this 10th day of July, 2017.

11 KEMP, JONES & COULTHARD, LLP

12 
 13 WILL KEMP, ESQ. (#1205)
 14 ERIC PEPPERMAN, ESQ. (#11679)
 15 KEMP, JONES & COULTHARD, LLP
 16 3800 Howard Hughes Parkway, 17th Floor
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17 -and-


18 PETER S. CHRISTIANSEN, ESQ. (#5254)
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2017, the foregoing REQUEST FOR EXEMPTION FROM ARBITRATION was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.


An Employee of Kemp, Jones & Coulthard

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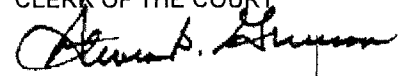
EXHIBIT 15

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EXHIBIT 15

Electronically Filed
7/20/2017 11:22 AM
Steven D. Grierson
CLERK OF THE COURT



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9 *Attorneys for Plaintiffs*

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 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 Kendele L.

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