

Case No. _____

In the Supreme Court of Nevada

FELICE J. FIORE and SPEEDVEGAS, LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State
of Nevada, in and for the County of Clark; and THE
HONORABLE NANCY L. ALLF, District Judge,

Respondents,

and

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY,
the duly appointed representative of the Estate and
as the widow and heir of Decedent GIL BEN-KELY;
SHON BEN-KELY, son and heir of decedent GIL BEN-
KELY; NATHALIE BEN-KELY-SCOTT, daughter and
heir of the decedent GIL BEN-KELY, GWENDOLYN
WARD, as Personal Representative of the ESTATE OF
CRAIG SHERWOOD, deceased; GWENDOLYN WARD,
Individually, and as surviving spouse of CRAIG
SHERWOOD, deceased; GWENDOLYN WARD, as Mother
and Natural Guardian of ZANE SHERWOOD,
surviving minor child of CRAIG SHERWOOD, decease,

Real Parties in Interest.

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**PETITIONERS' APPENDIX
VOLUME 1
PAGES 1-250**

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CERTIFICATE OF SERVICE

I certify that on October 7, 2021, I submitted the foregoing
“Petitioners’ Appendix” for filing *via* the Court’s eFlex electronic filing
system. Electronic notification will be sent to the following:

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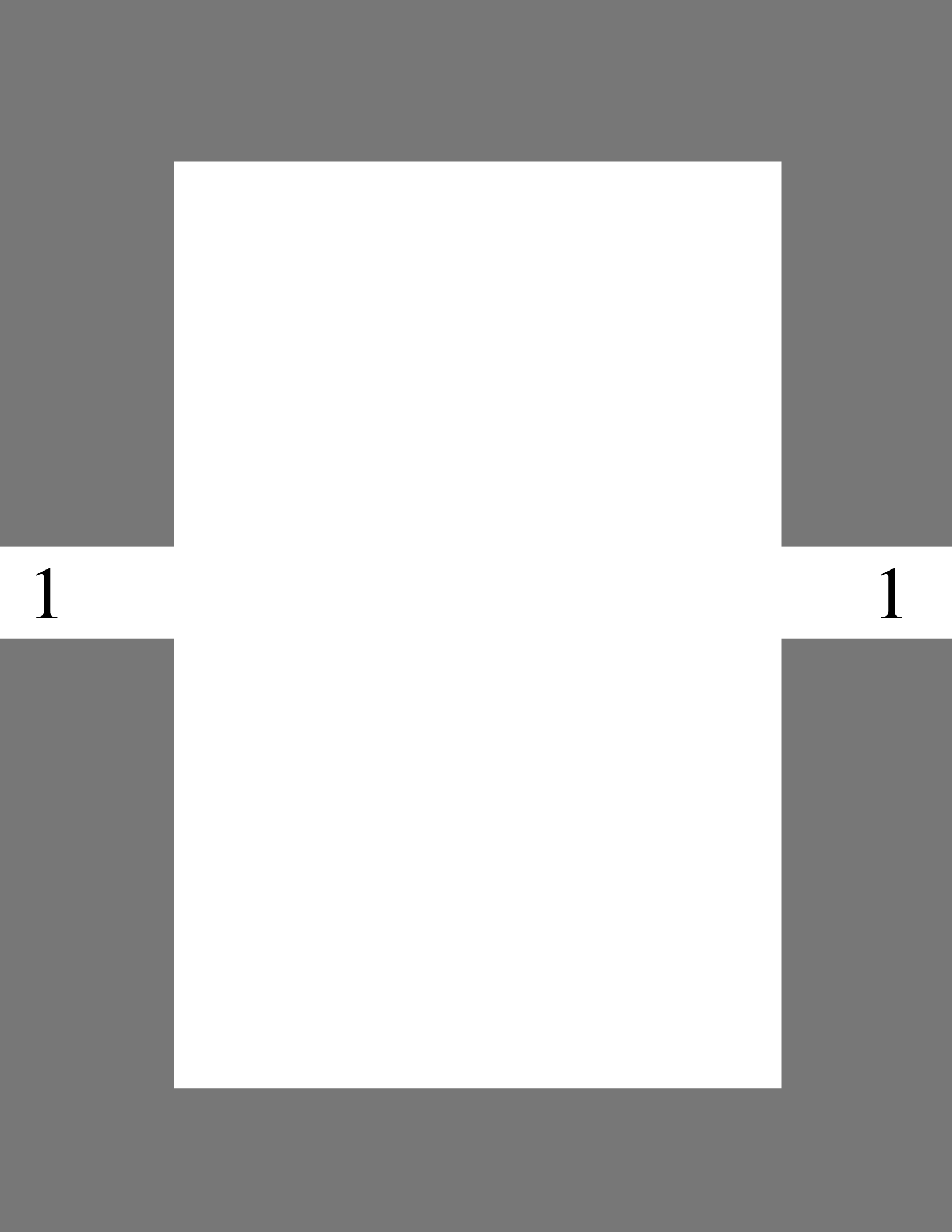
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Interest Gwendolyn Ward, as
Personal Representative of the
Estate of Craig Sherwood,
deceased; Gwendolyn Ward,
individually, and as surviving
spouse of Craig Sherwood,
deceased; Gwendolyn Ward, as
Mother and Natural Guardian of
Zane Sherwood, surviving minor
child of Craig Sherwood, deceased*

I further certify that I served a copy of this document by mailing a
true and correct copy thereof, postage prepaid, at Las Vegas, Nevada,
addressed as follows:

The Honorable Nancy L. Allf
DISTRICT COURT JUDGE – DEPT. 27
200 Lewis Avenue
Las Vegas, Nevada 89155

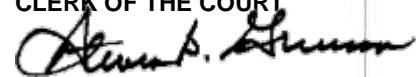
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DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by
ANTONELLA BEN-KELY as the duly
appointed representative of the Estate
and as the widow and heir of Decedent
GIL BEN-KELY; SHON BEN-KELY, son
and heir of decedent GIL BEN-KELY;
NATHALIE BEN-KELY-SCOTT, daughter
and heir of the decedent GIL BEN-KELY,

Plaintiffs,

vs.

SPEEDVEGAS, LLC, a foreign-limited
liability company;; SCOT GRAGSON, an
individual; WORLD CLASS DRIVING, an
unknown entity; MARY SLOAN, LLC, a
Nevada limited liability company;
SLOAN VENTURES 90, LLC, a Nevada
limited liability company; ROBERT
BARNARD, an individual;
MOTORSPORT SERVICES
INTERNATIONAL, LLC, a North Carolina
limited liability company and
AUTOMOBILI LAMBORGHINI AMERICA,
LLC, a foreign-limited liability company
DOES I-X; and ROE ENTITIES XI-XX,
inclusive,

Defendants.

CASE NO. A-17-757614-C
DEPT. Department 27

COMPLAINT

(With Demand For Jury Trial)

Exemption from Arbitration
Damages in Excess of \$50,000

1 Plaintiffs ESTATE OF GIL BEN-KELY, ANTONELLA BEN-KELY as the
2 duly appointed administrator of the Estate and as the surviving widow and heir
3 of decedent Gil Ben-Kely, SHON BEN-KELY, surviving son and heir of decedent
4 Gil Ben-Kely, NATHALIE BEN-KELY, surviving daughter and heir of decedent
5 Gil Ben-Kely; by and through counsel, the law firm of Gentile Cristalli Miller
6 Armeni Savarese, complain and allege against Defendants SPEEDVEGAS, LLC,
7 a foreign-limited liability company; WORLD CLASS DRIVING, an unknown
8 foreign entity; SCOTT GRAGSON, an individual; MARY SLOAN, LLC, a Nevada
9 limited liability company; SLOAN VENTURES 90, LLC, a Nevada limited liability
10 company; ROBERT BARNARD, an individual; MOTORSPORT SERVICES
11 INTERNATIONAL, LLC, a North Carolina limited liability company and
12 AUTOMOBILI LAMBORGHINI AMERICA, LLC, a foreign-limited liability
13 company, as follows:

14 **I. INTRODUCTION**

15 On February 12, 2017, Gil Ben-Kely, a SpeedVegas driving instructor
16 and Craig Sherwood, a Canadian tourist, were killed in a fiery crash ("Fatal
17 Crash") at the SpeedVegas Racetrack. Their bodies were charred beyond
18 recognition. This was the fifth crash at SpeedVegas in only its first ten months
19 of operation. Three of the five crashes were at Turn 1 on the Racetrack,
20 including the Fatal Crash.

21 Videos taken by persons driving past show the Lamborghini Aventador
22 engulfed in a massive fire that could be seen for miles. SpeedVegas knowingly
23 built its Racetrack ten miles away from the closest fire station, yet provided
24 only hand-held extinguishers to its Fire and Safety personnel. A video shows
25 that the SpeedVegas Fire and Safety personnel were completely ineffective in
26 putting out the fire with their hand-held extinguishers.

27 SpeedVegas designed and built the Racetrack in order to market it as the
28 "longest and fastest racetrack in Las Vegas", with the "longest straightaway"

1 and "No Speed Limit". SpeedVegas entrusts some of the most powerful, fastest
2 exotic sport cars in the World to amateur, inexperienced drivers. The faster the
3 car the more money SpeedVegas charges you to drive it so long as you have a
4 drivers' license, are wearing closed-toe shoes and are over 18 years of age.

5 SpeedVegas encouraged its customers to drive as fast as possible,
6 posting their highest speed on a telemetry board (its "SpeedPass" proprietary
7 technology), congratulating the fastest driver of the day on its website and
8 training the driving instructors to up-sell both cars and laps to drive even
9 faster. The SpeedPass telemetry board, however, fraudulently overstated the
10 actual speed of the sport cars by approximately fifteen percent, resulting in
11 customers trying to beat their friends or their own fastest speed during
12 subsequent laps. During subsequent laps, drivers empowered by the false
13 belief that they had already achieved a top speed would drive faster because
14 the speedometer would show the actual speed. This resulted in the drivers
15 pressuring driving instructors to allow them to drive even faster. After the
16 Fatal Crash, SpeedVegas removed the telemetry board in response to the
17 demands by the instructors.

18 Knowing that the Racetrack would be used by amateur drivers with little
19 or no driving experience with driving high-powered sport cars while
20 simultaneously marketing to those drivers that they could drive as fast as they
21 could make the exotic sport car go—the Lamborghini Aventador can exceed
22 200 mph—SpeedVegas failed to design the Racetrack to incorporate safety
23 features for when, not if, these inexperienced and amateur drivers either lost
24 control of the car or the car experienced mechanical failure.

25 Rather, SpeedVegas designed a technical and difficult course Racetrack
26 that challenges even professional racecar drivers. In fact, three of the five exotic
27 cars that crashed into the concrete walls on the Racetrack were actually being
28 driven by three different professional racecar drivers who lost control of the

1 cars either due to mechanical failure and/or the design of the Racetrack,
2 specifically the turns and the proximity of the concrete barrier walls.

3 In fact, prior to completing construction of the Racetrack, SpeedVegas
4 was told by more than one professional driver that Turn 1 was too dangerous
5 as designed due to its proximity to the Racetrack (20 feet) and the angle of the
6 Wall to the Racetrack. Another professional racecar driver and driving
7 instructor, the first time he was on the Racetrack, said "someone was going to
8 die" at Turn 1.

9 Moreover, prior to the Fatal Crash, SpeedVegas held a safety drill, telling
10 the employees that if there was going to be a crash that it would be at Turn 1.
11 Despite these warnings, SpeedVegas refused to redesign the Racetrack and
12 failed to build sufficient run-off for the cars to decrease speed before hitting the
13 concrete barrier walls, once again valuing its profit margin over the lives of its
14 employees and its customers.

15 Further, SpeedVegas also failed to properly cushion the concrete barrier
16 walls despite the prior crashes. Only after the Fatal Crash did SpeedVegas
17 properly bind the tires both vertically and horizontally together. Because
18 SpeedVegas failed to have adequate and properly affixed cushioning of the
19 Wall, the force of the Aventador when it hit the Wall simply pushed the tires
20 out of the way resulting in the Aventador hitting the Wall with such
21 overwhelming force that it actually cracked the Wall.

22 Yet, SpeedVegas re-opened the Racetrack to business without moving
23 the Wall, ignoring the impassioned pleas by driving instructors to move the
24 Wall and add more run-off areas and additional cushioning. Once again,
25 SpeedVegas chose profits over the lives of its employees and customers.
26 Management actually calculated the cost of moving the Wall against the
27 likelihood of another high impact crash.

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1 SpeedVegas also choose profit over hiring competent and experienced
2 mechanics to maintain these complex exotic sport cars and track managers to
3 operate the Racetrack. SpeedVegas had several prior instances of mechanical
4 failure of the sport cars while they were being driven on the Racetrack. In fact,
5 one instance of a brake pad falling off a car while an instructor was driving a
6 customer is documented in an on-line video. Instructors complained on more
7 than one occasion about the maintenance of the sport cars due to braking
8 problems, cracked rotors, bald tires, etc.

9 With respect to the Aventador, although it had only been available to
10 customers to drive for approximately a week prior to the Fatal Crash,
11 instructors had already complained about braking and handling issues. As
12 was its business practice with all the sport car, SpeedVegas swapped out the
13 original, more expensive original manufacturer equipment brakes with the
14 Girodisk brand on the Aventador on February 7, 2017. Yet, the day before the
15 Fatal Crash, February 11, 2017, SpeedVegas' assistant mechanic posted
16 pictures on Facebook working on the Aventador's brakes.

17 In addition to having known braking and handling issues, the Aventador
18 was also the subject of a February 3, 2017 Recall Notice due to a Lamborghini
19 manufacturing defect that caused the 2012-2017 Aventadors to catch on fire
20 and explode due to fuel coming into contact with the exhaust system. The
21 Recall Notice further advised that Aventadors with aftermarket modifications to
22 the exhaust system were at greater risk of fire. Despite knowing that its
23 Aventador had the aftermarket modifications to its exhaust system and of the
24 Recall Notice, SpeedVegas, once again, chose profit over safety. SpeedVegas
25 chose to allow the Aventador to continue to be driven on its commercial
26 Racetrack rather than pulling the Aventador out of availability to its customers
27 and placing it into a certified shop for repairs.

28 ///

1 Lamborghini also values profit over people by failing to take action to
2 recall the Aventadors despite first becoming aware of the “unreasonable safety
3 risk” as early as September 10, 2015, when the New York Daily News published
4 an article reporting the videos of the Aventadors catching fire. Rather than
5 immediately responding to this problem, Lamborghini delayed issuing the
6 Recall Notice until February 3, 2017 and would not allow certified dealerships
7 to make the necessary modifications until February 24, 2017, twelve days too
8 late for Gil Ben-Kely.

9 As a consequence of Defendants SpeedVegas and Lamborghini putting
10 profits over safety, two men died a horrific, fiery death, the bodies charred
11 beyond recognition. Through this Complaint the Ben-Kelys seek redress.

12 **II. THE PARTIES, JURISDICTION AND VENUE**

13 **A. Plaintiffs**

14 1. Estate of Gil Ben-Kely by the duly appointed administrator of the
15 Estate, Antonella Ben-Kely.

16 2. Plaintiff Antonella Ben-Kely is the widow and an heir of decedent
17 Gil Ben-Kely, the driving instructor killed at SpeedVegas in a fiery crash on
18 February 12, 2017 (“Fatal Crash”).

19 3. Plaintiff Shon Ben-Kely is the only son and an heir of decedent Gil
20 Ben-Kely.

21 4. Plaintiff Nathalie Ben-Kely-Scott is the only daughter and an heir
22 decedent Gil Ben-Kely.

23 **B. Defendants**

24 5. Upon information and belief, Defendant SpeedVegas LLC is and
25 was at all times relevant hereto, a foreign-limited liability company conducting
26 business in Clark County, Nevada, NV Business ID NV201116665874, as a
27 vehicle or tourism vehicle experience operating a track on Las Vegas Boulevard
28 (“Racetrack” or “Track”).

1 6. Upon information and belief Scott Gragson is a resident of Clark
2 County who has represented that he owns SpeedVegas and the land upon
3 which it was built, and who was warned during the construction of the
4 Racetrack that Turn One was dangerous because of proximity to the concrete
5 walls.

6 7. Upon information and belief, Defendant World Class Driving is an
7 unknown entity that owns, operates and/or otherwise profits from the
8 Racetrack as the merchant who charges and receives payment from
9 SpeedVegas' customers for their vehicle driving experience.

10 8. Upon information and belief, Defendant Sloan Ventures 90, LLC, is
11 a Nevada limited liability company that currently owns several parcels of the
12 land upon which SpeedVegas is built: Assessor's Parcel Numbers 191-20-301-
13 001, 191-801-003, 191-20-301-003, 191-20-201-004 and 191-19-701-003.

14 9. Upon information and belief, Defendant Mary Sloan, LLC, is a
15 Nevada limited liability company that also currently owns several parcels of the
16 land upon which the SpeedVegas Track is built: Assessor's Parcel Numbers
17 191-20-301-004, 191-20-301-005, 191-20-301-006, and 191-20-301-007.

18 10. Defendant Robert Barnard is an individual whose residence is
19 unknown and who has admitted that he is responsible for the design and
20 construction management of the SpeedVegas Racetrack as well as its "safety
21 features" and "operational procedures".

22 11. Upon information and belief, Defendant Motorsport Services
23 International, LLC is Defendant Robert Barnard's company, a limited liability
24 company formed in North Carolina, and also responsible for the design and
25 construction management of the Racetrack as well as its "safety features" and
26 its "operational procedures" (collectively with Robert Barnard referred to herein
27 as "Track Designer").

28 ///

1 12. Automobili Lamborghini, LLC is and was at all times a foreign-
2 limited liability company that manufactured the 2015 Lamborghini Aventador
3 Roadster, VIN ZHWUR1ZD3FLA03687 (the "Aventador"), that caught fire and
4 exploded on the SpeedVegas Racetrack on February 12, 2017.

5 13. Plaintiffs designate herein Doe individual defendants and Roe legal
6 entity defendants who are liable to Plaintiffs for the claims set forth hereinafter
7 but whose true identifies are presently unknown to Plaintiffs and, therefore,
8 Plaintiffs sue said Doe and Roe defendants by such fictitious names. Plaintiffs
9 will amend their Complaint to assert the true names and capacities of these
10 Defendants when Plaintiffs has ascertained sufficient information to identify
11 those Roe and Doe defendant who are believed to:

- 12 a. Directly and/or indirectly, own, control, manage and/or
13 otherwise operate the SpeedVegas Racetrack or "vehicle tourism
14 experience" at all relevant times set forth herein and/or was
15 otherwise responsible for the operation and/or conditions at the
16 SpeedVegas racetrack;
17 b. Own, leased, contributed and/or allowed to SpeedVegas, LLC to
18 use the Aventador on the Racetrack;
19 c. Made, authorized and/or otherwise allowed aftermarket
20 modifications to the Aventador;
21 d. Owns, developed, contributed and/or controlled the SpeedPass
22 proprietary technology that posted on a telemetry board the
23 (allegedly) fastest speed and fastest lap time achieved by drivers
24 of the SpeedVegas exotic sports cars on the SpeedVegas
25 racetrack;
26 e. Constructed the SpeedVegas Racetrack and

27 ///

28 ///

1 f. The manufacturer, installer and/or designer of any aftermarket
2 parts or equipment installed on the Aventador that caused
3 and/or contributed to the Fatal Crash.

4 14. The actions and/or the duties and obligations relevant to Plaintiffs'
5 claims in this Complaint occurred and/or arose in Clark County, Nevada, thus,
6 jurisdiction is proper in the Courts of this State and venue is proper in this
7 Judicial District.

8 III.

9 GENERAL ALLEGATIONS

10 A. FATAL CRASH

11 15. Plaintiffs repeat, re-allege and incorporate each and every
12 allegation in the preceding paragraphs of this Complaint as though fully set
13 forth herein.

14 16. On or about February 12, 2017, Gil Ben-Kely was killed in a fiery
15 crash ("Fatal Crash") at the SpeedVegas Racetrack.

16 17. All times relevant hereto, Gil Ben-Kely was legally upon the
17 SpeedVegas premises as an employee and who was expressly or impliedly
18 invited upon said premises for the benefit of SpeedVegas, working as a driving
19 instructor.

20 18. At the time of his death, Gil Ben-Kely was sitting in the passenger
21 seat of a 2015 Lamborghini Aventador provided by SpeedVegas, LLC,
22 instructing SpeedVegas customer, Craig Sherwood with the express or implied
23 consent of Defendants SpeedVegas, LLC; World Class Driving; Mary Sloan,
24 LLC; Sloan Ventures 90, LLC and Scott Gragson (collectively, "SpeedVegas
25 Defendants" or "SpeedVegas").

26 19. Upon information and belief, Craig Sherwood was a Canadian
27 tourist visiting Las Vegas for a real estate convention.

28 ///

1 20. Upon information and belief, Craig Sherwood met all of
2 SpeedVegas requirements for driving the most powerful sport car in the world
3 as he was over 18 years of age, had a valid driver's license and was wearing
4 closed-toe shoes.

5 21. At approximately 1:06 p.m., and for unknown reasons, the
6 Aventador left the surface of the Track at or before Turn 1, traveling at a high
7 rate of speed, and crashed into a concrete barrier wall (the "Wall").

8 22. The Wall was located approximately twenty feet from the surface of
9 the Racetrack at Turn One.

10 23. At some point during the driving experience, the Aventador caught
11 fire and exploded.

12 24. Videos posted online and taken by people driving on Las Vegas
13 Boulevard show that at 1:14 p.m., SpeedVegas' Fire and Safety personnel were
14 using hand-held fire extinguishers in an unsuccessful attempt to put out the
15 fully engulfed fire.

16 25. Photographs taken by the Metropolitan Police Department of the
17 scene of the Fatal Crash appear to show that Craig Sherwood's undamaged
18 wristwatch stopped at 1:14 p.m., presumably from the parts melting from the
19 intense heat of the fire.

20 26. Upon information and belief, the Clark County Fire Department
21 arrived at approximately 1:21 p.m. and started to put out the massive fire from
22 the exploding car.

23 27. Gil Ben-Kely and Craig Sherwood were killed in the Fatal Crash,
24 their bodies were burned beyond recognition while trapped in the burning
25 Aventador.

26 28. In addition to his body being charred beyond recognition, Gil Ben-
27 Kely suffered fatal injuries that were severe and extreme, including: extensive
28 thermal injuries, multiple fractures to his ribs, femurs, tibia, fibula as well as a

1 torn aorta.

2 29. Based upon the autopsy report, Gil Ben-Kely was still alive while
3 the Aventador was burning.

4 30. Upon information and belief, the Aventador burned for over fifteen
5 minutes before the Clark County Fire Department arrived.

6 31. Flames from the explosion and fire could be seen for miles.

7 32. At the time of the Fatal Crash, SpeedVegas did not have an
8 emergency vehicle with a mounted fire extinguisher tank.

9 33. Upon information and belief, following the Fatal Crash,
10 SpeedVegas finally invested in an emergency vehicle with a professional fire
11 extinguisher tank mounted on the truck.

12 34. Due to the remote location that SpeedVegas built its Racetrack, the
13 nearest Fire Station is approximately ten miles away or fifteen minute response
14 time to respond to an emergency.

15 35. Following the Fatal Crash, SpeedVegas shipped the remnants of
16 the Aventador to an unknown location, upon information and belief.

17 36. SpeedVegas has not provided the Ben-Kely Family with any report
18 regarding the cause of the Fatal Crash or of the examination of the Aventador.

19 **B. FIFTH CRASH WITHIN ONLY TEN MONTHS OF OPENING**

20 37. Plaintiffs repeat, re-allege and incorporate each and every
21 allegation in the preceding paragraphs of this Complaint as though fully set
22 forth herein.

23 38. SpeedVegas markets and advertises itself as a "Real Racetrack",
24 having the "longest and fastest racetrack in Las Vegas" and having "No Speed
25 Limit".

26 39. The Fatal Crash was the fifth known crash on the SpeedVegas
27 Racetrack during its first ten months of operation.

28 ///

1 40. At least five of SpeedVegas' exotic sport cars crashed into fixed
2 obstacles--the concrete barrier walls--located mere feet from the Racetrack.

3 41. Three of the five crashes occurred at the same place on the
4 Racetrack, namely: Turn 1, including the Fatal Crash.

5 42. Turn 1 is located at the end of the longest straightaway on the
6 Racetrack (approximately 1.5 miles long), allowing the high-powered exotic
7 sport cars to attain their highest rate of speed on the Racetrack.

8 43. SpeedVegas designed the Racetrack in order to market and
9 advertise it has having the longest straightaway with no speed limits.

10 44. SpeedVegas knew that the design of the Racetrack was dangerous
11 prior to completing construction because more than one professional racecar
12 driver actually warned the SpeedVegas Defendants.

13 45. Professional racecar drivers warned SpeedVegas that the Racetrack
14 as designed was dangerous because of the proximity of the concrete walls to
15 the track.

16 46. While the Racetrack was under construction and prior to its
17 completion, professional racecar driver and owner of Exotics Racing, Romain
18 Thieve, expressly warned Defendant Scott Gragson that the design of Turn 1
19 was too dangerous due to the proximity of the Racetrack to the Wall.

20 47. A second professional racecar driver and former SpeedVegas
21 driving instructor, Ian Holsap, while being driven around the Racetrack by
22 Roland Linder, a professional racecar driver and the original instructor of the
23 SpeedVegas driving instructors, upon seeing Turn 1 and the location of the
24 Wall immediately said: "someone is going to die there."

25 48. Well prior to the date of the Fatal Crash, SpeedVegas' Director of
26 Operations, Darren Stahl, told SpeedVegas employees that if there is going to
27 be a crash on the Racetrack, it would be at Turn One.

28 ///

C. SPEEDVEGAS ALLOWED THE LAMBORGHINI AVENTADOR ROADSTER TO BE USED ON THE COMMERCIAL RACETRACK DESPITE THE RECALL NOTICE OF THE UNREASONABLE SAFTY RISK OF FIRE, AFTERMARKET MODIFICATIONS THAT INCREASED THE RISK, BRAKING PROBLEMS AND STABILTY ISSUES AND WITHOUT INSTALLING A ROLL BAR OR CAGE

49. Plaintiffs repeat, re-allege and incorporate each and every allegation in the preceding paragraphs of this Complaint as though fully set forth herein.

50. Upon information and belief, the Aventador was a 2015 Roadster with a V12 engine and 729 bhp manufactured by Lamborghini and one of the most powerful exotic sport cars in the World.

51. Lamborghini advertises the Aventador as the most extraordinary car in Lamborghini's history given that it goes from 0-62 mph in just 3.0 seconds with a top speed of 217 mph, whether the removable top is on or off.

52. The Aventador was the fastest and most powerful supercar that SpeedVegas offered to its customers, outweighing the other cars by a half-ton.

53. The Aventador was difficult for even the experienced driving instructors to control on the Racetrack.

54. Despite its incredible power, speed and difficulty in controlling the Aventador, SpeedVegas did not require any additional training or qualifications for a customer to drive the Aventador.

55. Despite the Aventador being a removable top Roadster, SpeedVegas allowed the Aventador to be driven on its commercial Racetrack without installing a roll bar or a cage.

56. Photographs from the Fatal Crash show that the top of the Aventador came off at some point and can be seen lying in perfect condition on the Racetrack.

57. Without the top in place to protect the passenger compartment from the rear engine fire, Gil Ben-Kely and Craig Sherwood were directly

1 exposed to the flames, resulting in their extreme and severe thermal injuries
2 and charring their bodies beyond recognition.

3 58. On or about February 7, 2017, SpeedVegas swapped out the
4 Aventador's original Lamborghini brakes for Girodisk brakes and installed a
5 mechanical braking pedal for the instructor.

6 59. The instructor's brake pedal allowed only sixty percent braking
7 power of the Aventador's braking ability.

8 60. SpeedVegas knew about the braking problems prior to the Fatal
9 Crash, as its assistant mechanic posted pictures on his Facebook page on
10 February 11, 2017, the day before the Fatal Crash.

11 61. Upon information and belief, SpeedVegas also knew about prior
12 problems with the exotic sport cars using the Girodisk brakes on commercial
13 tracks given both its CEO and head mechanic previously worked at another
14 commercial track that experienced problems with the Girodisk brakes.

15 62. Upon information and belief, CEO Aaron Fessler quit his prior
16 employment at another commercial track after a different Aventador's brakes
17 locked up and nearly crashed.

18 63. Prior to the Fatal Crash, SpeedVegas experienced numerous
19 problems with the maintenance of its exotic sport cars.

20 64. On more than one occasion, brake pads had fallen off of the exotic
21 sport cars while they were being driven at high speeds on the Racetrack.

22 65. An on-line video shows a car losing a brake pad while a driving
23 instructor is driving a customer on the Racetrack at high speeds.

24 66. In addition to the aftermarket modifications made by SpeedVegas
25 (the swapping of the original brakes to Girodisk brakes and adding a
26 mechanical brake to the braking system), SpeedVegas knew or should have
27 known of the additional aftermarket modifications made to the rear spoiler and
28 to the exhaust system that created unreasonable safety risks.

1 67. The aftermarket modifications to the Aventador increased the risk
2 of fire and loss of stability and control at higher rates of speed.

3 **D. LAMBORGHINI KNEW OF THE AVENTADOR'S DESIGN DEFECT**
4 **THAT WAS CAUSING ENGINE FIRES AS EARLY AS 2015, BUT**
5 **FAILED TO ISSUE THE RECALL NOTICE UNTIL FEBRUARY 3, 2017**
6 **AND FAILED TO PERMIT DEALERSHIPS TO REMEDY THE DEFECT**
7 **UNTIL FEBRUARY 24, 2017, TWELVE DAYS TOO LATE**

8 68. Plaintiffs repeat, re-allege and incorporate each and every
9 allegation in the preceding paragraphs of this Complaint as though fully set
10 forth herein.

11 69. As early as 2015, Lamborghini knew that its Aventador models had
12 a fuel-system defect causing them to catch on fire.

13 70. On September 10, 2015, a *New York Daily News* article,
14 "*Lamborghini Supercar Meets Fiery End in Dubai*", reported that videos existed
15 showing Aventadors engulfed in flames from a fire starting near the mid-
16 mounted engine as a result of a manufacturing design defect.

17 71. In January 2016, after conducting an investigation of the
18 Aventadors catching fire, Lamborghini concluded that there was a correlation
19 between the emissions system's charcoal canister becoming soaked in fuel,
20 filled gas tanks and malfunctioning purge valves.

21 72. Despite having notice of the design defect and that Aventadors
22 were catching on fire and burning up all over the world (Miami, Dubai, New
23 York), Lamborghini failed to initiate a recall of the 2012-2017 Aventador
24 models until February 3, 2017: National Highway Traffic Safety Administration
25 ("NHTSA") Campaign Number 17V073000 ("Recall Notice").

26 73. A recall is issued when NHTSA or a manufacturer determines that
27 either the vehicle or the equipment "creates an unreasonable safety risk or fails
28 to meet minimum safety standards."

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1 74. Pursuant to the Recall Notice, Lamborghini voluntarily recalled its
2 2012-2017 Lamborghini Aventadors because "fuel may leak out of a full tank
3 and cause a fire".

4 75. The Recall Notice further states: "Gasoline contact with an ignition
5 source such as a hot exhaust system can increase the risk of a fire."

6 76. Upon information and belief, numerous Aventador Lamborghinis,
7 while being driven or even while stopped in traffic on city streets, have caught
8 fire and burned up due to the design defect of the gas tank and/or exhaust
9 system.

10 77. Despite issuing the Recall Notice on February 3, 2017,
11 Lamborghini refused to pay for repairs for the manufacturing defect until on or
12 after February 24, 2017, twelve days too late to save Gil Ben-Kely from fiery
13 Fatal Crash that charred his body beyond recognition.

14 78. Prior to the Fatal Crash, SpeedVegas knew that the Aventador was
15 the subject of the NHTSA Recall Notice warning of a high risk of catching fire,
16 particularly models with aftermarket modification to the emission.

17 79. SpeedVegas did not pull the Aventador from use on its commercial
18 Racetrack that encouraged inexperienced drivers to drive as fast as they can,
19 but continued to charge the unknowing customers to pay to drive the sports
20 car despite the risk of fire, placing both its customers and driving instructors
21 in danger.

22 80. Gil Ben-Kely never received the email sent by SpeedVegas on
23 February 11, 2017, but after work hours and well after the Aventador had been
24 fully fueled for the next, advising of the Recall Notice and the risk of fire if the
25 Aventador was fully fueled or its fuel level fell below a certain level.

26 81. Upon information and belief, driving instructors complained to
27 SpeedVegas that the Aventador did not brake properly and that it was difficult
28 for them to control the car during the week before the Fatal Crash.

1 82. Upon information and belief, SpeedVegas had experienced
2 maintenance problems such as bald tires, brakes locking up for unknown
3 reasons that resulted in the crashes and/or the cars going off the surface of the
4 Racetrack.

5 **E. SPEEDVEGAS DESIGNED THE RACETRACK TO MARKET IT AS**
6 **HAVING THE LONGEST STRAIGHTAWAY, THE FASTEST**
7 **RACETRACK IN LAS VEGAS WITH NO SPEEK LIMITS, RESULTING IN**
8 **THE HIGH-POWER SPORT CARS BEING DRIVEN AT UNSAFE SPEEDS**

9 83. Plaintiffs repeat, re-allege and incorporate each and every
10 allegation in the preceding paragraphs of this Complaint as though fully set
11 forth herein.

12 84. SpeedVegas designed its Racetrack based upon its marketing plan
13 to advertise the Racetrack as having "the longest straightaway", offering the
14 "longest and fastest racetrack in Las Vegas" and having "No Speed Limit".

15 85. SpeedVegas entices customers having no or little relevant driving
16 experience to drive the most powerful sport cars in the world at unsafe speeds.

17 86. SpeedVegas posts on its social media sites congratulations to the
18 drivers who reached the highest speed on the Track that day.

19 87. SpeedVegas also advertised its SpeedPass proprietary technology
20 that purported to record the fastest speed achieved by each driver on a
21 telemetry board.

22 88. The telemetry board caused customers to drive faster than was
23 safe because of their own false inflated top speed or another customer's inflated
24 top speed, buying more laps to go faster and faster.

25 89. SpeedVegas encourages and financially rewarded its driving
26 instructors to upsell the customers to buy more driving laps.

27 90. Upon information and belief, the SpeedPass technology overstates
28 the actual speed attained by the sport cars by approximately fifteen percent.

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1 91. The SpeedPass telemetry board would show that a customer
2 reached a speed of "140 mph" but the actual speed was 119 mph.

3 92. During the next lap the customer is looking at the speedometer on
4 the car, and believing from the telemetry board that he has already attained
5 140 mph then attempts to exceed the overstated speed of 140 mph.

6 93. This resulted in customers driving at unsafe speeds, increasing the
7 risk of the customer losing control and crashing.

8 94. The SpeedPass overstating the true speed also resulted in
9 customers pressuring the driving instructors to allow them to drive faster and
10 faster.

11 95. Upon information and belief, SpeedVegas' CEO, Arron Fessler,
12 questioned driving instructors whose customers did not drive to achieve high
13 rates of speed.

14 96. Immediately following the Fatal Crash and pursuant to demands
15 from the remaining instructors, SpeedVegas removed the SpeedPass telemetry
16 board.

17 **F. SPEEDVEGAS RACTRACK IS INHERENTLY, EXCESSIVELY AND**
18 **UNNECESSARILY DANGEROUS IN BOTH DESIGN AND OPERATION**

19 97. Plaintiffs repeat, re-allege and incorporate each and every
20 allegation in the preceding paragraphs of this Complaint as though fully set
21 forth herein.

22 98. The SpeedVegas Racetrack is inherently, excessively and
23 unnecessarily dangerous in both design and operation.

24 99. The design of the SpeedVegas Racetrack is inherently, excessively
25 and unnecessarily dangerous because:

- 26 a. The Wall was located only twenty feet from Turn 1 and at such
27 an angle that cars crash straight into it;
28 b. Insufficient run-off exists to allow a car to decrease or lose

1 speed before it crashes into a concrete barrier wall regardless
2 whether due to driver error or mechanical failure;

3 c. Insufficient cushioning to reduce the impact into the Wall given
4 that SpeedVegas failed to bind the tire stacks horizontally (only
5 vertically), had insufficient rows of tires and failed to affix the
6 tire stacks to the Wall resulting in the Aventador simply
7 pushing aside the tires crashing directly into the concrete;

8 d. The Racetrack is too technical and challenging for
9 inexperienced, amateur drivers driving at high rates of speed
10 given that the Racetrack challenges even professional racecar
11 drivers; at least two of the prior crashes occurred when
12 professional drivers were driving not the customer and

13 e. The Racetrack has no forgiveness at Turns 1 and 2 (S Turn)
14 when the car leaves the surface of the Racetrack whether
15 because of driver error or mechanical failure of the car, on the
16 left is a concrete barrier wall, straight ahead is a drop to a
17 drainage ditch with an exposed culvert or to the right the Wall.

18 100. SpeedVegas operated the Racetrack in an inherently and
19 excessively dangerous and unsafe manner by:

- 20 a. Failing to maintain sport cars in proper working order;
21 b. Swapping out the original manufacture brakes for Girodisk
22 brakes;
23 c. Using Girodisk brakes in place of the original manufacture
24 brakes despite knowing of problems with the Girodisk brakes
25 overheating on another commercial racetrack;
26 d. Allowing an Aventador Roadster with a removable top to be
27 used on the commercial Racetrack without a roll bar, cage or
28 providing fire protection racing suits in the event the top came

1 off exposing the passengers to the flames from the rear engine
2 fire;

3 e. Failing to immediately pull the Aventador from the Racetrack
4 upon receiving notice of the Recall Notice, particularly since the
5 notice provided that Aventadors with aftermarket modifications
6 to the exhaust system were at risk of fire;

7 f. Permitting the Aventador to be used on a commercial Racetrack
8 with its aftermarket modifications to its brakes, exhaust system
9 and the rear spoiler that result in braking and stability
10 problems at high rates of speed;

11 g. Failing to provide adequate safety equipment, emergency
12 procedures and/or safety features given the high risk of death
13 in the event of a crash and that the remote location of the
14 Racetrack--ten miles from the nearest Fire Station--resulted in
15 a fifteen minute response time to provide fire and medical
16 emergency services;

17 h. Using the SpeedPass proprietary technology that
18 misrepresented the actual speed of the cars that resulted in
19 customers driving at unsafe speeds given the dangerous,
20 unforgiving design of the Racetrack,

21 i. Failing to hire, retain and/or supervise competent and
22 knowledgeable mechanics to work on the cars and/or
23 experienced track managers to operate the Racetrack in a safe
24 and reasonable manner and

25 j. Having inadequate cushioning on the hard obstacles located too
26 close to the Racetrack.

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IV.

CAUSES OF ACTION**FIRST CAUSE OF ACTION—WRONGFUL DEATH**

101. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

102. Plaintiff Antonella Ben-Kely brings this wrongful death action as the duly appointed administrator of Decedent Gil Ben-Kely pursuant to NRS 41.085.

103. As a direct and proximate cause of Defendants' conduct, Gil Ben-Kely and his Estate suffered bodily injury resulting in loss of income, pain and suffering and death and funeral expenses.

104. Plaintiffs Antonella Ben-Kely, Shon Ben-Kely and Nathalie Ben-Kely-Scott (collectively the Ben-Kely Family) bring this wrongful death action pursuant to NRS 41.085 as the heirs of Gil Ben-Kely for damages against Defendants for their "wrongful acts or neglect" in causing the death of Gil Ben-Kely on February 12, 2017.

105. Pursuant to NRS 41.085, the Ben-Kely Family Plaintiffs seek damages for their grief and sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering and disfigurement of Gil Ben-Kely resulting from the direct and proximate cause of Defendants' conduct as set forth herein.

106. Defendants knowingly risked the life of Gil Ben-Kely in order to profit from the operation of the Racetrack.

107. Defendants' conduct was extreme and outrageous, warranting an award of punitive damages.

SECOND CAUSE OF ACTION—WILLFUL AND WANTON NEGLIGENCE

108. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

1 109. Plaintiff Antonella Ben-Kely as the Administrator of Gil-Kely's
2 Estate, brings this claim for injuries and damages sustained by Gil Ben-Kely
3 prior to his death, for the benefit of the Heirs and the Estate of Gil Ben-Kely.

4 110. As a direct and proximate cause of Defendants' indifference to the
5 consequences of their actions, their conscious and reckless disregard for the
6 rights and safety of Gil Ben-Kely and for their willful and wanton negligent
7 actions, Gil Ben-Kely and his estate sustained loss of earnings, severe blunt
8 force injuries, thermal injuries, suffered great pain of body and mind, and
9 ultimately suffered death.

10 111. Gil Ben-Kely's injuries and death were a natural, probable and
11 foreseeable consequence of the negligent, gross negligent, willful, wanton,
12 reckless and/or otherwise tortious or wrongful acts or omissions of
13 Defendants.

14 112. As a result, Plaintiffs are entitled to recover damages, including
15 punitive damages.

16 **THIRD CAUSE OF ACTION—GROSS NEGLIGENCE**

17 113. Plaintiffs repeat, re-allege, and incorporate the allegations in the
18 preceding paragraphs of this Complaint as though fully set forth herein.

19 114. Plaintiff Antonella Ben-Kely brings this action as Administrator of
20 Gil Ben-Kely's Estate for injuries sustained by Gil Ben-Kely prior to his death
21 for the benefit of the heirs of Gil Ben-Kely.

22 115. As a direct and proximate cause of Defendants' absence of care for
23 the safety and rights of Gil Ben-Kely as well as their reckless, overtly
24 dangerous and grossly negligent actions, Gil Ben-Kely and his Estate sustained
25 loss of earnings, severe and extreme injuries, suffered great pain of body and
26 mind and, ultimately, suffered death.

27 116. As a result, Plaintiffs are entitled to recover damages, including
28 punitive damages.

FOURTH CAUSE OF ACTION—NEGLIGENCE

117. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

118. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

119. As a direct and proximate cause of Defendants' actions, Gil Ben-Kely and his Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind and, ultimately, suffered death.

120. Gil Ben-Kely's injuries and death were a natural, probable and foreseeable consequence of the negligent, gross negligent, willful, wanton, reckless and/or otherwise tortious or wrongful acts or omissions of Defendants.

121. As a result, Plaintiffs are entitled to recover damages.

FIFTH CAUSE OF ACTION—VICARIOUS LIABILITY, RESPONDEAT SUPERIOR, OSTENSIBLE AGENCY AND/OR AGENCY

122. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

123. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

124. At all times relevant, the employees, agents, administrators, staff and/or representatives of Defendants (collectively referred to as "Employees") were employed by and/or acting on behalf of Defendants.

125. At all times relevant, the Employees acted within their respective capacities and scopes of employment for Defendants.

1 126. The Employees recklessly, wantonly, willfully, grossly negligently
2 and/or negligently, directly and proximately caused, through their acts and
3 omissions, injury, pain, suffering and, ultimately, the death of Gil Ben-Kely.

4 127. As a direct and proximate cause of the acts and omissions of the
5 Employees, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
6 extreme injuries as well as suffered great pain of body and mind and,
7 ultimately, suffered death.

8 128. Gil Ben-Kely's injuries and death were a natural, probable and
9 foreseeable consequence of the negligent, gross negligent, willful, wanton,
10 reckless and/or otherwise tortious or wrongful acts or omissions of
11 Defendants.

12 129. As a result, Plaintiffs are entitled to recover damages.

13 **SIXTH CAUSE OF ACTION—FRAUD**

14 130. Plaintiffs repeat, re-allege, and incorporate the allegations in the
15 preceding paragraphs of this Complaint as though fully set forth herein.

16 131. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
17 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
18 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
19 Estate.

20 132. Defendants fraudulently induced and misrepresented to Gil Ben-
21 Kely that the Racetrack was safe.

22 133. The Employees and/or persons maintaining and managing
23 SpeedVegas were unqualified and ignorant of proper basic safety procedures.

24 134. SpeedVegas did not permit the driving instructors or employees to
25 disclose the crashes to each other, instructing them to not discuss.

26 135. SpeedVegas pushed the driving instructors to allow customers to
27 drive at faster speeds.

28 ///

1 136. Defendants knew or should have known of the prior crashes on the
2 Racetrack as well as the maintenance problems with the exotic sport cars,
3 including but not limited to problems with the brakes, brake pads falling off of
4 the sport cars while being driven on the Track at high speeds, the design of the
5 Track, the proximately and location of the concrete barrier wall, complaints by
6 instructors about problems with Turn 1 and the condition of the sport cars
7 and/or the recall of the Aventador (collectively "Safety Issues").

8 137. Despite the three prior crashes at Turn 1 and the Safety Issues,
9 Defendants advertised, promoted and/or otherwise represented that the
10 Racetrack as being safe.

11 138. Defendants' representations were both misleading and false at the
12 time Defendants made them.

13 139. Defendants knew or should have known that Gil Ben-Kely and
14 other persons similarly situated relied upon their representations.

15 140. As a direct and proximate cause of Defendants' misleading and
16 fraudulent representations and actions, Gil Ben-Kely and his Estate suffered
17 loss of earnings, severe injuries, pain of body as well as mind, and ultimately,
18 suffered death.

19 141. Gil Ben-Kely was ignorant of the totality of the Safety Issues and
20 prior crashes due to Defendants' concealment and/or failure to disclose to him
21 and, therefore, Gil Ben-Kely reasonably relied upon Defendants'
22 misrepresentations, concealments and/or omissions.

23 142. Gil Ben-Kely's injuries and death were a natural, probable and
24 foreseeable consequence of the negligent, gross negligent, willful, wanton,
25 reckless and/or otherwise tortious or wrongful acts or omissions of
26 Defendants.

27 143. Plaintiffs are therefore entitled to damages as a result.

28 ///

SEVENTH CAUSE OF ACTION—WRONGFUL MISREPRESENTATIONS

144. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

145. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

146. Defendants knew or should have known of the prior crashes on the Track as well as the maintenance problems with the exotic sport cars, including but not limited to problems with the brakes, brake pads falling off of the sport cars while being driven on the Track at high speeds, the design of the Track, the proximately and location of the concrete barrier wall, complaints by instructors about problems with Turn 1 and the condition of the sport cars and/or the recall of the Aventador (collectively "Safety Issues").

147. Despite the three prior crashes at Turn 1 and the Safety Issues, Defendants advertised and/or otherwise promoted the Track as being safe to drive upon.

148. Defendants' conduct in concealing the Safety Issues and prior crashes constitute negligent misrepresentations to Gil Ben-Kely and others similarly situated.

149. As a direct and proximate result of Defendants' misrepresentations, Gil Ben-Kely and his Estate suffered loss of earnings, severe and extreme injuries, pain of body and mind and, ultimately death.

150. It was foreseeable to Defendants that Gil Ben-Kely would rely upon Defendants false information and misrepresentations to his detriment.

151. Gil Ben-Kely's injuries and death were a natural, probable and foreseeable consequence of the negligent, gross negligent, willful, wanton, reckless and/or otherwise tortious or wrongful acts or omissions of

1 Defendants.

2 152. Plaintiffs are entitled to damages as a result thereof.

3 **EIGHTH CAUSE OF ACTION—NEGLIGENT HIRNG AND RETENTION**

4 153. Plaintiffs repeat, re-allege, and incorporate the allegations in the
5 preceding paragraphs of this Complaint as though fully set forth herein.

6 154. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
7 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
8 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
9 Estate.

10 155. Defendants were negligent, grossly negligent, reckless, wanton
11 and/or willful in their hiring and retaining the Employees, including the
12 mechanic, assistant mechanic, assistant track manager and track manager
13 who allowed the Aventador to be used on the commercial Racetrack and/or
14 failed to maintain the Aventador in proper working condition for use on a
15 commercial track and/or knew or should have known that Gil Ben-Kely was
16 instructing in a sports car unsuitable for use on the Track on February 12,
17 2017.

18 156. Defendants hired and retained Employees that were unfit for their
19 jobs, unqualified and/or ignorant of reasonable safety procedures.

20 157. Defendants knew or should have known that the Employees they
21 hired and retained to maintain the sport cars and/or manage the operations of
22 SpeedVegas were unfit for the jobs, unqualified and/or ignorant of safety
23 procedures, resulting in foreseeable and unreasonable risk to Gil Ben-Kely and
24 others similarly situated.

25 158. It was foreseeable to Defendants that hiring and/or retaining these
26 Employees created an unreasonable risk of harm to Gil Ben-Kely and others
27 similarly situated.

28 ///

1 159. As a direct and proximate result of the negligent, grossly negligent,
2 reckless, willful, wanton and/or otherwise tortious conduct of Defendants, Gil
3 Ben-Kely and his Estate suffered loss of earnings, severe and extreme injuries,
4 pain of mind and body and, ultimately suffered death.

5 160. Gil Ben-Kely's injuries and death were a natural, probable and
6 foreseeable consequence of the negligent, gross negligent, willful, wanton,
7 reckless and/or otherwise tortious or wrongful acts or omissions of
8 Defendants.

9 161. Plaintiffs are entitled to recover damages as a result thereof.

10 **NINTH CAUSE OF ACTION—NEGLIGENT SUPERVISION**

11 162. Plaintiffs repeat, re-allege, and incorporate the allegations in the
12 preceding paragraphs of this Complaint as though fully set forth herein.

13 163. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
14 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
15 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
16 Estate.

17 164. Defendants, at all time relevant hereto, were responsible for the
18 management, supervision and operations of SpeedVegas, including but not
19 limited to the management and supervision of the Employees.

20 165. Defendants knew or should have known that the Employees
21 Defendants hired and retained to maintain the Aventador and/or manage the
22 operation of the Track were unfit for the job, unqualified and/or ignorant of the
23 necessary safety procedures, resulting in a foreseeable and unreasonable risk
24 to Gil Ben-Kely and others similarly situated.

25 166. Defendants had a duty to supervise, manage and otherwise operate
26 SpeedVegas in a reasonably safe manner, including but not limited to, hiring
27 and retaining Employees knowledgeable and in compliance with the necessary
28 safety requirements to operate and/or maintain the Aventador in proper

1 working condition for use on a commercial track.

2 167. Defendants were negligent, grossly negligent, wanton, willful
3 and/or reckless in their supervision of their Employees in maintaining the
4 Aventador and/or the operation of the Track warranting in an award of
5 damages, including but punitive damages, in one or more of the following
6 manners, with each sufficient to support the relief sought:

7 a. Permitting or failing to prevent negligent, grossly negligent,
8 wanton, willful reckless and/or other tortious conduct by
9 persons, whether or not their agents and/or Employees, upon
10 the premises;

11 b. Permitting or failing to prevent negligent, grossly negligent,
12 wanton, willful, reckless and/or other tortious conduct by
13 persons, whether or not their agents and/or Employees, in the
14 use of any and all instrumentalities utilized in the operation of
15 the SpeedVegas;

16 c. Failing to ensure the proper maintenance of any and/all
17 instrumentalities utilized in the operation of the SpeedVegas;

18 d. Failing to properly manage the operations of SpeedVegas;

19 e. Failing to institute proper safety procedures and/or training to
20 prevent the ongoing maintenance problems;

21 f. Failing to supervise and/or insure Employees were properly
22 trained in the maintenance of the Aventador and/or the
23 operation of the Track;

24 g. Failing to supervise and insure employment of qualified persons
25 involved in the maintenance of the Aventador and/or operation
26 of the Track and

27 h. In any other manner that may be proven at trial in this matter.

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1 168. Gil Ben-Kely's injuries and death were a natural, probable and
2 foreseeable consequence of the negligent, gross negligent, willful, wanton,
3 reckless and/or otherwise tortious or wrongful acts or omissions of Defendants
4 in failing to supervise the Employees responsible for maintaining the Aventador
5 and/or managing the Track.

6 169. As a direct and proximate cause of the acts or omissions of
7 Defendants, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
8 extreme injuries, pain of body and mind and, ultimately, death.

9 170. Plaintiffs are entitled to recover damages as a result thereof.

10 **TENTH CAUSE OF ACTION—CLAIMS FOR HEDONIC OR**
11 **LIFETIME INJURY AND SUFFERING**

12 171. Plaintiffs repeat, re-allege, and incorporate the allegations in the
13 preceding paragraphs of this Complaint as though fully set forth herein.

14 172. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
15 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
16 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
17 Estate.

18 173. As a direct and proximate result of Defendants' acts or omissions,
19 Gil Ben-Kely suffered bodily injury resulting in loss of earnings, pain and
20 suffering, death and funeral expenses in an amount to be proven at trial.

21 174. As a direct and proximate result of Defendants' acts or omissions,
22 Gil Ben-Kely and his Estate suffered mental and physical anguish as well as
23 the loss of the enjoyment of life in the future, lost future wages and, ultimately,
24 the loss of his life.

25 175. Defendants knowingly risked the life of Gil Ben-Kely in order to
26 continue to make profits.

27 176. Defendants' conduct was extreme and outrageous, wanton, willful
28 and/or in reckless disregard, thereby warranting an award of damages,

1 including punitive damages.

2 177. Plaintiffs are entitled to recover damages as a result.

3 **ELEVENTH CAUSE OF ACTION—RES IPSA LOQUITUR**

4 178. Plaintiffs repeat, re-allege, and incorporate the allegations in the
5 preceding paragraphs of this Complaint as though fully set forth he

6 179. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
7 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
8 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
9 Estate.

10 180. A res ipsa loquitur inference of negligence has been established
11 given that Defendants were in control of the Aventador and/or manufactured
12 the Aventador that caused the harm to Gil Ben-Kely and his Estate, that such
13 an accident does not ordinarily occur in the absence of negligence and that
14 Defendants are in a better position to explain the cause of the Fatal Crash than
15 Plaintiffs.

16 181. Plaintiffs are not required to show the exact cause of the injury.

17 182. Plaintiff have established that it is more probable than not that the
18 injury occurred as a result of Defendants' breaches of duty.

19 183. Plaintiffs are entitled to damages as a result.

20 **TWELTH CAUSE OF ACTION—NEGLIGENT DESIGN OF TRACK**
21 **(Against SpeedVegas Defendants and Track Designers)**

22 184. Plaintiffs repeat, re-allege, and incorporate the allegations in the
23 preceding paragraphs of this Complaint as though fully set forth herein.

24 185. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
25 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
26 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
27 Estate.

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1 186. Speed Vegas in conjunction with the Track Designers designed the
2 Racetrack, managed the construction of the Track and were responsible for the
3 "safety features" and "operational procedures" of the Track.

4 187. Defendants owed a duty of care to design and construct a safe
5 Track and create operational procedures for the Track to be operated in a
6 reasonable and safe manner.

7 188. Defendants breached their duty by failing to provide adequate run-
8 offs at critical points on the Racetrack where, due to either driver error or
9 mechanical failure, the high powered exotic sport car leave the surface of the
10 Track.

11 189. Defendants failed to design Track to allow the sport cars to reduce
12 speed before encountering concrete barrier walls.

13 190. Defendants also breached their duty to design and construct a safe
14 Track by allowing a concrete barrier wall to be placed approximately 20 feet
15 from Turn One as well as allowing an exposed drainage culvert and ditch near
16 Turns 1 and 2.

17 191. Defendants further breached their duty of car to design and
18 construct a safe Track by failing to properly affix the tires barrier or other
19 customary materials in order to soften the impact of the car when the car hits
20 the concrete barrier walls or drainage pipe.

21 192. Defendants further breached their duty of care by failing to provide
22 adequate safety features when, not if, mechanical failure or driver error results
23 in a car leaving the surface of the Track.

24 193. Defendants further breached their duty of care by failing to
25 establish appropriate safety features and operational procedures given the
26 location of the nearest Fire Station (ten miles away and corresponding delayed
27 response time by emergency personnel) given the extremely dangerous nature
28 of having exotic sport cars being driven by inexperienced drivers, on a Track

1 having no speed limits and the high probability of life-threatening injuries
2 when an accident occurs.

3 194. Defendants further breached their duty of care by not requiring
4 adequate safety features and operational procedures and for SpeedVegas' Fire
5 and Safety personnel, including but not limited to only having handheld fire
6 extinguishers for responding to car fires on Track.

7 195. Plaintiffs are entitled to damages in an amount to be proven at trial
8 as a result thereof.

9 **THIRTEENTH CAUSE OF ACTION—NEGLIGENT ENTRUSTMENT**
10 **(Against SpeedVegas Defendants)**

11 196. Plaintiffs repeat, re-allege and incorporate each and every
12 allegation in the preceding paragraphs of this Complaint as though fully set
13 forth herein.

14 197. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
15 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
16 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
17 Estate.

18 198. That at the time of the Fatal Crash, Defendants negligently
19 entrusted the Aventador to Craig Sherwood by failing to provide adequate
20 training and/or failed to ensure that Craig Sherwood was properly skilled, car.

21 199. Despite Craig Sherwood's lack of training and/or qualifications,
22 Defendants permitted, allowed and invited Craig Sherwood to operate the
23 Aventador, one of the most powerful sport cars in the World.

24 200. As a direct and proximate result of Craig Sherwood's failure to
25 operate the Aventador, for which the Defendants are responsible, Gil Ben-Kely
26 and his Estate suffered injury and thereafter died.

27 201. Plaintiffs are entitled to damages in an amount to be proven at trial
28 as a result thereof.

FOURTEENTH CAUSE OF ACTION—PRODUCT LIABILITY
(Against Defendant Lamborghini)

202. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

203. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

204. Defendant Lamborghini manufactured the Aventador.

205. The Aventador had a design defect which rendered it unreasonably dangerous because it failed to perform in a manner reasonably expected in light of its nature and intended function.

206. The fire and explosion of the Aventador constituted evidence of an unexpected, dangerous malfunction that gives rise to an inference of a manufacturing defect.

207. Defendant had reason to anticipate that danger would result from use of its product and failed to give adequate warning of such danger.

208. Defendant had notice that its Aventadors were catching on fire due to the design defect as early as September 2015, and during 2016 when it investigated the prior incidents of the Aventador catching fire for no reason, exploding, and burning up.

209. Defendant knew as of 2016 that a defect relating to the fuel tank and emission were causing Aventadors to catch on fire and explode.

210. Defendant failed to send notice of the voluntary recall of the Aventadors until February 3, 2017.

211. Defendant further failed to offer repairs of the Aventadors (2012-2017 models) until February 24, 2017. Defendant recalled its 2012-2017 Aventadors because it had determined that the cars created an unreasonable

1 safety risk and/or failed to meet minimum safety standards.

2 212. An alternative safer design existed given that Lamborghini has
3 corrected the design flaw in other and/or new models of Aventadors as well as
4 offering the free repair of its 2012-2017 Aventador models pursuant to NHTSA
5 Recall Campaign #17V07300.

6 213. The defect existed at the time the Aventador left the manufacturer.

7 214. The defect caused injury to Gil Ben-Kely and his Estate.

8 215. At all material times and as early as 2015, Defendant Lamborghini
9 knew of the defective nature of the design of its Aventador and continued to
10 design, manufacture, market and sell the Aventadors so as to maximize its
11 sales and profits at the expense of public health and safety. Defendant
12 Lamborghini's conduct exhibits such an entire want of care as to establish that
13 its actions were a result of fraud, evil motive, actual malice, and the conscious
14 and deliberate disregard of foreseeable harm to Plaintiffs.

15 216. Plaintiffs are entitled to damages in an amount to be proven at
16 trial, including punitive damages.

17 **FIFTEENTH CAUSE OF ACTION—NEGLIGENT PROPERTY OWNERS**
18 **(Against Defendant Mary Sloan, LLC and Sloan Ventures 90, LLC)**

19 217. Plaintiffs repeat, re-allege and incorporate each and every
20 allegation in the preceding paragraphs of this Complaint as though fully set
21 forth herein

22 218. Defendants are the owners of the real property upon which the
23 SpeedVegas Track was built and is operated upon, has a nondelegable duty to
24 answer for the well-being of those persons who are on the premises.

25 219. Gil Ben-Kely was legally upon the SpeedVegas premises as an
26 employee.

27 220. Gil Ben-Kely, as a driving instructor employee of SpeedVegas, was
28 expressly or impliedly invited onto the premises for the benefit for SpeedVegas.

1 221. Defendants as owners of the real property owed a non-delegable
2 duty of care to ensure property maintenance in safe condition.

3 222. Defendants breached their duty by allowing an unreasonably
4 dangerous Track to be constructed and operated on their property.

5 223. Plaintiffs are entitled to damages as a result thereof.

6 **PUNITIVE DAMAGES**

7 224. Plaintiffs repeat, re-allege and incorporate each and every
8 allegation in the preceding paragraphs of this Complaint as though fully set
9 forth herein.

10 225. As a direct and proximate result of Defendants' deliberate
11 indifference to the consequences of their actions and conscious reckless
12 disregard of the rights and safety of Gil Ben-Kely, absence of care for the safety
13 and rights of Gil Ben-Kely and overtly dangerous, reckless and grossly
14 negligent actions, Gil Ben-Kely and his Estate suffered severe and extreme
15 injuries, great pain of body and mind and, ultimately death.

16 226. Plaintiffs are entitled to an award of punitive damages in amount
17 as a jury may find appropriate at the trial in this matter.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for relief as follows:

20 1. For trial by jury;

21 2. For compensatory damages in an amount in excess of \$50,000.00
22 against all Defendants jointly and severally for an award of compensatory
23 damages for loss of earnings, funeral expenses, pain and suffering, as well as
24 other damages according to proof at trial;

25 3. For punitive damages in an amount against Defendants for
26 punitive or exemplary damages in an amount sufficient to punish and deter
27 future similar conduct;

28 4. For reasonable attorneys' fees and costs;

- 1 5. For prejudgment interest;
2 6. For leave to amend as additional facts are gathered; and
3 7. For such other and further relief as the Court deems just and
4 proper.

5 **V.**

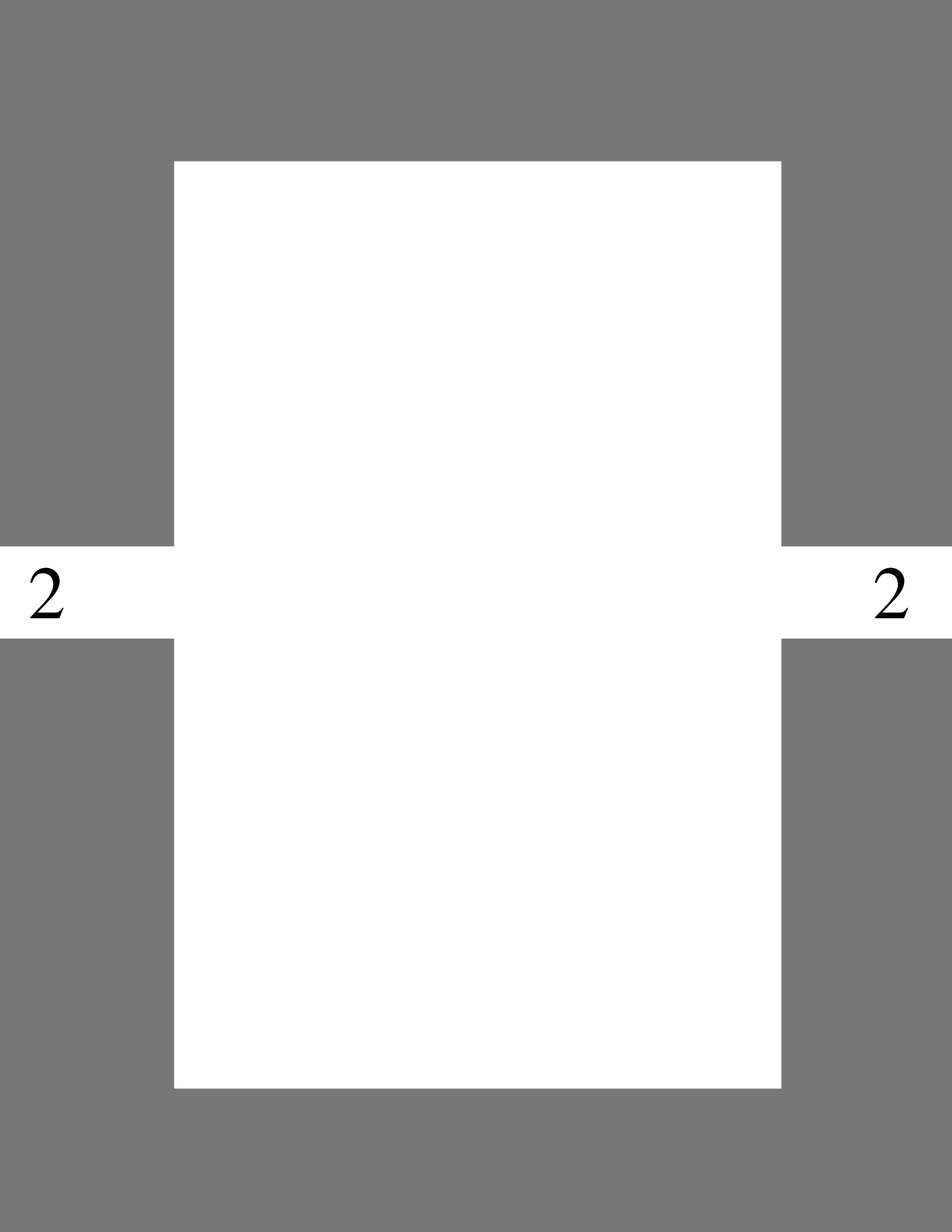
6 **JURY DEMAND**

7 Pursuant to Rule 38(b) of the Nevada Rules of Civil Procedure and
8 general state law, Plaintiff demands a jury trial in connection with the subject
9 action.

10 Dated this 28 day of June, 2017.

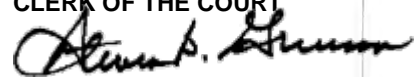
11 GENTILE CRITALLI
12 MILLER ARMENI SAVARESE

13 _____
14 DOMINIC GENTILE
15 Nevada Bar No. 1923
16 JANIECE MARSHALL
17 Nevada Bar No. 4686
18 410 S. Rampart Blvd., Suite 420
19 Las Vegas, NV 89145
20 Tel.: 702.880.0000
21 Attorneys for Plaintiffs
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by
ANTONELLA BEN-KELY as the duly
appointed representative of the Estate
and as the widow and heir of Decedent
GIL BEN-KELY; SHON BEN-KELY, son
and heir of decedent GIL BEN-KELY;
NATHALIE BEN-KELY-SCOTT, daughter
and heir of the decedent GIL BEN-KELY,

Plaintiffs,

vs.

SPEEDVEGAS, LLC, a foreign-limited
liability company;; SCOT GRAGSON, an
individual; WORLD CLASS DRIVING, an
unknown entity; SLOAN VENTURES 90,
LLC, a Nevada limited liability company;
ROBERT BARNARD, an individual;
MOTORSPORTS SERVICES
INTERNATIONAL, LLC, a North Carolina
limited liability company and
AUTOMOBILI LAMBORGHINI AMERICA,
LLC, a foreign-limited liability company
DOES I-X; and ROE ENTITIES XI-XX,
inclusive,

Defendants.

CASE NO. A-17-757614-C
DEPT. XXVII

AMENDED COMPLAINT

(With Demand For Jury Trial)

Exemption from Arbitration
Damages in Excess of \$50,000

1 Plaintiffs ESTATE OF GIL BEN-KELY, ANTONELLA BEN-KELY as the
2 duly appointed administrator of the Estate and as the surviving widow and heir
3 of decedent Gil Ben-Kely, SHON BEN-KELY, surviving son and heir of decedent
4 Gil Ben-Kely, NATHALIE BEN-KELY, surviving daughter and heir of decedent
5 Gil Ben-Kely; by and through counsel, the law firm of Gentile Cristalli Miller
6 Armeni Savarese, complain and allege against Defendants SPEEDVEGAS, LLC,
7 a foreign-limited liability company; WORLD CLASS DRIVING, an unknown
8 foreign entity; SCOTT GRAGSON, an individual; SLOAN VENTURES 90, LLC, a
9 Nevada limited liability company; ROBERT BARNARD, an individual;
10 MOTORSPORTS SERVICES INTERNATIONAL, LLC, a North Carolina limited
11 liability company and AUTOMOBILI LAMBORGHINI AMERICA, LLC, a foreign-
12 limited liability company, as follows:

13 **I. INTRODUCTION**

14 On February 12, 2017, Gil Ben-Kely, a SpeedVegas driving instructor
15 and Craig Sherwood, a Canadian tourist, were killed in a fiery crash ("Fatal
16 Crash") at the SpeedVegas Racetrack. Their bodies were charred beyond
17 recognition. This was the fifth crash at SpeedVegas in only its first ten months
18 of operation. Three of the five crashes were at Turn 1 on the Racetrack,
19 including the Fatal Crash.

20 Videos taken by persons driving past show the Lamborghini Aventador
21 engulfed in a massive fire that could be seen for miles. SpeedVegas knowingly
22 built its Racetrack ten miles away from the closest fire station, yet provided
23 only hand-held extinguishers to its Fire and Safety personnel. A video shows
24 that the SpeedVegas Fire and Safety personnel were completely ineffective in
25 putting out the fire with their hand-held extinguishers.

26 SpeedVegas designed and built the Racetrack in order to market it as the
27 "longest and fastest racetrack in Las Vegas", with the "longest straightaway"
28 and "No Speed Limit". SpeedVegas entrusts some of the most powerful, fastest

1 exotic sports cars in the World to amateur, inexperienced drivers. The faster
2 the car the more money SpeedVegas charges you to drive it so long as you have
3 a drivers' license, are wearing closed-toe shoes and are over 18 years of age.

4 SpeedVegas encouraged its customers to drive as fast as possible,
5 posting their highest speed on a telemetry board (its "SpeedPass" proprietary
6 technology), congratulating the fastest driver of the day on its website and
7 training the driving instructors to up-sell both cars and laps to drive even
8 faster. The SpeedPass telemetry board, however, fraudulently overstated the
9 actual speed of the sports cars by approximately fifteen percent, resulting in
10 customers trying to beat their friends or their own fastest speed during
11 subsequent laps. During subsequent laps, drivers empowered by the false
12 belief that they had already achieved a top speed would drive faster because
13 the speedometer would show the actual speed. This resulted in the drivers
14 pressuring driving instructors to allow them to drive even faster. After the
15 Fatal Crash, SpeedVegas removed the telemetry board in response to the
16 demands by the instructors.

17 Knowing that the Racetrack would be used by amateur drivers with little
18 or no driving experience with driving high-powered sports cars while
19 simultaneously marketing to those drivers that they could drive as fast as they
20 could make the exotic sports car go—the Lamborghini Aventador can exceed
21 200 mph—SpeedVegas failed to design the Racetrack to incorporate safety
22 features for when, not if, these inexperienced and amateur drivers either lost
23 control of the car or the car experienced mechanical failure.

24 Rather, SpeedVegas designed a technical and difficult course Racetrack
25 that challenges even professional racecar drivers. In fact, three of the five exotic
26 cars that crashed into the concrete walls on the Racetrack were actually being
27 driven by three different professional racecar drivers who lost control of the
28 cars either due to mechanical failure and/or the design of the Racetrack,

1 specifically the turns and the proximity of the concrete barrier walls.

2 In fact, prior to completing construction of the Racetrack, SpeedVegas
3 was told by more than one professional driver that Turn 1 was too dangerous
4 as designed due to its proximity to the Racetrack (20 feet) and the angle of the
5 Wall to the Racetrack. Another professional racecar driver and driving
6 instructor, the first time he was on the Racetrack, said "someone was going to
7 die" at Turn 1.

8 Moreover, prior to the Fatal Crash, SpeedVegas held a safety drill, telling
9 the employees that if there was going to be a crash that it would be at Turn 1.
10 Despite these warnings, SpeedVegas refused to redesign the Racetrack and
11 failed to build sufficient run-off for the cars to decrease speed before hitting the
12 concrete barrier walls, once again valuing its profit margin over the lives of its
13 employees and its customers.

14 Further, SpeedVegas also failed to properly cushion the concrete barrier
15 walls despite the prior crashes. Only after the Fatal Crash did SpeedVegas
16 properly bind the tires both vertically and horizontally together. Because
17 SpeedVegas failed to have adequate and properly affixed cushioning of the
18 Wall, the force of the Aventador when it hit the Wall simply pushed the tires
19 out of the way resulting in the Aventador hitting the Wall with such
20 overwhelming force that it actually cracked the Wall.

21 Yet, SpeedVegas re-opened the Racetrack to business without moving
22 the Wall, ignoring the impassioned pleas by driving instructors to move the
23 Wall and add more run-off areas and additional cushioning. Once again,
24 SpeedVegas chose profits over the lives of its employees and customers.
25 Management actually calculated the cost of moving the Wall against the
26 likelihood of another high impact crash.

27 ///

28 ///

1 SpeedVegas also choose profit over hiring competent and experienced
2 mechanics to maintain these complex exotic sports cars and track managers to
3 operate the Racetrack. SpeedVegas had several prior instances of mechanical
4 failure of the sports cars while they were being driven on the Racetrack. In
5 fact, one instance of a brake pad falling off a car while an instructor was
6 driving a customer is documented in an on-line video. Instructors complained
7 on more than one occasion about the maintenance of the sports cars due to
8 braking problems, cracked rotors, bald tires, etc.

9 With respect to the Aventador, although it had only been available to
10 customers to drive for approximately a week prior to the Fatal Crash,
11 instructors had already complained about braking and handling issues. As
12 was its business practice with all the sports cars, SpeedVegas swapped out the
13 original manufacturer equipment brakes with the Girodisk brand on the
14 Aventador on or about February 7, 2017. Yet, the day before the Fatal Crash,
15 February 11, 2017, SpeedVegas' assistant mechanic posted pictures on
16 Facebook showing work being done on the Aventador's brakes.

17 In addition to having known braking and handling issues, the Aventador
18 was also the subject of a February 3, 2017 Recall Notice due to a Lamborghini
19 manufacturing defect that caused the 2012-2017 Aventadors to catch on fire
20 and explode due to fuel coming into contact with the exhaust system. The
21 Recall Notice further advised that Aventadors with aftermarket modifications to
22 the exhaust system were at greater risk of fire. Despite knowing that its
23 Aventador had the aftermarket modifications to its exhaust system and of the
24 Recall Notice, SpeedVegas, once again, chose profit over safety. SpeedVegas
25 chose to allow the Aventador to continue to be driven on its commercial
26 Racetrack rather than pulling the Aventador out of availability to its customers
27 and placing it into a certified shop for repairs.

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1 Lamborghini also values profit over people by failing to take action to
2 recall the Aventadors despite first becoming aware of the “unreasonable safety
3 risk” as early as September 10, 2015, when the New York Daily News published
4 an article reporting the videos of the Aventadors catching fire. Rather than
5 immediately responding to this problem, Lamborghini delayed issuing the
6 Recall Notice until February 3, 2017, and, furthermore, would not allow
7 certified dealerships to make the necessary modifications until February 24,
8 2017, twelve days too late for Gil Ben-Kely.

9 As a consequence of Defendants SpeedVegas and Lamborghini putting
10 profits over safety, two men died a horrific, fiery death, their bodies charred
11 beyond recognition. Through this Complaint the Ben-Kelys seek redress.

12 **II. THE PARTIES, JURISDICTION AND VENUE**

13 **A. Plaintiffs**

14 1. Estate of Gil Ben-Kely by the duly appointed administrator of the
15 Estate, Antonella Ben-Kely.

16 2. Plaintiff Antonella Ben-Kely is the widow and an heir of decedent
17 Gil Ben-Kely, the driving instructor killed at SpeedVegas in a fiery crash on
18 February 12, 2017 (“Fatal Crash”).

19 3. Plaintiff Shon Ben-Kely is the only son and an heir of decedent Gil
20 Ben-Kely.

21 4. Plaintiff Nathalie Ben-Kely-Scott is the only daughter and an heir
22 decedent Gil Ben-Kely.

23 **B. Defendants**

24 5. Upon information and belief, Defendant SpeedVegas LLC is and
25 was at all times relevant hereto, a foreign-limited liability company conducting
26 business in Clark County, Nevada, NV Business ID NV201116665874, as a
27 vehicle or tourism vehicle experience operating a track on Las Vegas Boulevard
28 (“Racetrack” or “Track”).

1 6. Upon information and belief Scott Gragson is a resident of Clark
2 County who has represented that he owns SpeedVegas and the land upon
3 which it was built, and who was warned during the construction of the
4 Racetrack that Turn One was dangerous because of proximity to the concrete
5 walls.

6 7. Upon information and belief, Defendant World Class Driving is an
7 unknown entity that owns, operates and/or otherwise profits from the
8 Racetrack as the merchant who charges and receives payment from
9 SpeedVegas' customers for their vehicle driving experience.

10 8. Upon information and belief, Defendant Sloan Ventures 90, LLC, is
11 a Nevada limited liability company that currently owns several parcels of the
12 land upon which SpeedVegas is built: Assessor's Parcel Numbers 191-20-301-
13 001, 191-801-003, 191-20-301-003, 191-20-201-004 and 191-19-701-003.

14 9. Defendant Robert Barnard is an individual whose residence is
15 unknown and who has admitted that he is responsible for the design and
16 construction management of the SpeedVegas Racetrack as well as its "safety
17 features" and "operational procedures".

18 10. Upon information and belief, Defendant Motorsports Services
19 International, LLC is Defendant Robert Barnard's company, a limited liability
20 company formed in North Carolina, and also responsible for the design and
21 construction management of the Racetrack as well as its "safety features" and
22 its "operational procedures" (collectively with Robert Barnard referred to herein
23 as "Track Designer").

24 11. Automobili Lamborghini, LLC is and was at all times a foreign-
25 limited liability company that manufactured the 2015 Lamborghini Aventador
26 Roadster, VIN ZHWUR1ZD3FLA03687 (the "Aventador"), that caught fire and
27 exploded on the SpeedVegas Racetrack on February 12, 2017.

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1 12. Plaintiffs designate herein Doe individual defendants and Roe legal
2 entity defendants who are liable to Plaintiffs for the claims set forth hereinafter
3 but whose true identifies are presently unknown to Plaintiffs and, therefore,
4 Plaintiffs sue said Doe and Roe defendants by such fictitious names. Plaintiffs
5 will amend their Complaint to assert the true names and capacities of these
6 Defendants when Plaintiffs has ascertained sufficient information to identify
7 those Roe and Doe defendant who are believed to:

- 8 a. Directly and/or indirectly, own, control, manage and/or
9 otherwise operate the SpeedVegas Racetrack or "vehicle tourism
10 experience" at all relevant times set forth herein and/or was
11 otherwise responsible for the operation and/or conditions at the
12 SpeedVegas racetrack;
13 b. Own, leased, contributed and/or allowed to SpeedVegas, LLC to
14 use the Aventador on the Racetrack;
15 c. Made, authorized and/or otherwise allowed aftermarket
16 modifications to the Aventador;
17 d. Owns, developed, contributed and/or controlled the SpeedPass
18 proprietary technology that posted on a telemetry board the
19 (allegedly) fastest speed and fastest lap time achieved by drivers
20 of the SpeedVegas exotic sports cars on the SpeedVegas
21 racetrack;
22 e. Constructed the SpeedVegas Racetrack and
23 f. The manufacturer, installer and/or designer of any aftermarket
24 parts or equipment installed on the Aventador that caused
25 and/or contributed to the Fatal Crash.

26 ///

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13. The actions and/or the duties and obligations relevant to Plaintiffs' claims in this Complaint occurred and/or arose in Clark County, Nevada, thus, jurisdiction is proper in the Courts of this State and venue is proper in this Judicial District.

III.

GENERAL ALLEGATIONS

A. FATAL CRASH

14. Plaintiffs repeat, re-allege and incorporate each and every allegation in the preceding paragraphs of this Complaint as though fully set forth herein.

15. On or about February 12, 2017, Gil Ben-Kely was killed in a fiery crash (“Fatal Crash”) at the SpeedVegas Racetrack.

16. All times relevant hereto, Gil Ben-Kely was legally upon the SpeedVegas premises as an employee and who was expressly or impliedly invited upon said premises for the benefit of SpeedVegas, working as a driving instructor.

17. At the time of his death, Gil Ben-Kely was sitting in the passenger seat of a 2015 Lamborghini Aventador provided by SpeedVegas, LLC, instructing SpeedVegas customer, Craig Sherwood with the express or implied consent of Defendants SpeedVegas, LLC; World Class Driving; Mary Sloan, LLC; Sloan Ventures 90, LLC and Scott Gragson (collectively, "SpeedVegas Defendants" or "SpeedVegas").

18. Upon information and belief, Craig Sherwood was a Canadian tourist visiting Las Vegas for a real estate convention.

19. Upon information and belief, Craig Sherwood met all of SpeedVegas requirements for driving the most powerful sports car in the world as he was over 18 years of age, had a valid driver's license and was wearing closed-toe shoes.

1 20. At approximately 1:06 p.m., and for unknown reasons, the
2 Aventador left the surface of the Track at or before Turn 1, traveling at a high
3 rate of speed, and crashed into a concrete barrier wall (the "Wall").

4 21. The Wall was located approximately twenty feet from the surface of
5 the Racetrack at Turn One.

6 22. At some point during the driving experience, the Aventador caught
7 fire and exploded.

8 23. Videos posted online and taken by people driving on Las Vegas
9 Boulevard show that at 1:14 p.m., SpeedVegas' Fire and Safety personnel were
10 using hand-held fire extinguishers in an unsuccessful attempt to put out the
11 fully engulfed fire.

12 24. Photographs taken by the Metropolitan Police Department of the
13 scene of the Fatal Crash appear to show that Craig Sherwood's undamaged
14 wristwatch stopped at 1:14 p.m., presumably from the parts melting from the
15 intense heat of the fire.

16 25. Upon information and belief, the Clark County Fire Department
17 arrived at approximately 1:21 p.m. and started to put out the massive fire from
18 the exploding car.

19 26. Gil Ben-Kely and Craig Sherwood were killed in the Fatal Crash,
20 their bodies were burned beyond recognition while trapped in the burning
21 Aventador.

22 27. In addition to his body being charred beyond recognition, Gil Ben-
23 Kely suffered fatal injuries that were severe and extreme, including: extensive
24 thermal injuries, multiple fractures to his ribs, femurs, tibia, fibula as well as a
25 torn aorta.

26 28. Based upon the autopsy report, Gil Ben-Kely was still alive while
27 the Aventador was burning.

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1 29. Upon information and belief, the Aventador burned for over fifteen
2 minutes before the Clark County Fire Department arrived.

3 30. Flames from the explosion and fire could be seen for miles.

4 31. At the time of the Fatal Crash, SpeedVegas did not have an
5 emergency vehicle with a mounted fire extinguisher tank.

6 32. Upon information and belief, following the Fatal Crash,
7 SpeedVegas finally invested in an emergency vehicle with a professional fire
8 extinguisher tank mounted on the truck.

9 33. Due to the remote location that SpeedVegas built its Racetrack, the
10 nearest Fire Station is approximately ten miles away or fifteen minute response
11 time to respond to an emergency.

12 34. Following the Fatal Crash, SpeedVegas shipped the remnants of
13 the Aventador to an unknown location, upon information and belief.

14 35. SpeedVegas has not provided the Ben-Kely Family with any report
15 regarding the cause of the Fatal Crash or of the examination of the Aventador.

16 **B. FIFTH CRASH WITHIN ONLY TEN MONTHS OF OPENING**

17 36. Plaintiffs repeat, re-allege and incorporate each and every
18 allegation in the preceding paragraphs of this Complaint as though fully set
19 forth herein.

20 37. SpeedVegas markets and advertises itself as a "Real Racetrack",
21 having the "longest and fastest racetrack in Las Vegas" and having "No Speed
22 Limit".

23 38. The Fatal Crash was the fifth known crash on the SpeedVegas
24 Racetrack during its first ten months of operation.

25 39. At least five of SpeedVegas' exotic sports cars crashed into fixed
26 obstacles--the concrete barrier walls--located mere feet from the Racetrack.

27 40. Three of the five crashes occurred at the same place on the
28 Racetrack, namely: Turn 1, including the Fatal Crash.

1 41. Turn 1 is located at the end of the longest straightaway on the
2 Racetrack (approximately 1.5 miles long), allowing the high-powered exotic
3 sports cars to attain their highest rate of speed on the Racetrack.

4 42. SpeedVegas designed the Racetrack in order to market and
5 advertise it as having the longest straightaway with no speed limits.

6 43. SpeedVegas knew that the design of the Racetrack was dangerous
7 prior to completing construction because more than one professional racecar
8 driver actually warned the SpeedVegas Defendants.

9 44. Professional racecar drivers warned SpeedVegas that the
10 Racetrack, as designed, was dangerous because of the proximity of the
11 concrete walls to the Racetrack.

12 45. While the Racetrack was under construction and prior to its
13 completion, professional racecar driver and owner of Exotics Racing, Romain
14 Thieve, expressly warned Defendant Scott Gragson that the design of Turn 1
15 was too dangerous due to the proximity of the Racetrack to the Wall.

16 46. A second professional racecar driver and former SpeedVegas
17 driving instructor, Ian Holsop, while being driven around the Racetrack by
18 Roland Linder, a professional racecar driver and the original instructor of the
19 SpeedVegas driving instructors, and upon seeing Turn 1 and the location of the
20 Wall, immediately said: "someone is going to die there."

21 47. Well prior to the date of the Fatal Crash, SpeedVegas' Director of
22 Operations, Darren Stahl, told SpeedVegas employees that if there is going to
23 be a crash on the Racetrack, it would be at Turn One.

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C. SPEEDVEGAS ALLOWED THE LAMBORGHINI AVENTADOR ROADSTER TO BE USED ON THE COMMERCIAL RACETRACK DESPITE THE RECALL NOTICE OF THE UNREASONABLE SAFTY RISK OF FIRE, AFTERMARKET MODIFICATIONS THAT INCREASED THE RISK, BRAKING PROBLEMS AND STABILTY ISSUES AND WITHOUT INSTALLING A ROLL BAR OR CAGE

48. Plaintiffs repeat, re-allege and incorporate each and every allegation in the preceding paragraphs of this Complaint as though fully set forth herein.

49. Upon information and belief, the Aventador was a 2015 Roadster with a V12 engine and 729 bhp manufactured by Lamborghini and one of the most powerful exotic sports cars in the World.

50. Lamborghini advertises the Aventador as the most extraordinary car in Lamborghini's history given that it goes from 0-62 mph in just 3.0 seconds with a top speed of 217 mph, whether the removable top is on or off.

51. The Aventador was the fastest and most powerful supercar that SpeedVegas offered to its customers, outweighing the other cars by a half-ton.

52. The Aventador was difficult for even the experienced driving instructors to control on the Racetrack.

53. Despite its incredible power, speed and difficulty in controlling the Aventador, SpeedVegas did not require any additional training or qualifications for a customer to drive the Aventador.

54. Despite the Aventador being a removable top Roadster, SpeedVegas allowed the Aventador to be driven on its commercial Racetrack without installing a roll bar or a cage.

55. Photographs from the Fatal Crash show that the top of the Aventador came off at some point and can be seen lying in perfect condition on the Racetrack.

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1 56. Without the top in place to protect the passenger compartment
2 from the rear engine fire, Gil Ben-Kely and Craig Sherwood were directly
3 exposed to the flames, resulting in their extreme and severe thermal injuries
4 and charring their bodies beyond recognition.

5 57. On or about February 7, 2017, SpeedVegas swapped out the
6 Aventador's original Lamborghini brakes for Girodisk brakes and also had a
7 mechanical braking pedal installed for the driving instructor.

8 58. Upon information and belief, the instructor's brake pedal allowed
9 less than sixty percent braking power of the Aventador's braking ability.

10 59. SpeedVegas knew about the braking problems prior to the Fatal
11 Crash, as its assistant mechanic posted pictures on his Facebook page on
12 February 11, 2017, the day before the Fatal Crash, showing work being done
13 on the Aventador's new brakes.

14 60. Upon information and belief, SpeedVegas also knew about prior
15 problems with the exotic sports cars using the Girodisk brakes on commercial
16 tracks given both its track manager, Robert Strohmeyer, and head mechanic
17 previously worked at another commercial track that experienced problems with
18 the Girodisk brakes.

19 61. Upon information and belief, track manager, Robert Strohmeyer,
20 quit his prior employment at another commercial track after a different
21 Aventador's brakes locked up and nearly crashed.

22 62. Prior to the Fatal Crash, SpeedVegas experienced numerous
23 problems with the maintenance of its exotic sports cars.

24 63. Upon information and belief, on more than one occasion, brake
25 pads had fallen off of the exotic sports cars while they were being driven at high
26 speeds on the Racetrack.

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1 64. An on-line video shows a SpeedVegas sports car losing a brake pad
2 while a driving instructor is driving a customer on the Racetrack at a high rate
3 of speed.

4 65. In addition to the aftermarket modifications made by SpeedVegas
5 (the swapping of the original brakes to Girodisk brakes and adding a
6 mechanical brake to the braking system), SpeedVegas knew or should have
7 known of the additional aftermarket modifications made to the rear spoiler and
8 to the exhaust system that created unreasonable safety risks.

9 66. The aftermarket modifications to the Aventador increased the risk
10 of fire and loss of stability and control at higher rates of speed.

11 **D. LAMBORGHINI KNEW OF THE AVENTADOR'S DESIGN DEFECT**
12 **THAT WAS CAUSING ENGINE FIRES AS EARLY AS 2015, BUT**
13 **FAILED TO ISSUE THE RECALL NOTICE UNTIL FEBRUARY 3, 2017**
14 **AND FAILED TO PERMIT DEALERSHIPS TO REMEDY THE DEFECT**
15 **UNTIL FEBRUARY 24, 2017, TWELVE DAYS TOO LATE**

16 67. Plaintiffs repeat, re-allege and incorporate each and every
17 allegation in the preceding paragraphs of this Complaint as though fully set
18 forth herein.

19 68. As early as 2015, Lamborghini knew that its Aventador models had
20 a fuel-system defect causing them to catch on fire.

21 69. On September 10, 2015, a *New York Daily News* article,
22 "*Lamborghini Supercar Meets Fiery End in Dubai*", reported that videos existed
23 showing Aventadors engulfed in flames from a fire starting near the mid-
24 mounted engine as a result of a manufacturing design defect.

25 70. In January 2016, after conducting an investigation of the
26 Aventadors catching fire, Lamborghini concluded that there was a correlation
27 between the emissions system's charcoal canister becoming soaked in fuel,
28 filled gas tanks and malfunctioning purge valves.

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1 71. Despite having notice of the design defect and that Aventadors
2 were catching on fire and burning up all over the world (Miami, Dubai, New
3 York), Lamborghini failed to initiate a recall of the 2012-2017 Aventador
4 models until February 3, 2017: National Highway Traffic Safety Administration
5 (“NHTSA”) Campaign Number 17V073000 (“Recall Notice”).

6 72. A recall is issued when NHTSA or a manufacturer determines that
7 either the vehicle or the equipment “creates an unreasonable safety risk or fails
8 to meet minimum safety standards.”

9 73. Pursuant to the Recall Notice, Lamborghini voluntarily recalled its
10 2012-2017 Lamborghini Aventadors because “fuel may leak out of a full tank
11 and cause a fire”.

12 74. The Recall Notice further states: “Gasoline contact with an ignition
13 source such as a hot exhaust system can increase the risk of a fire.”

14 75. Upon information and belief, numerous Aventador Lamborghinis,
15 while being driven or even while stopped in traffic on city streets, have caught
16 fire and burned up due to the design defect of the gas tank and/or exhaust
17 system.

18 76. Despite issuing the Recall Notice on February 3, 2017,
19 Lamborghini refused to pay for repairs for the manufacturing defect until on or
20 after February 24, 2017, twelve days too late to save Gil Ben-Kely from fiery
21 Fatal Crash that charred his body beyond recognition.

22 77. Prior to the Fatal Crash, SpeedVegas knew that the Aventador was
23 the subject of the NHTSA Recall Notice warning of a high risk of catching fire,
24 particularly models with aftermarket modification to the emission.

25 78. SpeedVegas did not pull the Aventador from use on its commercial
26 Racetrack that encouraged inexperienced drivers to drive as fast as they can,
27 but continued to charge the unknowing customers to pay to drive the sports
28 car despite the risk of fire, placing both its customers and driving instructors

1 in danger.

2 79. Gil Ben-Kely never received the email sent by SpeedVegas on
3 February 11, 2017, but after work hours and well after the Aventador had been
4 fully fueled for the next, advising of the Recall Notice and the risk of fire if the
5 Aventador was fully fueled or its fuel level fell below a certain level.

6 80. Upon information and belief, driving instructors complained to
7 SpeedVegas that the Aventador did not brake properly and that it was difficult
8 for them to control the car during the week before the Fatal Crash.

9 81. Upon information and belief, SpeedVegas had experienced
10 maintenance problems such as bald tires, brakes locking up for unknown
11 reasons that resulted in the crashes and/or the cars going off the surface of the
12 Racetrack.

13 **E. SPEEDVEGAS DESIGNED THE RACETRACK TO MARKET IT AS**
14 **HAVING THE LONGEST STRAIGHTAWAY, THE FASTEST**
15 **RACETRACK IN LAS VEGAS WITH NO SPEEK LIMITS, RESULTING IN**
16 **THE HIGH-POWER SPORTS CARS BEING DRIVEN AT UNSAFE**
17 **SPEEDS**

18 82. Plaintiffs repeat, re-allege and incorporate each and every
19 allegation in the preceding paragraphs of this Complaint as though fully set
20 forth herein.

21 83. SpeedVegas designed its Racetrack based upon its marketing plan
22 to advertise the Racetrack as having "the longest straightaway", offering the
23 "longest and fastest racetrack in Las Vegas" and having "No Speed Limit".

24 84. SpeedVegas entices customers, having no or little relevant driving
25 experience, to drive the most powerful sports cars in the world at unsafe
26 speeds.

27 85. SpeedVegas posts on its social media sites congratulations to the
28 drivers who reached the highest speed on the Racetrack that day.

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1 86. SpeedVegas also advertised its SpeedPass proprietary technology
2 that purported to record the fastest speed achieved by each driver on a
3 telemetry board.

4 87. The telemetry board caused customers to drive faster than was
5 safe because of their own false inflated top speed or another customer's inflated
6 top speed, buying more laps to go faster and faster.

7 88. SpeedVegas encourages and financially rewarded its driving
8 instructors to upsell the customers to buy more driving laps.

9 89. Upon information and belief, the SpeedPass technology overstates
10 the actual speed attained by the sports cars by approximately fifteen percent.

11 90. The SpeedPass telemetry board would show that a customer
12 reached a speed of "140 mph" but the actual speed was 119 mph.

13 91. During the next lap the customer is looking at the speedometer on
14 the car, and believing from the telemetry board that he has already attained
15 140 mph then attempts to exceed the overstated speed of 140 mph.

16 92. This resulted in customers driving at unsafe speeds, increasing the
17 risk of the customer losing control and crashing.

18 93. The SpeedPass overstating the true speed also resulted in
19 customers pressuring the driving instructors to allow them to drive faster and
20 faster.

21 94. Upon information and belief, SpeedVegas' CEO, Arron Fessler,
22 would question driving instructors why their customers did not achieve high
23 rates of speed.

24 95. Immediately following the Fatal Crash and pursuant to demands
25 from the remaining instructors, SpeedVegas removed the SpeedPass telemetry
26 board.

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F. SPEEDVEGAS RACTRACK IS INHERENTLY, EXCESSIVELY AND UNNECESSARILY DANGEROUS IN BOTH DESIGN AND OPERATION

96. Plaintiffs repeat, re-allege and incorporate each and every allegation in the preceding paragraphs of this Complaint as though fully set forth herein.

97. The SpeedVegas Racetrack is inherently, excessively and unnecessarily dangerous in both design and operation.

98. The design of the SpeedVegas Racetrack is inherently, excessively and unnecessarily dangerous because:

- a. The Wall was located only twenty feet from Turn 1 and at such an angle that cars crash straight into it;
- b. Insufficient run-off exists to allow a car to decrease or lose speed before it crashes into a concrete barrier wall regardless whether due to driver error or mechanical failure;
- c. Insufficient cushioning to reduce the impact into the Wall given that SpeedVegas failed to bind the tire stacks horizontally (only vertically), had insufficient rows of tires and failed to affix the tire stacks to the Wall resulting in the Aventador simply pushing aside the tires crashing directly into the concrete;
- d. The Racetrack is too technical and challenging for inexperienced, amateur drivers driving at high rates of speed given that the Racetrack challenges even professional racecar drivers; at least two of the prior crashes occurred when professional drivers were driving not the customer and
- e. The Racetrack has no forgiveness at Turns 1 and 2 (S Turn) when the car leaves the surface of the Racetrack whether because of driver error or mechanical failure of the car, on the left is a concrete barrier wall, straight ahead is a drop to a

1 drainage ditch with an exposed culvert or to the right the Wall.

2 99. SpeedVegas operated the Racetrack in an inherently and
3 excessively dangerous and unsafe manner by:

- 4 a. Failing to maintain the sports cars in proper working order;
- 5 b. Swapping out the original manufacture brakes for Girodisk
6 brakes;
- 7 c. Using Girodisk brakes in place of the original manufacture
8 brakes despite knowing of problems with the Girodisk brakes
9 overheating on another commercial racetrack;
- 10 d. Allowing an Aventador Roadster with a removable top to be
11 used on the commercial Racetrack without a roll bar, cage or
12 providing fire protection racing suits in the event the top came
13 off exposing the passengers to the flames from the rear engine
14 fire;
- 15 e. Failing to immediately pull the Aventador from the Racetrack
16 upon receiving notice of the Recall Notice, particularly since the
17 notice provided that Aventadors with aftermarket modifications
18 to the exhaust system were at risk of fire;
- 19 f. Permitting the Aventador to be used on a commercial Racetrack
20 with its aftermarket modifications to its brakes, exhaust system
21 and the rear spoiler that result in braking and stability
22 problems at high rates of speed;
- 23 g. Failing to provide adequate safety equipment, emergency
24 procedures and/or safety features given the high risk of death
25 in the event of a crash and that the remote location of the
26 Racetrack--ten miles from the nearest Fire Station--resulted in
27 a fifteen minute response time to provide fire and medical
28 emergency services;

- 1 h. Using the SpeedPass proprietary technology that
2 misrepresented the actual speed of the cars that resulted in
3 customers driving at unsafe speeds given the dangerous,
4 unforgiving design of the Racetrack,
5 i. Failing to hire, retain and/or supervise competent and
6 knowledgeable mechanics to work on the cars and/or
7 experienced track managers to operate the Racetrack in a safe
8 and reasonable manner and
9 j. Having inadequate cushioning on the hard obstacles located too
10 close to the Racetrack.

11 **IV.**

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION—WRONGFUL DEATH**

14 100. Plaintiffs repeat, re-allege, and incorporate the allegations in the
15 preceding paragraphs of this Complaint as though fully set forth herein.

16 101. Plaintiff Antonella Ben-Kely brings this wrongful death action as
17 the duly appointed administrator of Decedent Gil Ben-Kely pursuant to NRS
18 41.085.

19 102. As a direct and proximate cause of Defendants' conduct, Gil Ben-
20 Kely and his Estate suffered bodily injury resulting in loss of income, pain and
21 suffering and death and funeral expenses.

22 103. Plaintiffs Antonella Ben-Kely, Shon Ben-Kely and Nathalie Ben-
23 Kely-Scott (collectively the Ben-Kely Family) bring this wrongful death action
24 pursuant to NRS 41.085 as the heirs of Gil Ben-Kely for damages against
25 Defendants for their "wrongful acts or neglect" in causing the death of Gil Ben-
26 Kely on February 12, 2017.

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1 104. Pursuant to NRS 41.085, the Ben-Kely Family Plaintiffs seek
2 damages for their grief and sorrow, loss of probable support, companionship,
3 society, comfort and consortium, and damages for pain, suffering and
4 disfigurement of Gil Ben-Kely resulting from the direct and proximate cause of
5 Defendants' conduct as set forth herein.

6 105. Defendants knowingly risked the life of Gil Ben-Kely in order to
7 profit from the operation of the Racetrack.

8 106. Defendants' conduct was extreme and outrageous, warranting an
9 award of punitive damages.

10 **SECOND CAUSE OF ACTION—WILLFUL AND WANTON NEGLIGENCE**

11 107. Plaintiffs repeat, re-allege, and incorporate the allegations in the
12 preceding paragraphs of this Complaint as though fully set forth herein.

13 108. Plaintiff Antonella Ben-Kely as the Administrator of Gil-Kely's
14 Estate, brings this claim for injuries and damages sustained by Gil Ben-Kely
15 prior to his death, for the benefit of the Heirs and the Estate of Gil Ben-Kely.

16 109. As a direct and proximate cause of Defendants' indifference to the
17 consequences of their actions, their conscious and reckless disregard for the
18 rights and safety of Gil Ben-Kely and for their willful and wanton negligent
19 actions, Gil Ben-Kely and his estate sustained loss of earnings, severe blunt
20 force injuries, thermal injuries, suffered great pain of body and mind, and
21 ultimately suffered death.

22 110. Gil Ben-Kely's injuries and death were a natural, probable and
23 foreseeable consequence of the negligent, gross negligent, willful, wanton,
24 reckless and/or otherwise tortious or wrongful acts or omissions of
25 Defendants.

26 111. As a result, Plaintiffs are entitled to recover damages, including
27 punitive damages.

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THIRD CAUSE OF ACTION—GROSS NEGLIGENCE

112. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

113. Plaintiff Antonella Ben-Kely brings this action as Administrator of Gil Ben-Kely's Estate for injuries sustained by Gil Ben-Kely prior to his death for the benefit of the heirs of Gil Ben-Kely.

114. As a direct and proximate cause of Defendants' absence of care for the safety and rights of Gil Ben-Kely as well as their reckless, overtly dangerous and grossly negligent actions, Gil Ben-Kely and his Estate sustained loss of earnings, severe and extreme injuries, suffered great pain of body and mind and, ultimately, suffered death.

115. As a result, Plaintiffs are entitled to recover damages, including punitive damages.

FOURTH CAUSE OF ACTION—NEGLIGENCE

116. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

117. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

118. As a direct and proximate cause of Defendants' actions, Gil Ben-Kely and his Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind and, ultimately, suffered death.

119. Gil Ben-Kely's injuries and death were a natural, probable and foreseeable consequence of the negligent, gross negligent, willful, wanton, reckless and/or otherwise tortious or wrongful acts or omissions of Defendants.

1 120. As a result, Plaintiffs are entitled to recover damages.

2 **FIFTH CAUSE OF ACTION—VICARIOUS LIABILITY, RESPONDEAT**
3 **SUPERIOR, OSTENSIBLE AGENCY AND/OR AGENCY**

4 121. Plaintiffs repeat, re-allege, and incorporate the allegations in the
5 preceding paragraphs of this Complaint as though fully set forth herein.

6 122. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
7 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
8 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
9 Estate.

10 123. At all times relevant, the employees, agents, administrators, staff
11 and/or representatives of Defendants (collectively referred to as "Employees")
12 were employed by and/or acting on behalf of Defendants.

13 124. At all times relevant, the Employees acted within their respective
14 capacities and scopes of employment for Defendants.

15 125. The Employees recklessly, wantonly, willfully, grossly negligently
16 and/or negligently, directly and proximately caused, through their acts and
17 omissions, injury, pain, suffering and, ultimately, the death of Gil Ben-Kely.

18 126. As a direct and proximate cause of the acts and omissions of the
19 Employees, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
20 extreme injuries as well as suffered great pain of body and mind and,
21 ultimately, suffered death.

22 127. Gil Ben-Kely's injuries and death were a natural, probable and
23 foreseeable consequence of the negligent, gross negligent, willful, wanton,
24 reckless and/or otherwise tortious or wrongful acts or omissions of
25 Defendants.

26 128. As a result, Plaintiffs are entitled to recover damages.
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SIXTH CAUSE OF ACTION—FRAUD

129. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

130. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

131. Defendants fraudulently induced and misrepresented to Gil Ben-Kely that the Racetrack was safe.

132. The Employees and/or persons maintaining and managing SpeedVegas were unqualified and ignorant of proper basic safety procedures.

133. SpeedVegas did not permit the driving instructors or employees to disclose the crashes to each other, instructing them to not discuss.

134. SpeedVegas pushed the driving instructors to allow customers to drive at faster speeds.

135. Defendants knew or should have known of the prior crashes on the Racetrack as well as the maintenance problems with the exotic sports cars, including but not limited to problems with the brakes, brake pads falling off of the sports cars while being driven on the Track at high speeds, the design of the Track, the proximately and location of the concrete barrier wall, complaints by instructors about problems with Turn 1 and the condition of the sports cars and/or the recall of the Aventador (collectively "Safety Issues").

136. Despite the three prior crashes at Turn 1 and the Safety Issues, Defendants advertised, promoted and/or otherwise represented that the Racetrack as being safe.

137. Defendants' representations were both misleading and false at the time Defendants made them.

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1 138. Defendants knew or should have known that Gil Ben-Kely and
2 other persons similarly situated relied upon their representations.

3 139. As a direct and proximate cause of Defendants' misleading and
4 fraudulent representations and actions, Gil Ben-Kely and his Estate suffered
5 loss of earnings, severe injuries, pain of body as well as mind, and ultimately,
6 suffered death.

7 140. Gil Ben-Kely was ignorant of the totality of the Safety Issues and
8 prior crashes due to Defendants' concealment and/or failure to disclose to him
9 and, therefore, Gil Ben-Kely reasonably relied upon Defendants'
10 misrepresentations, concealments and/or omissions.

11 141. Gil Ben-Kely's injuries and death were a natural, probable and
12 foreseeable consequence of the negligent, gross negligent, willful, wanton,
13 reckless and/or otherwise tortious or wrongful acts or omissions of
14 Defendants.

15 142. Plaintiffs are therefore entitled to damages as a result.

16 **SEVENTH CAUSE OF ACTION—WRONGFUL MISREPRESENTATIONS**

17 143. Plaintiffs repeat, re-allege, and incorporate the allegations in the
18 preceding paragraphs of this Complaint as though fully set forth herein.

19 144. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
20 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
21 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
22 Estate.

23 145. Defendants knew or should have known of the prior crashes on the
24 Track as well as the maintenance problems with the exotic sports cars,
25 including but not limited to problems with the brakes, brake pads falling off of
26 the sports cars while being driven on the Track at high speeds, the design of
27 the Track, the proximately and location of the concrete barrier wall, complaints
28 by instructors about problems with Turn 1 and the condition of the sports cars

1 and/or the recall of the Aventador (collectively "Safety Issues").

2 146. Despite the three prior crashes at Turn 1 and the Safety Issues,
3 Defendants advertised and/or otherwise promoted the Track as being safe to
4 drive upon.

5 147. Defendants' conduct in concealing the Safety Issues and prior
6 crashes constitute negligent misrepresentations to Gil Ben-Kely and others
7 similarly situated.

8 148. As a direct and proximate result of Defendants'
9 misrepresentations, Gil Ben-Kely and his Estate suffered loss of earnings,
10 severe and extreme injuries, pain of body and mind and, ultimately death.

11 149. It was foreseeable to Defendants that Gil Ben-Kely would rely upon
12 Defendants' false information and misrepresentations to his detriment.

13 150. Gil Ben-Kely's injuries and death were a natural, probable and
14 foreseeable consequence of the negligent, gross negligent, willful, wanton,
15 reckless and/or otherwise tortious or wrongful acts or omissions of
16 Defendants.

17 151. Plaintiffs are entitled to damages as a result thereof.

18 **EIGHTH CAUSE OF ACTION—NEGLIGENT HIRNG AND RETENTION**

19 152. Plaintiffs repeat, re-allege, and incorporate the allegations in the
20 preceding paragraphs of this Complaint as though fully set forth herein.

21 153. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
22 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
23 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
24 Estate.

25 154. Defendants were negligent, grossly negligent, reckless, wanton
26 and/or willful in their hiring and retaining the Employees, including the
27 mechanic, assistant mechanic, assistant track manager and track manager
28 who allowed the Aventador to be used on the commercial Racetrack and/or

1 failed to maintain the Aventador in proper working condition for use on a
2 commercial track and/or knew or should have known that Gil Ben-Kely was
3 instructing in a sports car unsuitable for use on the Track on February 12,
4 2017.

5 155. Defendants hired and retained Employees that were unfit for their
6 jobs, unqualified and/or ignorant of reasonable safety procedures.

7 156. Defendants knew or should have known that the Employees they
8 hired and retained to maintain the sports cars and/or manage the operations
9 of SpeedVegas were unfit for the jobs, unqualified and/or ignorant of safety
10 procedures, resulting in foreseeable and unreasonable risk to Gil Ben-Kely and
11 others similarly situated.

12 157. It was foreseeable to Defendants that hiring and/or retaining these
13 Employees created an unreasonable risk of harm to Gil Ben-Kely and others
14 similarly situated.

15 158. As a direct and proximate result of the negligent, grossly negligent,
16 reckless, willful, wanton and/or otherwise tortious conduct of Defendants, Gil
17 Ben-Kely and his Estate suffered loss of earnings, severe and extreme injuries,
18 pain of mind and body and, ultimately suffered death.

19 159. Gil Ben-Kely's injuries and death were a natural, probable and
20 foreseeable consequence of the negligent, gross negligent, willful, wanton,
21 reckless and/or otherwise tortious or wrongful acts or omissions of
22 Defendants.

23 160. Plaintiffs are entitled to recover damages as a result thereof.

24 **NINTH CAUSE OF ACTION—NEGLIGENT SUPERVISION**

25 161. Plaintiffs repeat, re-allege, and incorporate the allegations in the
26 preceding paragraphs of this Complaint as though fully set forth herein.

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1 162. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
2 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
3 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
4 Estate.

5 163. Defendants, at all time relevant hereto, were responsible for the
6 management, supervision and operations of SpeedVegas, including but not
7 limited to the management and supervision of the Employees.

8 164. Defendants knew or should have known that the Employees
9 Defendants hired and retained to maintain the Aventador and/or manage the
10 operation of the Track were unfit for the job, unqualified and/or ignorant of the
11 necessary safety procedures, resulting in a foreseeable and unreasonable risk
12 to Gil Ben-Kely and others similarly situated.

13 165. Defendants had a duty to supervise, manage and otherwise operate
14 SpeedVegas in a reasonably safe manner, including but not limited to, hiring
15 and retaining Employees knowledgeable and in compliance with the necessary
16 safety requirements to operate and/or maintain the Aventador in proper
17 working condition for use on a commercial track.

18 166. Defendants were negligent, grossly negligent, wanton, willful
19 and/or reckless in their supervision of their Employees in maintaining the
20 Aventador and/or the operation of the Track warranting in an award of
21 damages, including but punitive damages, in one or more of the following
22 manners, with each sufficient to support the relief sought:

23 a. Permitting or failing to prevent negligent, grossly negligent,
24 wanton, willful reckless and/or other tortious conduct by
25 persons, whether or not their agents and/or Employees, upon
26 the premises;

27 b. Permitting or failing to prevent negligent, grossly negligent,
28 wanton, willful, reckless and/or other tortious conduct by

1 persons, whether or not their agents and/or Employees, in the
2 use of any and all instrumentalities utilized in the operation of
3 the SpeedVegas;

4 c. Failing to ensure the proper maintenance of any and/all
5 instrumentalities utilized in the operation of the SpeedVegas;

6 d. Failing to properly manage the operations of SpeedVegas;

7 e. Failing to institute proper safety procedures and/or training to
8 prevent the ongoing maintenance problems;

9 f. Failing to supervise and/or insure Employees were properly
10 trained in the maintenance of the Aventador and/or the
11 operation of the Track;

12 g. Failing to supervise and insure employment of qualified persons
13 involved in the maintenance of the Aventador and/or operation
14 of the Track and

15 h. In any other manner that may be proven at trial in this matter.

16 167. Gil Ben-Kely's injuries and death were a natural, probable and
17 foreseeable consequence of the negligent, gross negligent, willful, wanton,
18 reckless and/or otherwise tortious or wrongful acts or omissions of Defendants
19 in failing to supervise the Employees responsible for maintaining the Aventador
20 and/or managing the Track.

21 168. As a direct and proximate cause of the acts or omissions of
22 Defendants, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
23 extreme injuries, pain of body and mind and, ultimately, death.

24 169. Plaintiffs are entitled to recover damages as a result thereof.

25 **TENTH CAUSE OF ACTION—CLAIMS FOR HEDONIC OR**
26 **LIFETIME INJURY AND SUFFERING**

27 170. Plaintiffs repeat, re-allege, and incorporate the allegations in the
28 preceding paragraphs of this Complaint as though fully set forth herein.

1 171. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
2 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
3 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
4 Estate.

5 172. As a direct and proximate result of Defendants' acts or omissions,
6 Gil Ben-Kely suffered bodily injury resulting in loss of earnings, pain and
7 suffering, death and funeral expenses in an amount to be proven at trial.

8 173. As a direct and proximate result of Defendants' acts or omissions,
9 Gil Ben-Kely and his Estate suffered mental and physical anguish as well as
10 the loss of the enjoyment of life in the future, lost future wages and, ultimately,
11 the loss of his life.

12 174. Defendants knowingly risked the life of Gil Ben-Kely in order to
13 continue to make profits.

14 175. Defendants' conduct was extreme and outrageous, wanton, willful
15 and/or in reckless disregard, thereby warranting an award of damages,
16 including punitive damages.

17 176. Plaintiffs are entitled to recover damages as a result.

18 **ELEVENTH CAUSE OF ACTION—RES IPSA LOQUITUR**

19 177. Plaintiffs repeat, re-allege, and incorporate the allegations in the
20 preceding paragraphs of this Complaint as though fully set forth he

21 178. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
22 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
23 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
24 Estate.

25 179. A res ipsa loquitur inference of negligence has been established
26 given that Defendants were in control of the Aventador and/or manufactured
27 the Aventador that caused the harm to Gil Ben-Kely and his Estate, that such
28 an accident does not ordinarily occur in the absence of negligence and that

1 Defendants are in a better position to explain the cause of the Fatal Crash than
2 Plaintiffs.

3 180. Plaintiffs are not required to show the exact cause of the injury.

4 181. Plaintiff have established that it is more probable than not that the
5 injury occurred as a result of Defendants' breaches of duty.

6 182. Plaintiffs are entitled to damages as a result.

7 **TWELTH CAUSE OF ACTION—NEGLIGENT DESIGN OF TRACK**
8 **(Against SpeedVegas Defendants and Track Designers)**

9 183. Plaintiffs repeat, re-allege, and incorporate the allegations in the
10 preceding paragraphs of this Complaint as though fully set forth herein.

11 184. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
12 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
13 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
14 Estate.

15 185. Speed Vegas in conjunction with the Track Designers designed the
16 Racetrack, managed the construction of the Track and were responsible for the
17 "safety features" and "operational procedures" of the Track.

18 186. Defendants owed a duty of care to design and construct a safe
19 Track and create operational procedures for the Track to be operated in a
20 reasonable and safe manner.

21 187. Defendants breached their duty by failing to provide adequate run-
22 offs at critical points on the Racetrack where, due to either driver error or
23 mechanical failure, the high powered exotic sports car leave the surface of the
24 Track.

25 188. Defendants failed to design Track to allow the sports cars to reduce
26 speed before encountering concrete barrier walls.

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1 189. Defendants also breached their duty to design and construct a safe
2 Track by allowing a concrete barrier wall to be placed approximately 20 feet
3 from Turn One as well as allowing an exposed drainage culvert and ditch near
4 Turns 1 and 2.

5 190. Defendants further breached their duty of care to design and
6 construct a safe Track by failing to properly affix the tires barrier or other
7 customary materials in order to soften the impact of the car when the car hits
8 the concrete barrier walls or drainage pipe.

9 191. Defendants further breached their duty of care by failing to provide
10 adequate safety features when, not if, mechanical failure or driver error results
11 in a car leaving the surface of the Track.

12 192. Defendants further breached their duty of care by failing to
13 establish appropriate safety features and operational procedures given the
14 location of the nearest Fire Station (ten miles away and corresponding delayed
15 response time by emergency personnel) given the extremely dangerous nature
16 of having exotic sports cars being driven by inexperienced drivers, on a Track
17 having no speed limits and the high probability of life-threatening injuries
18 when an accident occurs.

19 193. Defendants further breached their duty of care by not requiring
20 adequate safety features and operational procedures and for SpeedVegas' Fire
21 and Safety personnel, including but not limited to only having handheld fire
22 extinguishers for responding to car fires on Track.

23 194. Plaintiffs are entitled to damages in an amount to be proven at trial
24 as a result thereof.

25 **THIRTEENTH CAUSE OF ACTION—NEGLIGENT ENTRUSTMENT**
26 **(Against SpeedVegas Defendants)**

27 195. Plaintiffs repeat, re-allege and incorporate each and every
28 allegation in the preceding paragraphs of this Complaint as though fully set

1 forth herein.

2 196. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
3 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
4 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
5 Estate.

6 197. That at the time of the Fatal Crash, Defendants negligently
7 entrusted the Aventador to Craig Sherwood by failing to provide adequate
8 training and/or failed to ensure that Craig Sherwood was properly skilled, car.

9 198. Despite Craig Sherwood's lack of training and/or qualifications,
10 Defendants permitted, allowed and invited Craig Sherwood to operate the
11 Aventador, one of the most powerful sports cars in the World.

12 199. As a direct and proximate result of Craig Sherwood's failure to
13 operate the Aventador, for which the Defendants are responsible, Gil Ben-Kely
14 and his Estate suffered injury and thereafter died.

15 200. Plaintiffs are entitled to damages in an amount to be proven at trial
16 as a result thereof.

17 **FOURTEENTH CAUSE OF ACTION—PRODUCT LIABILITY**
18 **(Against Defendant Lamborghini)**

19 201. Plaintiffs repeat, re-allege, and incorporate the allegations in the
20 preceding paragraphs of this Complaint as though fully set forth herein.

21 202. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
22 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
23 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
24 Estate.

25 203. Defendant Lamborghini manufactured the Aventador.

26 204. The Aventador had a design defect which rendered it unreasonably
27 dangerous because it failed to perform in a manner reasonably expected in
28 light of its nature and intended function.

1 205. The fire and explosion of the Aventador constituted evidence of an
2 unexpected, dangerous malfunction that gives rise to an inference of a
3 manufacturing defect.

4 206. Defendant had reason to anticipate that danger would result from
5 use of its product and failed to give adequate warning of such danger.

6 207. Defendant had notice that its Aventadors were catching on fire due
7 to the design defect as early as September 2015, and during 2016 when it
8 investigated the prior incidents of the Aventador catching fire for no reason,
9 exploding, and burning up.

10 208. Defendant knew as of 2016 that a defect relating to the fuel tank
11 and emission were causing Aventadors to catch on fire and explode.

12 209. Defendant failed to send notice of the voluntary recall of the
13 Aventadors until February 3, 2017.

14 210. Defendant further failed to offer repairs of the Aventadors (2012-
15 2017 models) until February 24, 2017. Defendant recalled its 2012-2017
16 Aventadors because it had determined that the cars created an unreasonable
17 safety risk and/or failed to meet minimum safety standards.

18 211. An alternative safer design existed given that Lamborghini has
19 corrected the design flaw in other and/or new models of Aventadors as well as
20 offering the free repair of its 2012-2017 Aventador models pursuant to NHTSA
21 Recall Campaign #17V07300.

22 212. The defect existed at the time the Aventador left the manufacturer.

23 213. The defect caused injury to Gil Ben-Kely and his Estate.

24 214. At all material times and as early as 2015, Defendant Lamborghini
25 knew of the defective nature of the design of its Aventador and continued to
26 design, manufacture, market and sell the Aventadors so as to maximize its
27 sales and profits at the expense of public health and safety. Defendant
28 Lamborghini's conduct exhibits such an entire want of care as to establish that

1 its actions were a result of fraud, evil motive, actual malice, and the conscious
2 and deliberate disregard of foreseeable harm to Plaintiffs.

3 215. Plaintiffs are entitled to damages in an amount to be proven at
4 trial, including punitive damages.

5 **FIFTEENTH CAUSE OF ACTION—NEGLIGENT PROPERTY OWNERS**
6 **(Against Defendant Mary Sloan, LLC and Sloan Ventures 90, LLC)**

7 216. Plaintiffs repeat, re-allege and incorporate each and every
8 allegation in the preceding paragraphs of this Complaint as though fully set
9 forth herein.

10 217. Defendants are the owners of the real property upon which the
11 SpeedVegas Track was built and is operated upon, has a nondelegable duty to
12 answer for the well-being of those persons who are on the premises.

13 218. Gil Ben-Kely was legally upon the SpeedVegas premises as an
14 employee.

15 219. Gil Ben-Kely, as a driving instructor employee of SpeedVegas, was
16 expressly or impliedly invited onto the premises for the benefit for SpeedVegas.

17 220. Defendants as owners of the real property owed a non-delegable
18 duty of care to ensure property maintenance in safe condition.

19 221. Defendants breached their duty by allowing an unreasonably
20 dangerous Track to be constructed and operated on their property.

21 222. Plaintiffs are entitled to damages as a result thereof.

22 **PUNITIVE DAMAGES**

23 223. Plaintiffs repeat, re-allege and incorporate each and every
24 allegation in the preceding paragraphs of this Complaint as though fully set
25 forth herein.

26 224. As a direct and proximate result of Defendants' deliberate
27 indifference to the consequences of their actions and conscious reckless
28 disregard of the rights and safety of Gil Ben-Kely, absence of care for the safety

1 and rights of Gil Ben-Kely and overtly dangerous, reckless and grossly
2 negligent actions, Gil Ben-Kely and his Estate suffered severe and extreme
3 injuries, great pain of body and mind and, ultimately death.

4 225. Plaintiffs are entitled to an award of punitive damages in amount
5 as a jury may find appropriate at the trial in this matter.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for relief as follows:

- 8 1. For trial by jury;
- 9 2. For compensatory damages in an amount in excess of \$50,000.00
10 against all Defendants jointly and severally for an award of compensatory
11 damages for loss of earnings, funeral expenses, pain and suffering, as well as
12 other damages according to proof at trial;
- 13 3. For punitive damages in an amount against Defendants for
14 punitive or exemplary damages in an amount sufficient to punish and deter
15 future similar conduct;
- 16 4. For reasonable attorneys' fees and costs;
- 17 5. For prejudgment interest;
- 18 6. For leave to amend as additional facts are gathered and
- 19 7. For such other and further relief as the Court deems just and
20 proper.

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V.

JURY DEMAND

Pursuant to Rule 38(b) of the Nevada Rules of Civil Procedure and general state law, Plaintiff demands a jury trial in connection with the subject action.

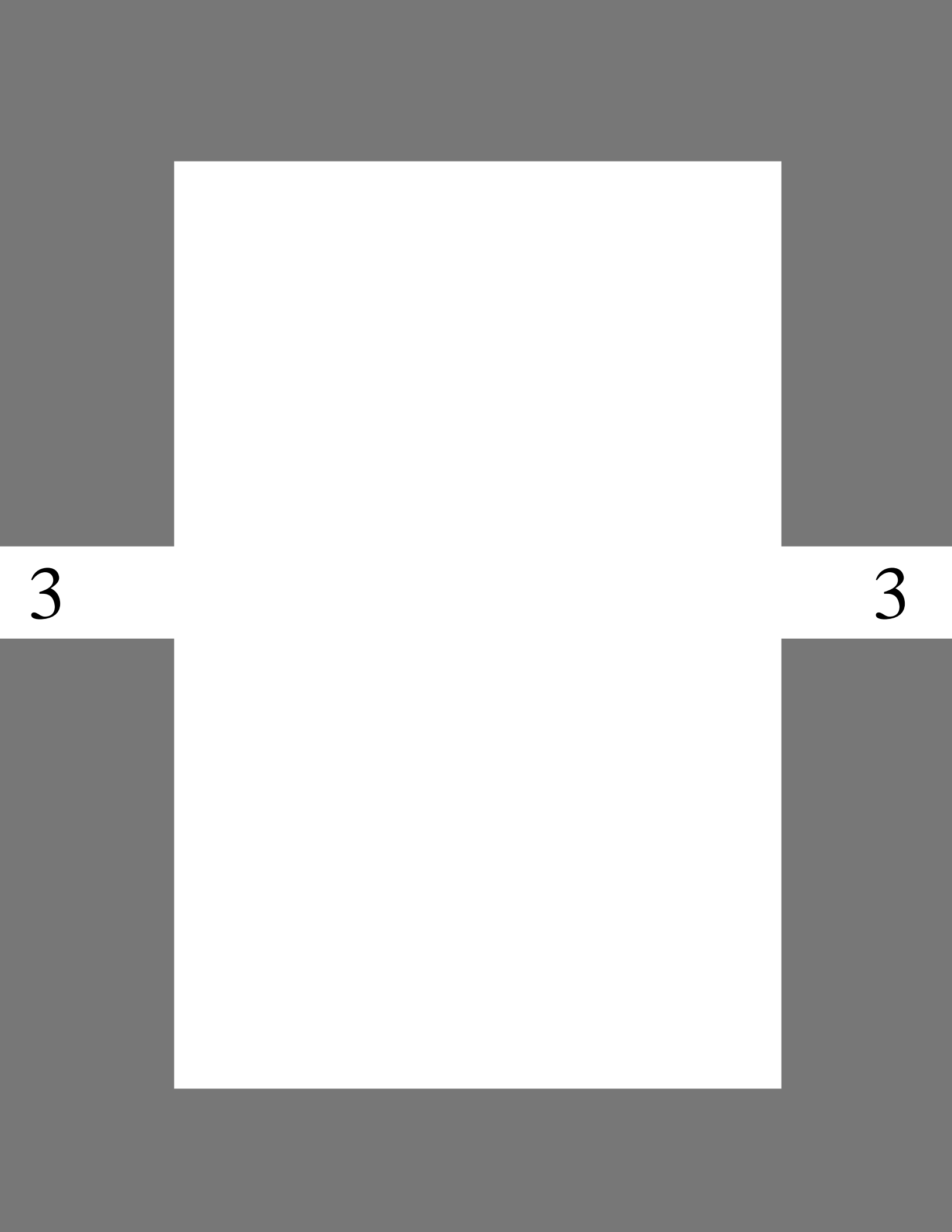
Dated this 26th day of July, 2017.

GENTILE CRITALLI
MILLER ARMENI SAVARESE

GENTILE CRISTALLI
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DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by
ANTONELLA BEN-KELY as the duly
appointed representative of the Estate
and as the widow and heir of Decedent
GIL BEN-KELY; SHON BEN-KELY, son
and heir of decedent GIL BEN-KELY;
NATHALIE BEN-KELY-SCOTT, daughter
and heir of the decedent GIL BEN-KELY,

Plaintiffs,

vs.

SPEEDVEGAS, LLC, a foreign-limited
liability company;; SCOT GRAGSON, an
individual; WORLD CLASS DRIVING, an
unknown entity; SLOAN VENTURES 90,
LLC, a Nevada limited liability company;
ROBERT BARNARD, an individual;
MOTORSPORT SERVICES
INTERNATIONAL, LLC, a North Carolina
limited liability company; AARON
FESSLER, an individual; TOM
MIZZONE, an individual; the ESTATE
OF CRAIG SHERWOOD and
AUTOMOBILI LAMBORGHINI AMERICA,
LLC, a foreign-limited liability company
DOES I-X; and ROE ENTITIES XI-XX,
inclusive,

Defendants.

CASE NO. A-17-757614-C
DEPT. XXVII

SECOND AMENDED COMPLAINT
(With Demand For Jury Trial)

1 Plaintiffs ESTATE OF GIL BEN-KELY, ANTONELLA BEN-KELY as the
2 duly appointed administrator of the Estate and as the surviving widow and
3 heir of decedent Gil Ben-Kely, SHON BEN-KELY, surviving son and heir of
4 decedent Gil Ben-Kely, NATHALIE BEN-KELY, surviving daughter and heir of
5 decedent Gil Ben-Kely; by and through counsel, the law firm of Gentile
6 Cristalli Miller Armeni Savarese, complain and allege against Defendants
7 SPEEDVEGAS, LLC, a foreign-limited liability company; WORLD CLASS
8 DRIVING, a foreign entity of unknown pedigree and provenance; SCOTT
9 GRAGSON, an individual; SLOAN VENTURES 90, LLC, a Nevada limited
10 liability company; ROBERT BARNARD, an individual; MOTORSPORT
11 SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company;
12 AARON FESSLER, an individual; TOM MIZZONE, an individual, THE ESTATE
13 OF CRAIG SHERWOOD and AUTOMOBILI LAMBORGHINI AMERICA, LLC, a
14 foreign-limited liability company, as follows:

15 **I. INTRODUCTION**

16 On February 12, 2017, Gil Ben-Kely, a SpeedVegas driving instructor
17 and Craig Sherwood, a Canadian tourist, were killed in a fiery crash ("Fatal
18 Crash") at the SpeedVegas "Racetrack". Their bodies were charred beyond
19 recognition. This was the fifth crash at SpeedVegas in only its first ten
20 months of operation. Three of the five crashes were at Turn 1 on the
21 Racetrack, including the Fatal Crash.

22 Videos taken by persons driving past the Racetrack on February 12,
23 2017, show the Lamborghini Aventador fully engulfed in a massive fire that
24 could be seen for miles. SpeedVegas knowingly built its Racetrack ten miles
25 away from the closest fire station, yet it provided only hand-held extinguishers
26 to its Fire and Safety personnel. The SpeedVegas Fire and Safety personnel
27 completely ineffective in putting out the fire. The extinguishers in the photos
28 appear to be only 20 pounds each. Putting out a fully involved automobile fire

1 generally requires in excess of 500 pounds of extinguishant. Only after the
2 Fatal Crash, did SpeedVegas invest in an emergency vehicle with a fire
3 extinguishment tank that other tracks routinely use.

4 SpeedVegas designed and built its "Racetrack" in order to competitively
5 market it against the other Las Vegas "driving experience" tracks as the
6 "longest and fastest racetrack in Las Vegas", with the "longest straightaway"
7 and "No Speed Limit". Despite the other two driving experience tracks being in
8 business for years in Las Vegas, no fatal crashes have occurred on those
9 tracks. Within its first ten months of operation, two people died on the
10 SpeedVegas Racetrack.

11 Moreover, upon information and belief, SpeedVegas has never had its
12 track design or operation approved by any racing sanctioning board, such as
13 the Sports Car Club of America (the "SCCA"). The SCCA is an entity that
14 would approve or disapprove the design and operation of a driving experience
15 track and/or require changes to the track and/or its operations before
16 allowing a sanctioned competition to be held at SpeedVegas.

17 Significantly, there are no local, state or federal laws, regulations or
18 ordinances that govern the SpeedVegas Racetrack. No Nevada or local agency
19 or body has never approved or disapproved of the design and/or track
20 operations of the SpeedVegas Racetrack. SpeedVegas obtained no certification
21 nor approval by any local, state or federal government with respect to its
22 "Racetrack" or its operations. (See Las Vegas Review Journal, March 18,
23 2017, *"Clark County officials hesitant to regulate 'extreme attractions because
24 of cost, lack of expertise."* ("Sisolak said the county does not have the expertise
25 or resources to regulate and monitor attractions like SpeedVegas...The county
26 doesn't have staffers trained to look at racetracks and their design, spokesman
27 Dan Kulin said.")). Prior to opening to the public, SpeedVegas was not required
28 to obtain any certification nor was it required to obtain any certification to re-

1 open after the Fatal Crash.

2 Moreover, no local, state or federal law requires any qualification or
3 professional license in order for a person to design one of these driving
4 experiences tracks in Nevada. Anyone can design a driving experience track
5 (or Racetrack as SpeedVegas refers to it) in Nevada. No certification or
6 professional licensing is required.

7 SpeedVegas entrusted some of the most powerful, fastest exotic sports
8 cars in the world to amateur, inexperienced drivers if they met three minimum
9 requirements, namely: (1) have a drivers' license, (2) wear closed-toe shoes
10 and (3) be 18 years of age. SpeedVegas encouraged its customers to drive as
11 fast as possible, posting their highest speed on a telemetry board (its
12 "SpeedPass" proprietary technology created by Defendant Aaron Fessler),
13 congratulating the fastest driver of the day on its website and training the
14 driving instructors to up-sell both cars and laps to drive even faster.

15 SpeedVegas continued using its SpeedPass telemetry board, even
16 though it fraudulently overstated the actual speed of the sports cars by
17 approximately fifteen percent, resulting in customers trying to beat their
18 friends or their own fastest speed during subsequent laps. During subsequent
19 laps, drivers empowered by the false belief that they had already achieved a
20 top speed would drive faster because the speedometer would show the actual
21 speed. This resulted in the drivers pressuring driving instructors to allow
22 them to drive even faster. Prior to the Fatal Crash, driving instructors had
23 requested that the SpeedPass telemetry board be taken down, but Aaron
24 Fessler/SpeedVegas refused. After the Fatal Crash, SpeedVegas immediately
25 removed the telemetry board; one of the few changes it made to its Racetrack
26 before re-opening after the Fatal Crash.

27 Knowing that its Racetrack would be used by amateur drivers having
28 little or no driving experience with high-powered sports cars while

1 simultaneously marketing to those drivers that they could drive as fast as they
2 could make the exotic sports car go—the Lamborghini Aventador can exceed
3 200 mph—SpeedVegas failed to design the Racetrack to incorporate safety
4 features for when, not if, these inexperienced and amateur drivers either lost
5 control of the car or the car experienced mechanical failure.

6 Rather, SpeedVegas designed a technical and difficult course that
7 challenges even professional racecar drivers. In fact, three of the five exotic
8 cars that crashed into the concrete walls on the Racetrack were actually being
9 driven by three different professional racecar drivers who lost control of the
10 cars either due to mechanical failure and/or the design of the Racetrack,
11 specifically the turns and the proximity of the concrete barrier walls.

12 Significantly, prior to completing construction of the Racetrack,
13 SpeedVegas was told by more than one professional driver that Turn 1 was too
14 dangerous as designed due to its proximity to the Racetrack (20 feet) and the
15 angle of the Wall to the Racetrack. A Professional racecar driver and driving
16 experience track owner expressly told Scott Gragson when Gragson invited
17 him to see “his racetrack”, that Turn 1 was too dangerous. Another
18 professional racecar driver and SpeedVegas driving instructor, upon riding on
19 the course during a training drive and seeing Turn 1 immediately said:
20 “someone is going to die” at Turn 1.

21 Moreover, prior to the Fatal Crash, SpeedVegas held a safety drill,
22 telling the employees that if there was going to be a crash that it would be at
23 Turn 1. Despite these warnings, SpeedVegas refused to redesign the
24 Racetrack and failed to build sufficient run-off for the cars to decrease speed
25 before hitting the concrete barrier walls, valuing its profit margin over the lives
26 of its employees and its customers.

27 Further, SpeedVegas also failed to properly cushion the concrete barrier
28 walls despite the prior crashes at Turn 1. Only after the Fatal Crash did

1 SpeedVegas properly bind the tires both vertically and horizontally together
2 and add another row of tires. Because SpeedVegas failed to have adequate
3 and properly affixed cushioning of the Wall, the force of the Aventador when it
4 hit the Wall simply pushed the tires out of the way resulting in the Aventador
5 hitting the Wall with such overwhelming force that it actually cracked the
6 Wall.

7 Yet, SpeedVegas re-opened the Racetrack for "business as usual"
8 without moving the Wall, ignoring the impassioned pleas by driving
9 instructors to move the Wall and to add more run-off areas and additional
10 cushioning. Once again, SpeedVegas chose profits over the lives of its
11 employees and customers. SpeedVegas management actually calculated the
12 cost of moving the Wall against the likelihood of another high impact crash.

13 SpeedVegas also choose profit over hiring (1) competent and
14 experienced mechanics to maintain these complex exotic sports cars and (2)
15 track managers to operate the Racetrack. SpeedVegas had several prior
16 instances of mechanical failure of the sports cars while they were being driven
17 on the Racetrack. In fact, one instance of a brake pad falling off a car while an
18 instructor was driving a customer is documented in an on-line video.
19 Instructors complained on more than one occasion about the maintenance of
20 the sports cars, including but not limited to problems with the brakes,
21 problems with cracked rotors, bald tires and problems with the handling of the
22 cars.

23 With respect to the Aventador, although it had only been available to
24 customers to drive for approximately one week prior to the Fatal Crash,
25 instructors had already complained about braking and handling issues. As
26 was its business practice with all the sports cars, SpeedVegas swapped out
27 the original manufacturer equipment brakes with the Girodisk brand brakes
28 on the Aventador on or about February 7, 2017. Yet, the day before the Fatal

1 Crash, February 11, 2017, SpeedVegas' assistant mechanic posted pictures on
2 Facebook showing work being done on the Aventador's brakes.

3 In addition to having known braking and handling issues, the
4 Aventador was also the subject of a February 3, 2017 Recall Notice for a
5 Lamborghini manufacturing defect that caused the 2012-2017 Aventadors to
6 catch on fire and explode due to fuel coming into contact with the exhaust
7 system. The Recall Notice further advised that Aventadors with aftermarket
8 modifications to the exhaust system were at greater risk of fire. Despite
9 knowing both that its Aventador had the aftermarket modifications to its
10 exhaust system and of the Recall Notice, SpeedVegas, once again, chose profit
11 over safety. SpeedVegas chose to allow the Aventador to continue to be driven
12 on its commercial Racetrack rather than pulling the Aventador out of
13 availability to its customers and placing it into a certified shop for repairs.

14 At the time of the Fatal Crash, Craig Sherwood, a Canadian tourist, was
15 operating the Aventador. SpeedVegas has alleged that Mr. Sherwood had a
16 medical condition that SpeedVegas says was the cause of the Fatal Crash.

17 Lamborghini also values profit over people by failing to take action to
18 recall the Aventadors despite first becoming aware of the "unreasonable safety
19 risk" as early as September 10, 2015, when the New York Daily News
20 published an article reporting the videos of the Aventadors catching fire.
21 Rather than immediately responding to this problem, Lamborghini delayed
22 issuing the Recall Notice until February 3, 2017, and, further, would not allow
23 certified dealerships to make the necessary modifications until February 24,
24 2017, twelve days too late for Gil Ben-Kely.

25 As a consequence of Defendants SpeedVegas and Lamborghini putting
26 profits over safety, two men died a horrific, fiery death, the bodies charred
27 beyond recognition. Through this Complaint the Ben-Kelys seek redress for
28 the death of their husband and father, Gil Ben-Kely.

II. THE PARTIES, JURISDICTION AND VENUE

A. Plaintiffs

1. Estate of Gil Ben-Kely by the duly appointed administrator of the Estate, Antonella Ben-Kely.

2. Plaintiff Antonella Ben-Kely is the widow and an heir of decedent Gil Ben-Kely, the driving instructor killed at SpeedVegas in a fiery crash on February 12, 2017 ("Fatal Crash").

3. Plaintiff Shon Ben-Kely is the only son and an heir of decedent Gil Ben-Kely.

4. Plaintiff Nathalie Ben-Kely-Scott is the only daughter and an heir of decedent Gil Ben-Kely.

B. Defendants

5. Upon information and belief, Defendant SpeedVegas LLC is and was at all times relevant hereto, a foreign-limited liability company conducting business in Clark County, Nevada, NV Business ID NV201116665874, as a vehicle or tourism vehicle experience operating a track on Las Vegas Boulevard ("Racetrack" or "Track").

6. Upon information and belief Scott Gragson is a resident of Clark County who represented and/or held himself as the owner of the SpeedVegas Racetrack. Upon information and belief, Defendant Gragson's company, Sloan Ventures 90 LLC, owns the parcels of land upon which the SpeedVegas Racetrack and facility was built.

7. During October 2015, Mr. Gragson invited professional racecar driver and owner of Exotic Racing, Romain Thieven, and others to come and see "his Racetrack" prior to the completion of construction. Mr. Thieven understood that Defendant Gragson owned SpeedVegas based upon his words and his actions. While reviewing the design plans with Defendant Gragson,

1 Mr. Thieven advised Defendant Gragson that Turn One, as designed, was
2 extremely dangerous because of proximity to the concrete walls.

3 8. Defendant Gragson has not disclosed whether he truly has an
4 ownership interest in SpeedVegas. Regardless, Defendant Gragson is an actual
5 representations to others that SpeedVegas was "his Racetrack" in conjunction
6 with his apparent authority to invite visitors onto the property (the land that
7 his company Sloan Ventures 90 LLC owns title to and leases to SpeedVegas) in
8 order to show-off the plans, design and construction of the Racetrack are
9 sufficient grounds upon which to hold Defendant Gragson liable as the
10 ostensible owner/operator of the Racetrack and for the harm caused to
11 decedent Gil Ben-Kely by the dangerous design, construction and operation of
12 the Racetrack.

13 9. Defendant Gragson is not protected by NRS 78.474 unless he is
14 an actual shareholder of SpeedVegas LLC and/or if the adherence to the
15 fiction of separate entity would, under the circumstances, sanction a fraud or
16 promote injustice, pursuant to a court's inherent equitable power.

17 10. Upon information and belief, SpeedVegas has failed to follow
18 corporate formalities by failing to hold shareholder meetings, failing to provide
19 notice of any shareholder meetings, and failure to obtain shareholder approval
20 when converting shares of prior corporations into share of SpeedVegas.

21 11. Neither Defendant Gragson nor any other defendant named in the
22 amended complaint alleged in their motions to dismiss that SpeedVegas LLC
23 had paid its workers compensation insurance as of the date of the Fatal
24 Crash.

25 12. Defendants are not entitled to the protection of the Nevada
26 Industrial Insurance Act ("NIIA") as the exclusive remedy for an employee
27 against his employer for workplace injuries unless SpeedVegas LLC was
28 current on its workers compensation payment.

1 13. Even if SpeedVegas was current on its NIIA workers compensation
2 insurance payments, Defendant Gragson and the other SpeedVegas
3 Defendants are not entitled to the exclusive remedy protection under the NIIA
4 given that the NIIA creates disparate standards for workers and employers,
5 biased in favor of the employer with respect to the accidental injury
6 determination.

7 14. An employer seeking protection under NIIA must satisfy a
8 considerably lower burden of proof that the injury resulted from the worker's
9 willfulness or intentional self-infliction than a worker seeking to pursue
10 damages outside of NIIA.

11 15. An employee must prove that the employer possessed a conscious
12 and deliberate intent directed towards the purpose of inflicting an injury.

13 16. Given the disparate treatment between employers and employees,
14 the appropriate test to determine when an employee is permitted to seek
15 damages against his employer outside of the NIIA is whether the employer has
16 knowingly maintained the workplace in an unreasonably hazardous condition.
17 While an employer is usually not motivated by a desire to harm employees, an
18 employer is financially motivated to take a calculated risk with its employees
19 lives and safety because the employer knows that when the injury inevitably
20 occurs due to the workplace condition, the cost will be less because of the
21 exclusive remedy and limited compensation provisions under NIIA.

22 17. The SpeedVegas Defendants—SpeedVegas LLC, World Class
23 Driving, Aaron Fessler, Tom Mizzzone and Scott Gragson--knowingly
24 maintained the workplace in an unreasonably hazardous condition resulting
25 in the death of Gil Ben-Kely.

26 18. Upon information and belief, Defendant Sloan Ventures 90, LLC,
27 is a Nevada limited liability company that currently owns several parcels of the
28 land upon which SpeedVegas is built: Assessor's Parcel Numbers 191-20-

1 301-001, 191-801-003, 191-20-301-003, 191-20-201-004 and 191-19-701-
2 003.

3 19. Upon information and belief, Defendant World Class Driving is an
4 unknown entity the pedigree and provenance of which is unknown, that owns,
5 operates and/or otherwise profits from the Racetrack as the merchant who
6 charges and receives payment from SpeedVegas' customers for their vehicle
7 driving experience.

8 20. Upon information and belief, Defendant Robert Barnard is a
9 United States citizen who, following the Fatal Crash and prior to being served,
10 moved to Spain. Mr. Barnard admitted that he is responsible for the design
11 and construction management of the SpeedVegas Racetrack as well as its
12 "safety features" and "operational procedures".

13 21. Following the Fatal Crash, the following statement of Mr. Barnard
14 was included in a March 15, 2017 letter from SpeedVegas to tour operators: "I
15 undertook the design and supervised the construction, provided input into the
16 overall site layout, and operations. . . . During the brief SPEEDVEGAS closure,
17 I took the opportunity to review both the physical and operational aspects,
18 and conclude that the facility continues to meet the safety standards above."

19 22. When attempting to serve Mr. Barnard with service of this action,
20 Plaintiffs learned that following the Fatal Crash, Mr. Barnard has left the
21 United States and now resides in Spain. Defendant Barnard declined to accept
22 service of this action when contacted by phone.

23 23. Upon information and belief, Defendant Motorsport Services
24 International, LLC is Defendant Robert Barnard's company, a limited liability
25 company formed in North Carolina, and also responsible for the design and
26 construction management of the Racetrack as well as its "safety features" and
27 its "operational procedures" (collectively with Robert Barnard referred to
28 herein as "Track Designer").

1 24. The day following attempted personal service on Defendant
2 Barnard by the process server, Defendant Barnard filed on behalf of his
3 company, Motorsport Services International, LLC, a Notice of Dissolution.

4 25. Upon information and belief, Defendant Aaron Fessler is the Chief
5 Executive Officer of SpeedVegas and is the owner, developer and operator of
6 SpeedVegas, responsible for the design and construction of the Racetrack, the
7 procedures and operations of the Racetrack, the fire and safety procedures of
8 the Racetrack, the swapping of the original manufacture brakes for the
9 Girodisc brand brakes, allowing which sports cars are offered to the public as
10 well as responsible for the hiring, firing and supervising of the employees,
11 including but not limited to the mechanic who swapped out the brakes and
12 allowed an assistant to work on the brakes the day before the Fatal Crash.

13 26. Upon further information and belief, Defendant Fessler, failed to
14 follow corporate formalities with respect to SpeedVegas, LLC. According to a
15 shareholder of SpeedVegas LLC, SpeedVegas has not held annual shareholder
16 meetings, has not complied with repeated requests for shareholder minutes,
17 has not permitted the inspection of the corporate records and did not obtain
18 shareholder approval for actions taken by Defendant Fessler.

19 27. Upon further information and belief, Defendant Fessler developed
20 the SpeedPass technology that fraudulently overstated the speeds of the sports
21 cars driving on the Racetrack.

22 28. Upon information and belief, Defendant Tom Mizzone worked in
23 conjunction with Aaron Fessler with respect to formation of SpeedVegas.
24 Upon further information and belief, Defendant Mizzone also failed to follow
25 corporate formalities with respect to SpeedVegas LLC, including but not
26 limited to failing to provide notice of annual shareholder meetings to investors,
27 holding shareholder meetings, obtaining approval for the transfer of shares
28

1 from two prior legal entities into SpeedVegas LLC's shares and failing to allow
2 a shareholder to inspect the records despite numerous requests.

3 29. The Estate of Craig Sherwood is the estate of the Canadian real
4 estate agent who was driving the Aventador at the time of the Fatal Crash.
5 SpeedVegas has alleged that decedent Sherwood had a medical condition that
6 was the cause of the Fatal Crash.

7 30. Automobili Lamborghini, LLC is and was at all times a foreign-
8 limited liability company that manufactured the 2015 Lamborghini Aventador
9 Roadster, VIN ZHWUR1ZD3FLA03687 (the "Aventador"), that caught fire and
10 exploded on the SpeedVegas Racetrack on February 12, 2017.

11 31. Plaintiffs designate herein Doe individual defendants and Roe
12 legal entity defendants who are liable to Plaintiffs for the claims set forth
13 hereinafter but whose true identifies are presently unknown to Plaintiffs and,
14 therefore, Plaintiffs sue said Doe and Roe defendants by such fictitious names.
15 Plaintiffs will amend their Complaint to assert the true names and capacities
16 of these Defendants when Plaintiffs has ascertained sufficient information to
17 identify those Roe and Doe defendant who are believed:

- 18 a. To directly and/or indirectly, own, control, manage
19 and/or otherwise operate the SpeedVegas Racetrack or
20 "vehicle tourism experience" at all relevant times set
21 forth herein and/or was otherwise responsible for the
22 operation and/or conditions at the SpeedVegas
23 racetrack;
- 24 b. To have owned, leased, contributed or otherwise allowed
25 SpeedVegas, LLC to use the Aventador on the Racetrack;
- 26 c. To have made, authorized or otherwise allowed
27 aftermarket modifications to the Aventador;
- 28

1 d. To have owned, developed, contributed or otherwise
2 controlled the SpeedPass proprietary technology that
3 posted on a telemetry board the (allegedly) fastest speed
4 and fastest lap time achieved by drivers of the
5 SpeedVegas exotic sports cars on the SpeedVegas
6 racetrack;

7 e. To have constructed the SpeedVegas Racetrack and

8 f. To have manufactured, installed and/or designed any
9 aftermarket parts or equipment installed on the
10 Aventador that caused and/or contributed to the Fatal
11 Crash.

12 32. The actions and/or duties and obligations relevant to Plaintiffs'
13 claims in this Complaint occurred and/or arose in Clark County, Nevada,
14 thus, jurisdiction is proper in the Courts of this State and venue is proper in
15 this Judicial District.

16 III.

17 GENERAL ALLEGATIONS

18 A. FATAL CRASH

19 33. Plaintiffs repeat, re-allege and incorporate each and every
20 allegation in the preceding paragraphs of this Complaint as though fully set
21 forth herein.

22 34. On or about February 12, 2017, Gil Ben-Kely was killed in a fiery
23 crash ("Fatal Crash") at the SpeedVegas Racetrack.

24 35. All times relevant hereto, Gil Ben-Kely was legally upon the
25 SpeedVegas premises as an employee who was expressly or impliedly invited
26 upon said premises for the benefit of SpeedVegas, working as a driving
27 instructor.

28 . . .

1 36. At the time of his death, Gil Ben-Kely was sitting in the passenger
2 seat of a 2015 Lamborghini Aventador rented by driver Craig Sherwood from
3 Defendants SpeedVegas, LLC and/or World Class Driving, instructing
4 SpeedVegas customer, Craig Sherwood.

5 37. Upon information and belief, Craig Sherwood was a Canadian real
6 estate agent and tourist, visiting Las Vegas for a real estate convention.

7 38. Upon information and belief, Craig Sherwood met all of
8 SpeedVegas requirements for driving the most powerful sports car in the world
9 as he was over 18 years of age, had a valid driver's license and was wearing
10 closed-toe shoes.

11 39. At approximately 1:06 p.m., and for unknown reasons, the
12 Aventador left the surface of the Track at or before Turn 1, traveling at a high
13 rate of speed, and crashed into a concrete barrier wall (the "Wall").

14 40. The Wall was located approximately twenty feet from the surface
15 of the Racetrack at Turn One.

16 41. At some point during the driving experience, the Aventador caught
17 fire and exploded.

18 42. Videos posted online and taken by people driving on Las Vegas
19 Boulevard show that at 1:14 p.m., SpeedVegas' Fire and Safety personnel were
20 using hand-held fire extinguishers in an unsuccessful attempt to put out the
21 fully engulfed fire.

22 43. Photographs taken by the Metropolitan Police Department of the
23 scene of the Fatal Crash appear to show that Craig Sherwood's undamaged
24 wristwatch stopped at 1:14 p.m., presumably from the parts melting from the
25 intense heat of the fire.

26 44. Upon information and belief, the Clark County Fire Department
27 arrived at approximately 1:21 p.m. and started to put out the massive fire
28 from the exploding car.

1 45. Gil Ben-Kely and Craig Sherwood were killed in the Fatal Crash;
2 their bodies were burned beyond recognition while trapped in the burning
3 Aventador.

4 46. In addition to his body being charred beyond recognition, Gil Ben-
5 Kely suffered fatal injuries that were severe and extreme, including: extensive
6 thermal injuries, multiple fractures to his ribs, femurs, tibia, fibula as well as
7 a torn aorta.

8 47. Based upon the autopsy report, Gil Ben-Kely was still alive while
9 the Aventador was burning.

10 48. Upon information and belief, the Aventador burned for over fifteen
11 minutes before the Clark County Fire Department arrived.

12 49. Flames from the explosion and fire could be seen for miles.

13 50. At the time of the Fatal Crash, SpeedVegas did not have an
14 emergency vehicle with a mounted fire extinguisher tank.

15 51. Upon information and belief, following the Fatal Crash,
16 SpeedVegas finally invested in an emergency vehicle with a professional fire
17 extinguisher tank mounted on the truck.

18 52. Due to the remote location that SpeedVegas built its Racetrack,
19 the nearest Fire Station is approximately ten miles away or fifteen minute
20 response time to address an emergency.

21 53. Following the Fatal Crash, SpeedVegas shipped the remnants of
22 the Aventador to an unknown location, upon information and belief.

23 54. SpeedVegas has not provided the Ben-Kely Family with any report
24 regarding the cause of the Fatal Crash or of the examination of the Aventador.

25 . . .

26 . . .

27 . . .

28 . . .

B. NO LOCAL, STATE OR FEDERAL LAWS, REGULATIONS OR ORDINANCES REGULATE SPEEDVEGAS' RACETRACK OR REQUIRE ANY PROFESSIONAL LICENSE OR QUALIFICATIONS FOR A TRACK DESIGNER

55. Plaintiffs repeat, re-allege and incorporate each and every allegation in the preceding paragraphs of this Complaint as though fully set forth herein.

56. SpeedVegas markets and advertises itself as a "Real Racetrack", having the "longest and fastest racetrack in Las Vegas" and having "No Speed Limit".

57. Upon information and belief, no racing sanctioning body, such as the Sports Car Club of American (sanctioning body for driving experience tracks), has ever approved of the design and/or operation of SpeedVegas' Racetrack for a racing competition.

58. No local, state or federal laws, regulations or ordinances regulate the SpeedVegas Racetrack.

59. No local, state or federal law imposes any qualifications or licensing requirements for a track designer of a driving experience track in Nevada.

60. There is no professional license or any other type of license required to be a track designer for a driving experience track or racetrack in the State of Nevada.

61. No local, state or federal agency ever approved the design or operation of SpeedVegas' Racetrack.

62. The designer or designers of the SpeedVegas Racetrack was not required to have any local, state or federal issued professional license in order to design the SpeedVegas Racetrack.

...

...

C. FIFTH CRASH WITHIN ONLY TEN MONTHS OF OPENING

63. Plaintiffs repeat, re-allege and incorporate each and every allegation in the preceding paragraphs of this Complaint as though fully set forth herein.

64. The Fatal Crash was the fifth known crash on the SpeedVegas Racetrack during its first ten months of operation.

65. At least five of SpeedVegas' exotic sports cars crashed into fixed obstacles--the concrete barrier walls--located mere feet from the Racetrack.

66. Three of the five crashes occurred at the same place on the Racetrack, namely: Turn 1, including the Fatal Crash.

67. Turn 1 is located at the end of the longest straightaway on the Racetrack (approximately 1.5 miles long), allowing the high-powered exotic sports cars to attain their highest rate of speed on the Racetrack.

68. SpeedVegas designed the Racetrack in order to market and advertise it as having the longest straightaway with no speed limits.

69. SpeedVegas and Scott Gragson were on notice that the design of the Racetrack was extremely dangerous prior to completing construction because more than one professional racecar driver actually warned them how dangerous Turn 1 was as designed.

70. Professional racecar drivers warned SpeedVegas and Scott Gragson that the Racetrack, as designed, was dangerous because of the proximity of the concrete walls to the race track.

71. During October 2015, professional racecar driver and owner of Exotic Racing (the first driving experience track opened in Las Vegas) visited SpeedVegas while it was under construction. Mr. Thieven understood that Defendant Gragson was the owner of SpeedVegas based upon his statements and his actions. During the visit, Mr. Thieven reviewed the design of the Racetrack with Defendant Gragson and advised him that "that it was

1 dangerous because there was a concrete barrier wall located too close to Turn
2 1."

3 72. A second professional racecar driver and former SpeedVegas
4 driving instructor, Ian Holsop, while being driven around the Racetrack by
5 Roland Linder, a professional racecar driver and the original training
6 instructor of the SpeedVegas driving instructors, and upon seeing Turn 1 and
7 the location of the Wall immediately said: "someone is going to die there."

8 73. Well prior to the date of the Fatal Crash, SpeedVegas' Director of
9 Operations, Darren Stahl, told SpeedVegas employees that if there is going to
10 be a crash on the Racetrack, it would be at Turn One.

11 **D. SPEEDVEGAS ALLOWED THE LAMBORGHINI AVENTADOR**
12 **ROADSTER TO BE USED ON THE COMMERCIAL RACETRACK**
13 **DESPITE THE RECALL NOTICE OF THE UNREASONABLE SAFETY**
14 **RISK OF FIRE, AFTERMARKET MODIFICATIONS THAT INCREASED**
15 **THE RISK, BRAKING PROBLEMS AND STABILTY ISSUES AND**
16 **WITHOUT INSTALLING A ROLL BAR OR CAGE**

17 74. Plaintiffs repeat, re-allege and incorporate each and every
18 allegation in the preceding paragraphs of this Complaint as though fully set
19 forth herein.

20 75. Upon information and belief, the Aventador was a 2015 Roadster
21 with a V12 engine and 729 bhp manufactured by Lamborghini and one of the
22 most powerful exotic sports cars in the World.

23 76. Lamborghini advertises the Aventador as the most extraordinary
24 car in Lamborghini's history given that it goes from 0-62 mph in just 3.0
25 seconds with a top speed of 217 mph, whether the removable top is on or off.

26 77. The Aventador was the fastest and most powerful supercar that
27 SpeedVegas offered to its customers, outweighing the other cars by a half-ton.

28 78. The Aventador was difficult for even the experienced driving
instructors to control on the Racetrack.

...

1 79. Despite its incredible power, speed and difficulty in controlling the
2 Aventador, SpeedVegas did not require any additional training or
3 qualifications for a customer to drive the Aventador.

4 80. Despite the Aventador being a removable top Roadster,
5 SpeedVegas allowed the Aventador to be driven on its commercial Racetrack
6 without installing a roll bar or a cage.

7 81. Photographs from the Fatal Crash show that the top of the
8 Aventador came off at some point and can be seen lying in perfect condition on
9 the Racetrack.

10 82. Without the top in place to protect the passenger compartment
11 from the rear engine fire, Gil Ben-Kely and Craig Sherwood were directly
12 exposed to the flames, resulting in their extreme and severe thermal injuries
13 and charring their bodies beyond recognition.

14 83. On or about February 7, 2017, SpeedVegas swapped out the
15 Aventador's original Lamborghini brakes for Girodisk brakes and also had
16 installed a mechanical braking pedal for the driving instructor.

17 84. Upon information and belief, the instructor's brake pedal allowed
18 less than sixty percent braking power of the Aventador's braking ability.

19 85. SpeedVegas knew about the braking problems prior to the Fatal
20 Crash, as its assistant mechanic posted pictures on his Facebook page on
21 February 11, 2017, the day before the Fatal Crash, showing work being done
22 on the Aventador's new brakes.

23 86. Upon information and belief, SpeedVegas also knew about prior
24 problems with the exotic sports cars using the Girodisk brakes on commercial
25 tracks given that both its track manager, Robert Strohmeyer, and head
26 mechanic previously worked at another commercial track that experienced
27 problems with the Girodisk brakes.

28 . . .

1 87. Upon information and belief, track manager, Robert Strohmeyer,
2 quit his prior employment at another commercial track after a different
3 Aventador's brakes locked up and nearly crashed.

4 88. Prior to the Fatal Crash, SpeedVegas experienced numerous
5 problems with the maintenance of its exotic sports cars.

6 89. Upon information and belief, on more than one occasion, brake
7 pads had fallen off of the exotic sports cars while they were being driven at
8 high speeds on the Racetrack.

9 90. An on-line video shows a SpeedVegas sports car losing a brake
10 pad while a driving instructor is driving a customer on the Racetrack at a high
11 rate of speed.

12 91. In addition to the aftermarket modifications made by SpeedVegas
13 (the swapping of the original brakes to Girodisk brakes and adding a
14 mechanical brake to the braking system), SpeedVegas knew or should have
15 known of the additional aftermarket modifications made to the rear spoiler
16 and to the exhaust system that created unreasonable safety risks.

17 92. The aftermarket modifications to the Aventador increased the risk
18 of fire and loss of stability and control at higher rates of speed.

19 **E. LAMBORGHINI KNEW OF THE AVENTADOR'S DESIGN DEFECT**
20 **THAT WAS CAUSING ENGINE FIRES AS EARLY AS 2015, BUT**
21 **FAILED TO ISSUE THE RECALL NOTICE UNTIL FEBRUARY 3, 2017**
22 **AND FAILED TO PERMIT DEALERSHIPS TO REMEDY THE DEFECT**
23 **UNTIL FEBRUARY 24, 2017, TWELVE DAYS TOO LATE**

24 93. Plaintiffs repeat, re-allege and incorporate each and every
25 allegation in the preceding paragraphs of this Complaint as though fully set
26 forth herein.

27 94. As early as 2015, Lamborghini knew that its Aventador models
28 had a fuel-system defect causing them to catch on fire.

...

1 95. On September 10, 2015, a *New York Daily News* article,
2 “*Lamborghini Supercar Meets Fiery End in Dubai*”, reported that videos existed
3 showing Aventadors engulfed in flames from a fire starting near the mid-
4 mounted engine as a result of a manufacturing design defect.

5 96. In January 2016, after conducting an investigation of the
6 Aventadors catching fire, Lamborghini concluded that there was a correlation
7 between the emissions system’s charcoal canister becoming soaked in fuel,
8 filled gas tanks and malfunctioning purge valves.

9 97. Despite having notice of the design defect and that Aventadors
10 were catching on fire and burning up all over the world (Miami, Dubai, New
11 York), Lamborghini failed to initiate a recall of the 2012-2017 Aventador
12 models until February 3, 2017: National Highway Traffic Safety Administration
13 (“NHTSA”) Campaign Number 17V073000 (“Recall Notice”).

14 98. A recall is issued when NHTSA or a manufacturer determines that
15 either the vehicle or the equipment “creates an unreasonable safety risk or
16 fails to meet minimum safety standards.”

17 99. Pursuant to the Recall Notice, Lamborghini voluntarily recalled its
18 2012-2017 Lamborghini Aventadors because “fuel may leak out of a full tank
19 and cause a fire”.

20 100. The Recall Notice further states: “Gasoline contact with an
21 ignition source such as a hot exhaust system can increase the risk of a fire.”

22 101. Upon information and belief, numerous Aventador Lamborghinis,
23 while being driven or even while stopped in traffic on city streets, have caught
24 fire and burned up due to the design defect of the gas tank and/or exhaust
25 system.

26 102. Despite issuing the Recall Notice on February 3, 2017,
27 Lamborghini refused to pay for repairs for the manufacturing defect until on
28 or after February 24, 2017, twelve days too late to save Gil Ben-Kely from fiery

1 Fatal Crash that charred his body beyond recognition.

2 103. Prior to the Fatal Crash, SpeedVegas knew that the Aventador was
3 the subject of the NHTSA Recall Notice warning of a high risk of catching fire,
4 particularly models with aftermarket modification to the emission.

5 104. SpeedVegas did not pull the Aventador from use on its commercial
6 Racetrack that encouraged inexperienced drivers to drive as fast as they can,
7 but continued to charge the unknowing customers to pay to drive the sports
8 car despite the risk of fire, placing both its customers and driving instructors
9 in danger.

10 105. Gil Ben-Kely never received the email sent by SpeedVegas on
11 February 11, 2017, (after work hours and well after the Aventador had been
12 fully fueled for the next day), advising of the Recall Notice and the risk of fire if
13 the Aventador was fully fueled or its fuel level fell below a certain level.

14 106. Upon information and belief, driving instructors complained to
15 SpeedVegas that the Aventador did not brake properly and that it was difficult
16 for them to control the car during the week before the Fatal Crash.

17 107. Upon information and belief, SpeedVegas had experienced
18 maintenance problems such as bald tires, brakes locking up for unknown
19 reasons that resulted in the crashes and/or the cars going off the surface of
20 the Racetrack.

21 **F. DEFENDANTS SPEEDVEGAS LLC, AARON FESSLER, ROBERT**
22 **BARNARD, MOTORSPORTS INTERNATIONAL LLC, SCOTT GRAGSON**
23 **AND SLOAN VENTURES 90 LLC ALLOWED THE RACETRACK TO BE**
24 **DESIGNED, CONSTRUCTED AND POSITIONED ON THE SLOAN**
25 **VENTURES 90 LLC'S PARCELS IN ORDER TO MARKET THE**
26 **RACETRACK AS HAVING THE LONGEST STRAIGHTAWAY, THE**
27 **FASTEST RACETRACK IN LAS VEGAS WITH NO SPEED LIMITS**

28 108. Plaintiffs repeat, re-allege and incorporate each and every
allegation in the preceding paragraphs of this Complaint as though fully set
forth herein.

1 109. Upon information and belief, Defendants SpeedVegas LLC, Scott
2 Gragson, Robert Barnard, Motorsports Services International LLC and Aaron
3 Fessler were all involved in the design, construction and/or positioning of the
4 Racetrack on Sloan Ventures 90 LLC's parcels of land.

5 110. The land upon which the Racetrack was constructed continues to
6 be owned by Scott Gragson's limited liability company, Sloan Ventures 90
7 LLC.

8 111. As a landowner, Sloan Ventures 90 LLC owes a general duty of
9 reasonable care to entrants for risks that exist on the landowner's property
10 regardless of the open and obvious nature of the dangerous conditions.

11 112. Upon information and belief, Defendants SpeedVegas LLC, Aaron
12 Fessler, Sloan Ventures 90 LLC and Scott Gragson allowed the Racetrack to be
13 designed and positioned on Sloan Ventures 90 LLC's parcels of land pursuant
14 to marketing strategy to advertise the Racetrack as having "the longest
15 straightaway", offering the "longest and fastest racetrack in Las Vegas" and
16 having "No Speed Limit".

17 113. SpeedVegas entices customers, having no or little relevant driving
18 experience, to drive the most powerful sports cars in the world at unsafe
19 speeds.

20 114. SpeedVegas posts on its social media sites congratulations to the
21 drivers who reached the highest speed on the Racetrack that day.

22 115. SpeedVegas also advertised its SpeedPass proprietary technology
23 that purported to record the fastest speed achieved by each driver on a
24 telemetry board.

25 **G. DEFENDANTS SPEEDVEGAS LLC AND AARON FESSLER ALLOWED**
26 **THE SPEEDPASS PROPRIETARY TECHNOLOGY AND TELEMETRY**
27 **BOARD TO FRAUDULENTLY INFLATE SPEEDS**

28 116. Plaintiffs repeat, re-allege and incorporate each and every
allegation in the preceding paragraphs of this Complaint as though fully set

1 forth herein.

2 117. Upon information and belief, Aaron Fessler created and/or
3 designed or is otherwise responsible for the SpeedPass proprietary technology
4 and the telemetry board that recorded the highest speed and lap times for
5 drivers on the SpeedVegas Racetrack.

6 118. The SpeedPass technology caused customers to drive faster than
7 was safe because of their own false inflated top speed or another customer's
8 inflated top speed, buying more laps to go faster and faster.

9 119. SpeedVegas encourages and financially rewards its driving
10 instructors to upsell the customers to buy more driving laps.

11 120. Upon information and belief, the SpeedPass technology overstates
12 the actual speed attained by the sports cars by approximately fifteen percent.

13 121. The SpeedPass telemetry board would show that a customer
14 reached a speed of "140 mph" but the actual speed reached was only 119
15 mph.

16 122. During the next lap the customer is looking at the speedometer on
17 the car, and believing from the telemetry board that he has already attained
18 140 mph, then attempts to exceed the overstated speed of 140 mph.

19 123. This resulted in customers driving at unsafe speeds, increasing
20 the risk of the customer losing control of the sports cars, leaving the surface of
21 the Racetrack and/or crashing.

22 124. The SpeedPass' fraudulent misrepresentation of the true speeds
23 also resulted in customers pressuring the driving instructors to allow them to
24 drive faster and faster.

25 125. Upon information and belief, SpeedVegas' CEO, Arron Fessler,
26 would question driving instructors whose customers did not achieve high rates
27 of speed.

28 . . .

1 126. Immediately following the Fatal Crash and pursuant to demands
2 from the remaining instructors, SpeedVegas removed the SpeedPass telemetry
3 board.

4 **H. SPEEDVEGAS RACTRACK IS INHERENTLY, EXCESSIVELY AND**
5 **UNNECESSARILY DANGEROUS IN BOTH DESIGN AND OPERATION**

6 127. Plaintiffs repeat, re-allege and incorporate each and every
7 allegation in the preceding paragraphs of this Complaint as though fully set
8 forth herein.

9 128. The SpeedVegas Racetrack is inherently, excessively and
10 unnecessarily dangerous in both design, operation and as constructed.
11 (Exhibit 1, Thake Affidavit).

12 129. The design of the SpeedVegas Racetrack is inherently, excessively
13 and unnecessarily dangerous because:

- 14 a. The Wall was located only twenty feet from Turn 1 and at
15 such an angle that cars crash straight into it;
- 16 b. Insufficient run-off exists to allow a car to decrease or
17 lose speed before it crashes into a concrete barrier wall
18 regardless whether due to driver error or mechanical
19 failure;
- 20 c. Insufficient cushioning to reduce the impact into the Wall
21 given that SpeedVegas failed to bind the tire stacks
22 horizontally (only vertically), had insufficient rows of tires
23 and failed to affix the tire stacks to the Wall resulting in
24 the Aventador simply pushing aside the tires crashing
25 directly into the concrete;
- 26 d. The Racetrack is too technical and challenging for
27 inexperienced, amateur drivers driving at high rates of
28 speed given that the Racetrack challenges even

1 professional racecar drivers; at least two of the prior
2 crashes occurred when professional drivers were driving,
3 not the customer, and

- 4 e. The Racetrack has no forgiveness at Turns 1 and 2 (S
5 Turn) when the car leaves the surface of the Racetrack
6 whether because of driver error or mechanical failure of
7 the car; on the left is a concrete barrier wall; straight
8 ahead is a drop to a drainage ditch with an exposed
9 culvert or to the right the Wall.

10 (Exhibit 1, Thake Affidavit).

11 130. Upon information and belief Defendants SpeedVegas LLC, World
12 Class Driving, Scott Gragson, and Aaron Fessler allowed the Racetrack to be
13 operated in an inherently and excessively dangerous and unsafe manner.

14 131. The SpeedVegas Defendants allowed the Racetrack to be operated
15 in an inherently and excessively dangerous and unsafe manner by:

- 16 a. Failing to maintain the sports cars in proper working order;
17 b. Swapping out the original manufacture equipment brakes
18 for Girodisk brakes;
19 c. Using Girodisk brakes in place of the original
20 manufacture brakes despite knowing of problems with
21 the Girodisk brakes overheating on another commercial
22 racetrack;
23 d. Allowing an Aventador Roadster with a removable top to
24 be used on the commercial Racetrack without a roll bar,
25 cage or providing fire protection racing suits in the event
26 the top came off, thereby exposing the passengers to the
27 flames from the rear engine fire;

28 . . .

- 1 e. Failing to immediately pull the Aventador from the
2 Racetrack upon receiving the Recall Notice, particularly
3 since the notice provided that Aventadors with
4 aftermarket modifications to the exhaust system were at
5 risk of fire;
- 6 f. Permitting the Aventador to be used on a commercial
7 Racetrack with its aftermarket modifications to its brakes,
8 exhaust system and the rear spoiler that result in braking
9 and stability problems at high rates of speed;
- 10 g. Failing to provide adequate safety equipment, emergency
11 procedures and/or safety features given the high risk of
12 death in the event of a crash and that the remote
13 location of the Racetrack--ten miles from the nearest Fire
14 Station—resulted in a fifteen minute response time to
15 provide fire and medical emergency services;
- 16 h. Using the SpeedPass proprietary technology that
17 misrepresented the actual speed of the cars that resulted
18 in customers driving at unsafe speeds given the
19 dangerous, unforgiving design of the Racetrack,
- 20 i. Failing to hire, retain and/or supervise competent and
21 knowledgeable mechanics to work on the cars and/or
22 experienced track managers to operate the Racetrack in a
23 safe and reasonable manner and
- 24 j. Having inadequate cushioning on the hard obstacles
25 located too close to the Racetrack.

26 (Exhibit 1, Thake Affidavit).

27 . . .

28 . . .

1 **I. RES IPSA LOQUITUR**

2 132. Plaintiffs repeat, re-allege, and incorporate the allegations in the
3 preceding paragraphs of this Complaint as though fully set forth herein.

4 133. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
5 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
6 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
7 Estate.

8 134. A res ipsa loquitur inference of negligence has been established
9 given that Defendants are responsible for one or more of the following acts
10 that (1) caused the harm to Gil Ben-Kely and his Estate, (2) that such harm
11 does not ordinarily occur in the absence of negligence and (3) that Defendants
12 are in a better position to explain the cause of the Fatal Crash than Plaintiffs
13 including but not limited to: (a) designing, constructing and/or operating a
14 Racetrack that is inherently, excessively and unnecessarily dangerous; (b)
15 improperly maintaining the Aventador; (c) permitting the Aventador Roadster
16 to be used on the commercial Racetrack; (d) not recalling and/or pulling the
17 Aventador from the Racetrack after learning of the design defect that was
18 causing engine fires; (e) driving the Aventador at the time of the Fatal Crash;
19 (e) allowing the SpeedPass technology and telemetry board to fraudulently or
20 negligently misrepresent the actual speed of the cars and encouraging the
21 drivers to drive at unsafe speeds; (f) allowing the Aventador to be used on the
22 commercial Racetrack with its aftermarket modifications; (g) breaching its
23 general duty of care to entrants for risks that existed on the property and (h)
24 swapping out the original manufacturer brakes for the Girodisk brakes.

25 135. Plaintiff have established that it is more probable than not that
26 the injury occurred as a result of Defendants' breaches of duty.

27 136. Plaintiffs are entitled to damages as a result.

28 137. Defendants are not entitled to the protection of the Nevada

1 Industrial Insurance Act ("NIIA") as the exclusive remedy for an employee
2 against his employer for workplace injuries unless SpeedVegas LLC was
3 current on its workers compensation payment.

4 138. Defendants are further not entitled to the protection of the given
5 that the Nevada Industrial Insurance Act as currently interpreted because the
6 accidental injury determination creates disparate standards for workers and
7 employers, biasing the NIIA in favor of the employer.

8 139. An employer seeking protection under NIIA must satisfy a
9 considerably lower burden of proof that the injury resulted from the worker's
10 willfulness or intentional self-infliction) than a worker seeking to pursue
11 damages outside of NIIA.

12 140. An employee must prove that the employer possessed a conscious
13 and deliberate intent directed to the purpose of inflicting an injury.

14 141. The appropriate test whether the employee is permitted to seek
15 damages against his employer outside of NIIA is whether the employer has
16 knowingly maintained the workplace in an unreasonably hazardous condition,
17 not motivated by a desire to harm employees but financially motivated to take
18 a calculated risk with its employees lives and safety because the employer
19 knows that when the injury inevitably occurs, the cost will be less because of
20 the NIIA exclusive remedy and limited compensation provisions of NIIA.

21 142. SpeedVegas knowingly maintained the workplace in an
22 unreasonably hazardous condition resulting in the death of Gil Ben-Kely.

23 IV.

24 CAUSES OF ACTION

25 **FIRST CAUSE OF ACTION—WRONGFUL DEATH (Against All Defendants)**

26 143. Plaintiffs repeat, re-allege, and incorporate the allegations in the
27 preceding paragraphs of this Complaint as though fully set forth herein.

28 144. Plaintiff Antonella Ben-Kely brings this wrongful death action as

1 the duly appointed administrator of Decedent Gil Ben-Kely pursuant to NRS
2 41.085.

3 145. As a direct and proximate cause of Defendants' conduct, Gil Ben-
4 Kely and his Estate suffered bodily injury resulting in loss of income, pain and
5 suffering and death and funeral expenses.

6 146. Plaintiffs Antonella Ben-Kely, Shon Ben-Kely and Nathalie Ben-
7 Kely-Scott (collectively the Ben-Kely Family) bring this wrongful death action
8 pursuant to NRS 41.085 as the heirs of Gil Ben-Kely for damages against
9 Defendants for their "wrongful acts or neglect" in causing the death of Gil Ben-
10 Kely on February 12, 2017.

11 147. Pursuant to NRS 41.085, the Ben-Kely Family Plaintiffs seek
12 damages for their grief and sorrow, loss of probable support, companionship,
13 society, comfort and consortium, and damages for pain, suffering and
14 disfigurement of Gil Ben-Kely resulting from the direct and proximate cause of
15 Defendants' conduct as set forth herein.

16 148. Defendants knowingly risked the life of Gil Ben-Kely in order to
17 profit from the operation of the Racetrack.

18 149. Defendants' conduct was extreme and outrageous, warranting an
19 award of punitive damages.

20 **SECOND CAUSE OF ACTION—WILLFUL AND WANTON NEGLIGENCE**
21 **(Against All Defendants)**

22 150. Plaintiffs repeat, re-allege, and incorporate the allegations in the
23 preceding paragraphs of this Complaint as though fully set forth herein.

24 151. Plaintiff Antonella Ben-Kely as the Administrator of Gil-Kely's
25 Estate, brings this claim for injuries and damages sustained by Gil Ben-Kely
26 prior to his death, for the benefit of the Heirs and the Estate of Gil Ben-Kely.

27 152. As a direct and proximate cause of Defendants' indifference to the
28 consequences of their actions, their conscious and reckless disregard for the
rights and safety of Gil Ben-Kely and for their willful and wanton negligent

1 actions, Gil Ben-Kely and his estate sustained loss of earnings, severe blunt
2 force injuries, thermal injuries, suffered great pain of body and mind, and
3 ultimately suffered death.

4 153. Gil Ben-Kely's injuries and death were a natural, probable and
5 foreseeable consequence of the negligent, gross negligent, willful, wanton,
6 reckless and/or otherwise tortious or wrongful acts or omissions of
7 Defendants with respect to the design and construction of the Racetrack, the
8 placement of the concrete barrier walls and exposed drainage pipe too close to
9 the Racetrack surface, the failure to hire and supervise competent mechanics
10 to properly service the exotic sports cars, the failure to pull the Aventador from
11 use on the Racetrack after being notified of the recall of Lamborghini's fuel-
12 system design defect that caused the Aventador models to catch on fire.

13 154. As a result, Plaintiffs are entitled to recover damages, including
14 punitive damages.

15 **THIRD CAUSE OF ACTION—GROSS NEGLIGENCE**
16 **(Against all Defendants)**

17 155. Plaintiffs repeat, re-allege, and incorporate the allegations in the
18 preceding paragraphs of this Complaint as though fully set forth herein.

19 156. Plaintiff Antonella Ben-Kely brings this action as Administrator of
20 Gil Ben-Kely's Estate for injuries sustained by Gil Ben-Kely prior to his death
21 for the benefit of the heirs of Gil Ben-Kely.

22 157. As a direct and proximate cause of Defendants' absence of care for
23 the safety and rights of Gil Ben-Kely as well as their reckless, overtly
24 dangerous and grossly negligent actions, Gil Ben-Kely and his Estate
25 sustained loss of earnings, severe and extreme injuries, suffered great pain of
26 body and mind and, ultimately, suffered death.

27 158. As a result, Plaintiffs are entitled to recover damages, including
28 punitive damages.

**FOURTH CAUSE OF ACTION—NEGLIGENCE
(Against all Defendants)**

159. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

160. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

161. As a direct and proximate cause of Defendants' actions, Gil Ben-Kely and his Estate sustained loss of earnings, severe injuries, suffered great pain of body and mind and, ultimately, suffered death.

162. Gil Ben-Kely's injuries and death were a natural, probable and foreseeable consequence of the negligent, gross negligent, willful, wanton, reckless and/or otherwise tortious or wrongful acts or omissions of Defendants.

163. As a result, Plaintiffs are entitled to recover damages

**FIFTH CAUSE OF ACTION—VICARIOUS LIABILITY, RESPONDEAT
SUPERIOR, OSTENSIBLE AGENCY AND/OR AGENCY
(Against Defendants SpeedVegas LLC, Aaron Fessler, World Class Driving
and Scott Gragson)**

164. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

165. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

166. At all times relevant, the employees, agents, administrators, staff and/or representatives of Defendants (collectively referred to as "Employees") were employed by and/or acting on behalf of Defendants.

1 167. At all times relevant, the Employees acted within their respective
2 capacities and scopes of employment for Defendants.

3 168. The Employees recklessly, wantonly, willfully, grossly negligently
4 and/or negligently, directly and proximately caused, through their acts and
5 omissions, injury, pain, suffering and, ultimately, the death of Gil Ben-Kely.

6 169. As a direct and proximate cause of the acts and omissions of the
7 Employees, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
8 extreme injuries as well as suffered great pain of body and mind and,
9 ultimately, suffered death.

10 170. Gil Ben-Kely's injuries and death were a natural, probable and
11 foreseeable consequence of the negligent, gross negligent, willful, wanton,
12 reckless and/or otherwise tortious or wrongful acts or omissions of
13 Defendants.

14 171. As a result, Plaintiffs are entitled to recover damages

15 **SIXTH CAUSE OF ACTION—WRONGFUL MISREPRESENTATIONS**
16 **(Against Defendants SpeedVegas LLC, World Class Driving, Aaron Fessler**
 and Scott Gragson)

17 172. Plaintiffs repeat, re-allege, and incorporate the allegations in the
18 preceding paragraphs of this Complaint as though fully set forth herein.

19 173. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
20 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
21 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
22 Estate.

23 174. Defendants knew or should have known of the prior crashes on
24 the Racetrack as well as the maintenance problems with the exotic sports
25 cars, including but not limited to problems with the brakes, brake pads falling
26 off of the sports cars while being driven on the Track at high speeds, the
27 design of the Track, the proximately and location of the concrete barrier wall,
28 complaints by instructors about problems with Turn 1 and the condition of

1 the sports cars and/or the recall of the Aventador (collectively "Safety Issues").

2 175. Despite the three prior crashes at Turn 1 and the Safety Issues,
3 Defendants advertised and/or otherwise promoted the Track as being safe to
4 drive upon.

5 176. Defendants' conduct in concealing the Safety Issues and prior
6 crashes constitute negligent misrepresentations to Gil Ben-Kely and others
7 similarly situated.

8 177. As a direct and proximate result of Defendants'
9 misrepresentations, Gil Ben-Kely and his Estate suffered loss of earnings,
10 severe and extreme injuries, pain of body and mind and, ultimately death.

11 178. It was foreseeable to Defendants that Gil Ben-Kely would rely
12 upon Defendants' false information and misrepresentations to his detriment.

13 179. Gil Ben-Kely's injuries and death were a natural, probable and
14 foreseeable consequence of the negligent, gross negligent, willful, wanton,
15 reckless and/or otherwise tortious or wrongful acts or omissions of
16 Defendants.

17 180. Plaintiffs are entitled to damages as a result thereof.

18 **SEVENTH CAUSE OF ACTION—NEGLIGENT HIRING AND RETENTION**
19 **(Against Defendants SpeedVegas LLC, World Class Driving, Aaron Fessler**
20 **and Scott Gragson)**

21 181. Plaintiffs repeat, re-allege, and incorporate the allegations in the
22 preceding paragraphs of this Complaint as though fully set forth herein.

23 182. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
24 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
25 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
26 Estate.

27 183. Defendants were negligent, grossly negligent, reckless, wanton
28 and/or willful in their hiring and retaining the Employees, including the
mechanic, assistant mechanic, assistant track manager and track manager

1 who allowed the Aventador to be used on the commercial Racetrack and/or
2 failed to maintain the Aventador in proper working condition for use on a
3 commercial track and/or knew or should have known that Gil Ben-Kely was
4 instructing in a sports car unsuitable for use on the Track on February 12,
5 2017.

6 184. Defendants hired and retained Employees that were unfit for their
7 jobs, unqualified and/or ignorant of reasonable safety procedures.

8 185. Defendants knew or should have known that the Employees they
9 hired and retained to maintain the sports cars and/or manage the operations
10 of SpeedVegas were unfit for the jobs, unqualified and/or ignorant of safety
11 procedures, resulting in foreseeable and unreasonable risk to Gil Ben-Kely
12 and others similarly situated.

13 186. It was foreseeable to Defendants that hiring and/or retaining
14 these Employees created an unreasonable risk of harm to Gil Ben-Kely and
15 others similarly situated.

16 187. As a direct and proximate result of the negligent, grossly
17 negligent, reckless, willful, wanton and/or otherwise tortious conduct of
18 Defendants, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
19 extreme injuries, pain of mind and body and, ultimately suffered death.

20 188. Gil Ben-Kely's injuries and death were a natural, probable and
21 foreseeable consequence of the negligent, gross negligent, willful, wanton,
22 reckless and/or otherwise tortious or wrongful acts or omissions of
23 Defendants.

24 189. Plaintiffs are entitled to recover damages as a result thereof.

25 **EIGHTH CAUSE OF ACTION—NEGLIGENT SUPERVISION (Against**
26 **Defendants SpeedVegas LLC, World Class Driving, Aaron Fessler and**
27 **Scott Gragson)**

28 190. Plaintiffs repeat, re-allege, and incorporate the allegations in the
preceding paragraphs of this Complaint as though fully set forth herein.

1 191. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
2 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
3 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
4 Estate.

5 192. Defendants, at all time relevant hereto, were responsible for the
6 management, supervision and operations of SpeedVegas, including but not
7 limited to the management and supervision of the Employees.

8 193. Defendants knew or should have known that the Employees
9 Defendants hired and retained to maintain the Aventador and/or manage the
10 operation of the Track were unfit for the job, unqualified and/or ignorant of
11 the necessary safety procedures, resulting in a foreseeable and unreasonable
12 risk to Gil Ben-Kely and others similarly situated.

13 194. Defendants had a duty to supervise, manage and otherwise
14 operate SpeedVegas in a reasonably safe manner, including but not limited to,
15 hiring and retaining Employees knowledgeable and in compliance with the
16 necessary safety requirements to operate and/or maintain the Aventador in
17 proper working condition for use on a commercial track.

18 195. Defendants were negligent, grossly negligent, wanton, willful
19 and/or reckless in their supervision of their Employees in maintaining the
20 Aventador and/or the operation of the Track warranting in an award of
21 damages, including but punitive damages, in one or more of the following
22 manners, with each sufficient to support the relief sought:

23 a. Permitting or failing to prevent negligent, grossly negligent,
24 wanton, willful reckless and/or other tortious conduct by
25 persons, whether or not their agents and/or Employees, upon
26 the premises;

27 b. Permitting or failing to prevent negligent, grossly negligent,
28 wanton, willful, reckless and/or other tortious conduct by

1 persons, whether or not their agents and/or Employees, in the
2 use of any and all instrumentalities utilized in the operation of
3 the SpeedVegas;

4 c. Failing to ensure the proper maintenance of any and/all
5 instrumentalities utilized in the operation of the SpeedVegas;

6 d. Failing to properly manage the operations of SpeedVegas;

7 e. Failing to institute proper safety procedures and/or training to
8 prevent the ongoing maintenance problems;

9 f. Failing to supervise and/or insure Employees were properly
10 trained in the maintenance of the Aventador and/or the
11 operation of the Track;

12 g. Failing to supervise and insure employment of qualified
13 persons involved in the maintenance of the Aventador and/or
14 operation of the Track and

15 h. In any other manner that may be proven at trial in this matter.

16 196. Gil Ben-Kely's injuries and death were a natural, probable and
17 foreseeable consequence of the negligent, gross negligent, willful, wanton,
18 reckless and/or otherwise tortious or wrongful acts or omissions of
19 Defendants in failing to supervise the Employees responsible for maintaining
20 the Aventador and/or managing the Track.

21 197. As a direct and proximate cause of the acts or omissions of
22 Defendants, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
23 extreme injuries, pain of body and mind and, ultimately, death.

24 198. Plaintiffs are entitled to recover damages as a result thereof.

25 **NINTH CAUSE OF ACTION—RES IPSA LOQUITUR**
26 **(Against all Defendants)**

27 199. Plaintiffs repeat, re-allege, and incorporate the allegations in the
28 preceding paragraphs of this Complaint as though fully set forth herein.

1 200. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
2 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
3 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
4 Estate.

5 201. A res ipsa loquitur inference of negligence has been established
6 given that Defendants designed and constructed the Racetrack, responsible for
7 the maintenance of the Aventador, were in control of the Aventador and/or
8 manufactured the Aventador that caused the harm to Gil Ben-Kely and his
9 Estate, that such an accident does not ordinarily occur in the absence of
10 negligence and that Defendants are in a better position to explain the cause of
11 the Fatal Crash than Plaintiffs.

12 202. Plaintiffs are not required to show the exact cause of the injury.

13 203. Plaintiff have established that it is more probable than not that
14 the injury occurred as a result of Defendants' breaches of duty.

15 204. Plaintiffs are entitled to damages as a result.

16 **TENTH CAUSE OF ACTION—NEGLIGENT DESIGN OF TRACK**
17 **(Against Defendants SpeedVegas, World Class Driving, Aaron Fessler,**
18 **Scott Gragson, Robert Barnard and Motorsports International LLC)**

19 205. Plaintiffs repeat, re-allege, and incorporate the allegations in the
20 preceding paragraphs of this Complaint as though fully set forth herein.

21 206. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
22 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
23 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
24 Estate.

25 207. Upon information and belief, Defendants SpeedVegas LLC, Scott
26 Gragson, Aaron Fessler, Robert Barnard and Motorsports International LLC
27 were all involved in the design of the Racetrack.

28 208. Neither the State of Nevada nor Clark County required any
professional licensure to design the Racetrack.

1 209. No local or state laws require a track designer for this
2 driving experience" track to have any license or other professional
3 qualifications.

4 210. Defendants owed a duty of care to design and construct a safe
5 Track and create operational procedures for the Track to be operated in a
6 reasonable and safe manner.

7 211. Defendants breached their duty by failing to provide adequate
8 run-offs at critical points on the Racetrack where, due to either driver error or
9 mechanical failure, the high powered exotic sports car leave the surface of the
10 Track.

11 212. Defendants failed to design Track to allow the sports cars to
12 reduce speed before encountering concrete barrier walls.

13 213. Defendants also breached their duty to design and construct a
14 safe Track by allowing a concrete barrier wall to be placed approximately 20
15 feet from Turn One as well as allowing an exposed drainage culvert and ditch
16 near Turns 1 and 2.

17 214. Defendants further breached their duty of car to design and
18 construct a safe Track by failing to properly affix the tires barrier or other
19 customary materials in order to soften the impact of the car when the car hits
20 the concrete barrier walls or drainage pipe.

21 215. Defendants further breached their duty of care by failing to
22 provide adequate safety features when, not if, mechanical failure or driver
23 error results in a car leaving the surface of the Track.

24 216. Defendants further breached their duty of care by failing to
25 establish appropriate safety features and operational procedures given the
26 location of the nearest Fire Station (ten miles away and corresponding delayed
27 response time by emergency personnel) given the extremely dangerous nature
28 of having exotic sports cars being driven by inexperienced drivers, on a Track

1 having no speed limits and the high probability of life-threatening injuries
2 when an accident occurs.

3 217. Defendants further breached their duty of care by not requiring
4 adequate safety features and operational procedures and for SpeedVegas' Fire
5 and Safety personnel, including but not limited to only having handheld fire
6 extinguishers for responding to car fires on Track.

7 218. Plaintiffs are entitled to damages in an amount to be proven at
8 trial as a result thereof.

9 **ELEVENTH CAUSE OF ACTION—NEGLIGENT ENTRUSTMENT**
10 **(Against Defendants SpeedVegas, World Class Driving, Aaron Fessler and**
11 **Scott Gragson)**

12 219. Plaintiffs repeat, re-allege and incorporate each and every
13 allegation in the preceding paragraphs of this Complaint as though fully set
14 forth herein.

15 220. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
16 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
17 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
18 Estate.

19 221. That at the time of the Fatal Crash, Defendants negligently
20 entrusted the Aventador to Craig Sherwood by failing to provide adequate
21 training and/or failed to ensure that Craig Sherwood was properly skilled, car.

22 222. Despite Craig Sherwood's lack of training and/or qualifications,
23 Defendants permitted, allowed and invited Craig Sherwood to operate the
24 Aventador, one of the most powerful sports cars in the World.

25 223. As a direct and proximate result of Craig Sherwood's failure to
26 operate the Aventador, for which the Defendants are responsible, Gil Ben-Kely
27 and his Estate suffered injury and thereafter died.

28 224. Plaintiffs are entitled to damages in an amount to be proven at
trial as a result thereof.

**TWELFTH CAUSE OF ACTION—PRODUCT LIABILITY
(Against Defendant Lamborghini)**

225. Plaintiffs repeat, re-allege, and incorporate the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

226. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his Estate.

227. Defendant Lamborghini manufactured the Aventador.

228. The Aventador had a design defect which rendered it unreasonably dangerous because it failed to perform in a manner reasonably expected in light of its nature and intended function.

229. The fire and explosion of the Aventador constituted evidence of an unexpected, dangerous malfunction that gives rise to an inference of a manufacturing defect.

230. Defendant had reason to anticipate that danger would result from use of its product and failed to give adequate warning of such danger.

231. Defendant had notice that its Aventadors were catching on fire due to the design defect as early as September 2015, and during 2016 when it investigated the prior incidents of the Aventador catching fire for no reason, exploding, and burning up.

232. Defendant knew as of 2016 that a defect relating to the fuel tank and emission were causing Aventadors to catch on fire and explode.

233. Defendant failed to send notice of the voluntary recall of the Aventadors until February 3, 2017.

234. Defendant further failed to offer repairs of the Aventadors (2012-2017 models) until February 24, 2017. Defendant recalled its 2012-2017 Aventadors because it had determined that the cars created an unreasonable

1 safety risk and/or failed to meet minimum safety standards.

2 235. An alternative safer design existed given that Lamborghini has
3 corrected the design flaw in other and/or new models of Aventadors as well as
4 offering the free repair of its 2012-2017 Aventador models pursuant to NHTSA
5 Recall Campaign #17V07300.

6 236. The defect existed at the time the Aventador left the manufacturer.

7 237. The defect caused injury to Gil Ben-Kely and his Estate.

8 238. At all material times and as early as 2015, Defendant
9 Lamborghini knew of the defective nature of the design of its Aventador and
10 continued to design, manufacture, market and sell the Aventadors so as to
11 maximize its sales and profits at the expense of public health and safety.
12 Defendant Lamborghini's conduct exhibits such an entire want of care as to
13 establish that its actions were a result of fraud, evil motive, actual malice, and
14 the conscious and deliberate disregard of foreseeable harm to Plaintiffs.

15 239. Plaintiffs are entitled to damages in an amount to be proven at
16 trial, including punitive damages.

17 **THIRTEENTH CAUSE OF ACTION—NEGLIGENT PROPERTY OWNERS**
18 **(Against Defendant Sloan Ventures 90 LLC)**

19 240. Plaintiffs repeat, re-allege and incorporate each and every
20 allegation in the preceding paragraphs of this Complaint as though fully set
21 forth herein.

22 241. Defendant Sloan Ventures 90 LLC is the owner of the real
23 property upon which the SpeedVegas Track was built and is operated upon,
24 has a nondelegable duty to answer for the well-being of those persons who are
25 on the premises.

26 242. Gil Ben-Kely was legally upon the SpeedVegas premises as an
27 employee.

28 . . .

1 243. Gil Ben-Kely, as a driving instructor employee of SpeedVegas, was
2 expressly or impliedly invited onto the premises for the benefit for SpeedVegas.

3 244. Defendant as owner of the real property owed a non-delegable
4 general duty of care to entrants on its property.

5 245. Any open or obvious nature of a dangerous condition does not
6 relieve a landowner from its general duty of reasonable care.

7 246. Defendants breached their duty by allowing the inherently,
8 excessively and/or unnecessarily dangerous Racetrack to be designed,
9 constructed and/or operated on its real property.

10 247. Plaintiffs are entitled to damages as a result thereof.

11 **FOURTEENTH CAUSE OF ACTION**
12 **(Alter Ego Against Defendants Aaron Fessler and Tom Mizzone)**

13 248. Plaintiffs repeat, re-allege and incorporate each and every
14 allegation in the preceding paragraphs of this Complaint as though fully set
15 forth herein.

16 249. Upon information and belief, Aaron Fessler and Tom Mizzone
17 organized or caused to be organized SpeedVegas LLC.

18 250. Upon information and belief, Aaron Fessler is the Chief Executive
19 Officer of SpeedVegas, LLC.

20 251. Upon information and belief, Defendants influenced and governed
21 SpeedVegas LLC.

22 252. Upon information and belief, there is such unity of interest and
23 ownership between SpeedVegas LLC and Defendants that they are inseparable
24 from each other.

25 253. Upon information and belief, Aaron Fessler and Tom Mizzone
26 failed to follow corporate formalities with respect to SpeedVegas LLC, including
27 but not limited to failing to provide notice of shareholder meetings, holding
28 annual shareholder meetings, failing to obtain shareholder approval for the

1 conversion of stock shares from prior corporate entities and failing to obtain
2 approval for significant decisions regarding SpeedVegas LLC.

3 254. Upon information and belief, Aaron Fessler and Tom Mizzone are
4 the alter egos of SpeedVegas and have been conducting, managing and
5 controlling the affairs of SpeedVegas LLC since its incorporation as though it
6 was their own business.

7 255. Upon information and belief, SpeedVegas was undercapitalized at
8 the time it was incorporated.

9 256. Upon information and belief, SpeedVegas LLC was
10 undercapitalized at the time that Defendants formed it.

11 257. Adherence to the fiction of the separate corporate entity under the
12 circumstances would sanction a fraud or promote injustice.

13 258. The Ben-Kelys are entitled to pierce the corporate veil and recover
14 from Aaron Fessler and from Tom Mizzone individually.

15 259. The Ben-Kelys are entitled to damages in an amount to be proven
16 at trial, plus pre- and post-judgment interest.

17 260. As a direct and proximate result of Defendants Fessler and
18 Mizzone's actions, the Ben-Kelys have been required to retain the services of
19 an attorney to prosecute their claims and are entitled to be compensated for
20 any costs incurred in the prosecution of this action, including without
21 limitation, any and all costs and attorneys' fees.

22 **PUNITIVE DAMAGES (Against all Defendants)**

23 261. Plaintiffs repeat, re-allege and incorporate each and every
24 allegation in the preceding paragraphs of this Complaint as though fully set
25 forth herein.

26 262. As a direct and proximate result of Defendants' deliberate
27 indifference to the consequences of their actions and conscious reckless
28 disregard of the rights and safety of Gil Ben-Kely, absence of care for the

1 safety and rights of Gil Ben-Kely and overtly dangerous, reckless and grossly
2 negligent actions, Gil Ben-Kely and his Estate suffered severe and extreme
3 injuries, great pain of body and mind and, ultimately death.

4 263. Plaintiffs are entitled to an award of punitive damages in amount
5 as a jury may find appropriate at the trial in this matter.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for relief as follows:

- 8 1. For trial by jury;
- 9 2. For compensatory damages in an amount in excess of \$50,000.00
10 against all Defendants jointly and severally for an award of compensatory
11 damages for loss of earnings, funeral expenses, pain and suffering, as well as
12 other damages according to proof at trial;
- 13 3. For punitive damages in an amount against Defendants for
14 punitive or exemplary damages in an amount sufficient to punish and deter
15 future similar conduct;
- 16 4. For reasonable attorneys' fees and costs;
- 17 5. For prejudgment interest;
- 18 6. For leave to amend as additional facts are gathered and
- 19 7. For such other and further relief as the Court deems just and
20 proper.

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V.

JURY DEMAND

Pursuant to Rule 38(b) of the Nevada Rules of Civil Procedure and general state law, Plaintiff demands a jury trial in connection with the subject action.

Dated this 20th day of February, 2018.

GENTILE CRITALLI
MILLER ARMENI SAVARESE

GENTILE CRISTALLI
MILLER ARMENI SAVARESE

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CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese, hereby certifies that on the 20th day of February, 2018, she caused to be served, a copy of the foregoing **SECOND AMENDED COMPLAINT**, by electronic service in accordance with Administrative Order 14.2, to all interested parties through the Court's **Odyssey E-File & Serve**, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

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7 
8 An employee of
9 GENTILE CRISTALLI
10 MILLER ARMENI SAVARESE
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EXHIBIT 1

AFFIDAVIT OF MARTYN THAKE

STATE OF NEVADA)
) ss.
COUNTY OF)

I, Martyn C. Thake, being duly sworn, deposes and says as follows:

1. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters state upon information and belief, I belief them to be true and accurate.

2. I have been retained as an expert by the law firm of Gentile, Cristalli, Miller, Armeni and Savarese on behalf of Plaintiffs relating to the litigation by the Estate of Gil Ben-Kely and his heirs (the "Ben-Kely Family") against the owners and operators of the SpeedVegas "Racetrack" as a consequence of the wrongful death of Gil Ben-Kely on February 12, 2017.

3. For the past thirty years, I have worked as a track designer and builder.

4. I am the President of Motorsports Consulting Services, LLC and previously worked as the Director of Circuit Development for the Indy car series. I have influenced the design of over 100 racetracks worldwide.

5. There are no local, state or federal laws, ordinances or regulations that govern the "driving experience" tracks such as SpeedVegas, neither its design, construction nor operation. Nor are there any professional licensing requirements for a track designer in Nevada.

6. Upon information and belief, SpeedVegas has never had any sanctioning body, such as the Sports Car Club of America (the "SCCA"), either approve or disapprove its design or operation. The SCCA is the entity that sets guidelines and requires changes before it will approve the type of driving experience track that SpeedVegas operates. Although SpeedVegas advertises itself as a "Racetrack" it is a "training" track since not racing has been approved.

7. Based upon my prior experience as a racecar driver, certified EMT and track designer and certified track inspector, it is my opinion to a reasonable degree of professional certainty that the SpeedVegas Racetrack is inherently, excessively and unnecessarily dangerous.

...

...

1 8. My opinion is based upon a reasonable degree of professional certainty and based
2 upon my March 3, 2017 on-site visit of the SpeedVegas Racetrack as well as my review and
3 analysis of the following: (a) State of Nevada Traffic Crash Report and photographs taken of the
4 February 12, 2017 crash included with that Report; (b) Clark County Coroner Autopsy Report,
5 Case Number 17-01739; (c) Clark County Coroner/Medical Examiner Report of Investigation
6 (d) NMS Labs Toxicology Report for Patient ID 17-01739 and (e) the SpeedVegas website.

7 9. With respect to my visit to the SpeedVegas Racetrack on March 3, 2017, I was
8 required to attend a briefing before driving on the Racetrack.

9 10. The brief lasted approximately 17-minute, consisting of a driving instructor standing
10 before a hand-drawn diagram of the Racetrack on a white board.

11 11. The SpeedVegas' briefing was deficient for the following reasons:

12 a. The instructor failed to explain the difficulty or the precision needed to
13 execute Turns 1 and 2, the turns that immediately follow the long straightaway on
14 the Racetrack, the most technical and difficult turns on the Racetrack and the
15 turns at which five crashes had occurred, including the fatal crash of February 12,
16 2017.

17 b. The instructor failed to instruct what to do if the car left the track surface
18 or went off of the Racetrack and

19 c. The instructor failed to advise when or how the instructor would take over
20 the braking or steading of the car and what the driver was to do if the instructor
21 took control of the car.

22 12. In addition to the deficient briefing, SpeedVegas failed to provide a sighting or
23 warm-up lap at a reduced speed in order for me to familiarize myself with the Racetrack before I
24 was actually driving on it and being encouraged by the instructor to drive at a high rate of speed.

25 13. Upon entering the Mercedes sports car, I immediately noted that the brake pad
26 warning light was illuminated and brought it to the attention of the driving instructor. The
27 instructor told me to ignore the warning light, stating that a mechanic check those things at night.
28 The instructor had me accelerate to 50 mph and then brake sharply twice before I entered the

1 track. The first time, I operated the brakes. The second time, the instructor operated his instructor
2 brakes. That was the extent of the brake testing.

3 14. The instructor encouraged me to accelerate and continued to encourage me to
4 accelerate throughout the five laps despite my reluctance to do so.

5 15. I was not given an opportunity to drive the track as a sighting or warm-up lap, but
6 immediately upon entering the straightaway I was encouraged to accelerate by the instructor.

7 16. I accelerated up to 100 mph without ever having driven on the Racetrack.

8 17. Throughout the 5 laps, the driving instructor constantly pushed me to increase my
9 speed to over 100 mph despite my refusal to do so.

10 18. During Lap 3, I smelled burning brakes from the Mercedes.

11 19. The driving instructor did not direct me to stop or slow down despite the warning
12 light continuing to be illuminated and the burning brakes.

13 20. Before, during and after driving the 5 laps, I examined the design and operation of
14 the SpeedVegas Racetrack.

15 21. The layout of Turns 1 and 2 present unnecessary dangers given that it is an
16 amateur driving experience and given the options that are and were available to the original track
17 designer with respect to placement of the Racetrack on the parcel of land.

18 22. It appears that the Racetrack was designed for purposes of advertising as the
19 longest straightaway rather than designing a racetrack for amateur and inexperienced drivers that
20 many are unlikely have driven an exotic sports car at high rates of speed.

21 23. Turns 1 and 2 at the end of the long straightaway are located too close to Las
22 Vegas Boulevard without sufficient run-off space when the car leaves the Racetrack surface at a
23 high rate of speed.

24 24. At the end of the long straightway, at Turns 1 and 2, there exist three dangers: an
25 exposed drainage ditch to the left, a concrete barrier wall also on the left and a concrete barrier
26 wall on the right.

27 25. The concrete barriers are placed too close to the surface of the Racetrack. The
28 barrier at the last turn creates a head-on impact with virtually no run-off. If the turn is entered at

1 a high rate of speed the car may become airborne and potentially flip over the barrier or run into
2 the concrete barrier wall.

3 26. The SpeedVegas Racetrack has is inadequate cushioning on the concrete barrier
4 walls and the walls are located too close to the Racetrack at Turns 1 and 2 given that the rate of
5 speed the cars reach on the long straightaway of the Racetrack.

6 27. SpeedVegas appears to be using used track tires instead of factory reject steel
7 belted new tires between 14 and 17 inches in diameter for cushioning on the concrete barrier
8 walls.

9 28. The used track tires have insufficient sidewall and degraded sidewall strength and
10 therefore, present less cushioning than new factory reject steel belted tires.

11 29. If a driver loses control on Turns 1 and 2, there is insufficient run-off for the car
12 to decrease its speed before encountering the drainage ditch or the concrete barrier walls.

13 30. In reviewing the photographs included with the Traffic Crash Report of the Fatal
14 Crash, it appears that SpeedVegas did not have sufficient tires on the concrete barrier wall to
15 cushion the Aventador Lamborghini that Gil Ben-Kely was riding in the passenger seat as the
16 driving instructor while Canadian tourist Craig Sherwood was driving.

17 31. The tires appeared to be assembled poorly and incorrectly as the vertical banded
18 stacks were not banded together resulting in the Aventador crashing directly into the concrete
19 barrier wall without the cushioning of the tires.

20 32. I observed no conveyor belt type of material over the banded tires to prevent the
21 Aventador from going under the tires and hitting the concrete barrier wall.

22 33. I noted the presence of several hand-held fire extinguishers that appear to have
23 been used to attempt to put out the fire.

24 34. Based upon my experience in fire-fighting, the hand-held fire extinguishers were
25 inadequate for putting out a fully involved automobile fire.


26 35. The extinguishers in the photographs appear to be only 20 pounds each.

27 36. A fully involved automobile fire requires in excess of 500 pounds of
28 extinguishant would be required.

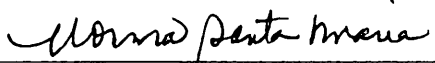
1 37. The overall design of the track lacks continuity of safety and lacks basis track
2 design common sense.

3 Further, Affiant sayeth naught.

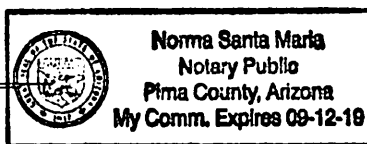
4 Executed this 16 day of February, 2018.

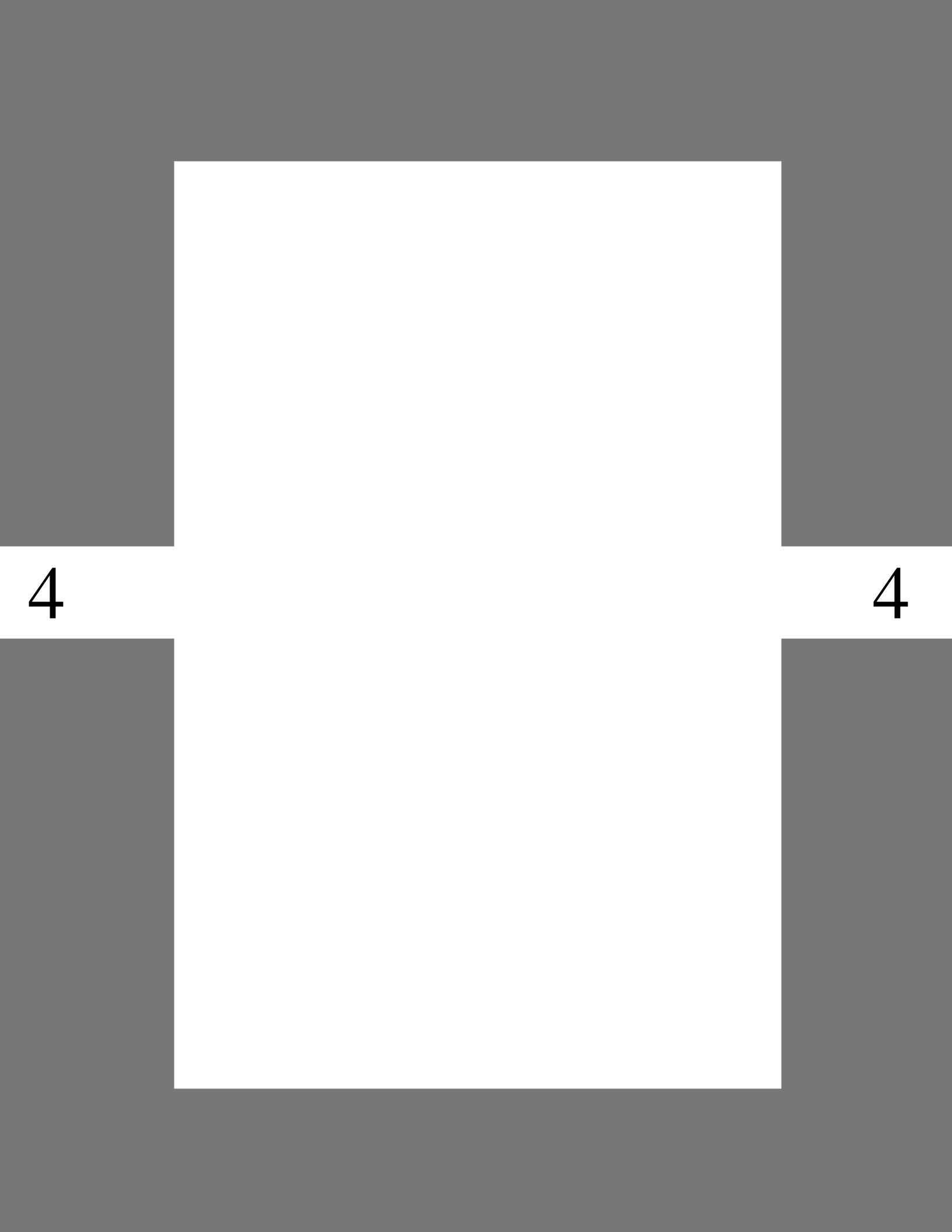
5
6 
MARTYN C. THAKE

7
8 SUBSCRIBED AND SWORN to before
me this 16th day of FEBRUARY, 2018.

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11 NOTARY PUBLIC in and for said
County and State





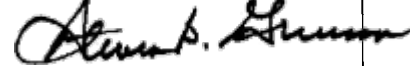
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Steven D. Grierson

CLERK OF THE COURT

**ACOM**

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Attorneys for Plaintiffs The Ben-Kely Family

DISTRICT COURT**CLARK COUNTY, NEVADA**

ESTATE OF GIL BEN-KELY by
ANTONELLA BEN-KELY as the duly
appointed representative of the Estate
and as the widow and heir of Decedent
GIL BEN-KELY; SHON BEN-KELY, son
and heir of decedent GIL BEN-KELY;
NATHALIE BEN-KELY-SCOTT, daughter
and heir of the decedent GIL BEN-KELY,

Plaintiffs,

vs.

SPEEDVEGAS, LLC, a foreign-limited
liability company; WORLD CLASS
DRIVING, an unknown entity; SLOAN
VENTURES 90, LLC, a Nevada limited
liability company; ROBERT BARNARD,
an individual; MOTORSPORT
SERVICES INTERNATIONAL, LLC, a
North Carolina limited liability
company; AARON FESSLER, an
individual; the ESTATE OF CRAIG
SHERWOOD and AUTOMOBILI
LAMBORGHINI AMERICA, LLC, a
foreign-limited liability company DOES
I-X; and ROE ENTITIES XI-XX,
inclusive,

Defendants.

CASE NO. A-17-757614-C
DEPT. XXVII

THIRD AMENDED COMPLAINT**(With Demand For Jury Trial)**

1 Plaintiffs ESTATE OF GIL BEN-KELY, ANTONELLA BEN-KELY as the
2 duly appointed administrator of the Estate and as the surviving widow and
3 heir of decedent Gil Ben-Kely, SHON BEN-KELY, surviving son and heir of
4 decedent Gil Ben-Kely, NATHALIE BEN-KELY, surviving daughter and heir of
5 decedent Gil Ben-Kely (collectively the "Ben-Kely Family"), by and through
6 their counsel, Dominic Gentile and Janiece Marshall, with the law firm of
7 Gentile Cristalli Miller Armeni Savarese, complain and allege against
8 Defendants SPEEDVEGAS, LLC, a foreign-limited liability company; WORLD
9 CLASS DRIVING, a foreign entity of unknown pedigree and provenance;
10 SLOAN VENTURES 90, LLC, a Nevada limited liability company; ROBERT
11 BARNARD, an individual; MOTORSPORT SERVICES INTERNATIONAL, LLC, a
12 North Carolina limited liability company; AARON FESSLER, an individual;
13 THE ESTATE OF CRAIG SHERWOOD and AUTOMOBILI LAMBORGHINI
14 AMERICA, LLC, a foreign-limited liability company, as follows:

15 **I. INTRODUCTION**

16 On February 12, 2017, Gil Ben-Kely, a SpeedVegas driving instructor
17 and Craig Sherwood, a Canadian tourist, were killed in a fiery crash ("Fatal
18 Crash") at the SpeedVegas "Racetrack". Their bodies were charred beyond
19 recognition. This was the fifth crash at SpeedVegas in only its first ten
20 months of operation. Three of the five crashes were at Turn 1 on the
21 Racetrack, including the Fatal Crash.

22 Videos taken by persons driving past the Racetrack on February 12,
23 2017, show the Lamborghini Aventador fully engulfed in a massive fire that
24 could be seen for miles. SpeedVegas knowingly built its Racetrack ten miles
25 away from the closest fire station, yet it provided only hand-held extinguishers
26 to its Fire and Safety personnel. The SpeedVegas Fire and Safety personnel
27 were completely ineffective in putting out the fire. The extinguishers in the
28 photos appear to be only 20 pounds each. Putting out a fully involved

1 automobile fire generally requires in excess of 500 pounds of extinguishant.
2 Only after the Fatal Crash, did SpeedVegas invest in an emergency vehicle
3 with a fire extinguishment tank that other tracks routinely use.

4 SpeedVegas designed and built its "Racetrack" in order to competitively
5 market it against the other Las Vegas "driving experience" tracks as the
6 "longest and fastest racetrack in Las Vegas", with the "longest straightaway"
7 and "No Speed Limit". Despite the other two driving experience tracks being in
8 business for years in Las Vegas, no fatal crashes have occurred on those
9 tracks. Within its first ten months of operation, two people died on the
10 SpeedVegas Racetrack.

11 Moreover, upon information and belief, SpeedVegas has never had its
12 track design or operation approved by any racing sanctioning board, such as
13 the Sports Car Club of America (the "SCCA"). The SCCA is an entity that
14 would approve or disapprove the design and operation of a driving experience
15 track and/or require changes to the track and/or its operations before
16 allowing a sanctioned competition to be held at SpeedVegas.

17 Significantly, there are no local, state or federal laws, regulations or
18 ordinances that govern the SpeedVegas Racetrack. No Nevada or local agency
19 or body has ever approved or disapproved of the design and/or track
20 operations of the SpeedVegas Racetrack. SpeedVegas obtained neither
21 certification nor approval by any local, state or federal government with
22 respect to its "Racetrack" or its operations. (See Las Vegas Review Journal,
23 March 18, 2017, "*Clark County officials hesitant to regulate 'extreme attractions*
24 *because of cost, lack of expertise.*" ("Sisolak said the county does not have the
25 expertise or resources to regulate and monitor attractions like
26 SpeedVegas...The County doesn't have staffers trained to look at racetracks
27 and their design, spokesman Dan Kulin said.")). Prior to opening to the public,
28 SpeedVegas was not required to obtain any certification nor was it required to

1 obtain any certification to re-open after the Fatal Crash.

2 Moreover, no local, state or federal law requires any qualification or
3 professional license in order for a person to design one of these driving
4 experiences tracks in Nevada. Anyone can design a driving experience track
5 (or "Racetrack" as SpeedVegas refers to it) in Nevada. No certification or
6 professional licensing is required.

7 SpeedVegas entrusted some of the most powerful, fastest exotic sports
8 cars in the world to amateur, inexperienced drivers if they met three minimum
9 requirements, namely: (1) have a drivers' license, (2) wear closed-toe shoes
10 and (3) be 18 years of age. SpeedVegas encouraged its customers to drive as
11 fast as possible, posting their highest speed on a telemetry board (its
12 "SpeedPass" proprietary technology created by Defendant Aaron Fessler),
13 congratulating the fastest driver of the day on its website and training the
14 driving instructors to up-sell both cars and laps to drive even faster.

15 SpeedVegas continued using its SpeedPass telemetry board, even
16 though it fraudulently overstated the actual speed of the sports cars by
17 approximately fifteen percent, resulting in customers trying to beat their
18 friends or their own previous fastest speed. During subsequent laps, drivers
19 empowered by the false belief that they had already achieved a top speed,
20 would drive faster because the speedometer would show the actual speed.
21 This resulted in the drivers pressuring driving instructors to allow them to
22 drive even faster. Prior to the Fatal Crash, driving instructors had requested
23 that the SpeedPass telemetry board be taken down, but Aaron
24 Fessler/SpeedVegas refused. After the Fatal Crash, SpeedVegas immediately
25 removed the telemetry board; one of the few changes it made to its Racetrack
26 before re-opening after the Fatal Crash.

27 Knowing that its Racetrack would be used by amateur drivers having
28 little or no driving experience with high-powered sports cars while

1 simultaneously marketing to those drivers that they could drive as fast as they
2 could make the exotic sports car go (the Lamborghini Aventador can exceed
3 200 mph) SpeedVegas failed to design the Racetrack to incorporate safety
4 features for when, not if, these inexperienced and amateur drivers either lost
5 control of the car or the car experienced mechanical failure.

6 Rather, SpeedVegas designed a technical and difficult course that
7 challenges even professional racecar drivers. In fact, three of the five exotic
8 cars that crashed into the concrete walls on the Racetrack were actually being
9 driven by three different professional racecar drivers who lost control of the
10 cars either due to mechanical failure and/or the design of the Racetrack,
11 specifically the turns and the proximity of the concrete barrier walls.

12 Significantly, prior to completing construction of the Racetrack,
13 SpeedVegas was told by more than one professional driver that Turn 1 was too
14 dangerous as designed due to its proximity to the Wall (20 feet) and the angle
15 of the Wall to the Racetrack. A Professional racecar driver and driving
16 experience track owner expressly told Scott Gragson when Gragson invited
17 him to see "his racetrack", that Turn 1 was too dangerous. Another
18 professional racecar driver and SpeedVegas driving instructor, upon riding on
19 the course during a training drive and seeing Turn 1, immediately said:
20 "someone is going to die" at Turn 1.

21 Moreover, prior to the Fatal Crash, SpeedVegas held a safety drill,
22 telling the employees that if there was going to be a crash that it would be at
23 Turn 1. Despite these warnings, SpeedVegas refused to redesign the
24 Racetrack and failed to build sufficient run-off for the cars to decrease speed
25 before hitting the concrete barrier walls, valuing its profit margin over the lives
26 of its employees and its customers.

27 Further, SpeedVegas also failed to properly cushion the concrete barrier
28 walls despite the prior crashes at Turn 1. Only after the Fatal Crash did

1 SpeedVegas properly bind the tires both vertically and horizontally together
2 and add another row of tires. Because SpeedVegas failed to have adequate
3 and properly affixed cushioning of the Wall, the force of the Aventador when it
4 hit the Wall simply pushed the tires out of the way resulting in the Aventador
5 hitting the Wall with such overwhelming force that it actually cracked the
6 Wall.

7 Yet, SpeedVegas re-opened the Racetrack for "business as usual"
8 without moving the Wall, ignoring the impassioned pleas by driving
9 instructors to move the Wall and to add more run-off areas and additional
10 cushioning. Once again, SpeedVegas chose profits over the lives of its
11 employees and customers. SpeedVegas management actually calculated the
12 cost of moving the Wall against the likelihood of another high impact crash.

13 SpeedVegas also chose profit over safety by failing to hire (1) competent
14 and experienced mechanics to maintain these complex exotic sports cars and
15 (2) competent and experienced track managers to operate the Racetrack.
16 SpeedVegas had several prior instances of mechanical failure of the sports
17 cars while they were being driven on the Racetrack. In fact, one instance of a
18 brake pad falling off a car while an instructor was driving a customer is
19 documented in an on-line video. Instructors complained on more than one
20 occasion about the maintenance of the sports cars, including but not limited
21 to problems with the brakes, problems with cracked rotors, bald tires and
22 problems with the handling of the cars.

23 With respect to the Aventador, although it had only been available to
24 customers to drive for approximately one week prior to the Fatal Crash,
25 instructors had already complained about braking and handling issues. As
26 was its business practice with all the sports cars, SpeedVegas swapped out
27 the original manufacturer equipment brakes with the Girodisk brand brakes
28 on the Aventador on or about February 7, 2017. Yet, the day before the Fatal

1 Crash, February 11, 2017, SpeedVegas' assistant mechanic posted pictures on
2 Facebook showing work being done on the Aventador's brakes.

3 In addition to having known braking and handling issues, the
4 Aventador was also the subject of a February 3, 2017 Recall Notice for a
5 Lamborghini manufacturing defect that caused the 2012-2017 Aventadors to
6 catch on fire and explode due to fuel coming into contact with the exhaust
7 system. The Recall Notice further advised that Aventadors with aftermarket
8 modifications to the exhaust system were at greater risk of fire. Despite
9 knowing both that it's Aventador had the aftermarket modifications to its
10 exhaust system and of the Recall Notice, SpeedVegas, once again, chose profit
11 over safety. SpeedVegas chose to generate revenue by allowing the Aventador
12 to continue to be driven on its commercial Racetrack rather than pulling the
13 Aventador out of availability to its customers and placing it into a certified
14 shop for repairs.

15 At the time of the Fatal Crash, Craig Sherwood, a Canadian tourist, was
16 operating the Aventador. SpeedVegas has publicly alleged that Mr. Sherwood
17 had a medical condition that SpeedVegas says was the cause of the Fatal
18 Crash. Yet once again placing profits ahead of safety, SpeedVegas did nothing
19 and continues to do nothing to require disclosure prior to being permitted to
20 drive on its Racetrack of that or any other medical condition by Mr. Sherwood
21 or any other of its customers that might endanger them or its professional
22 drivers. Craig Sherwood, in turn, knowing that he suffered from a medical
23 condition that rendered him susceptible to being unfit to drive at the super
24 high speeds and high level of excitement that he fully anticipated and sought,
25 had a duty to disclose his medical condition and susceptibility to Gil Ben-Kely
26 prior to embarking upon the driving experience and placing both of their lives
27 in danger.

28

1 Lamborghini also values profit over people by failing to take action to
2 recall the Aventadors despite first becoming aware of the “unreasonable safety
3 risk” as early as September 10, 2015, when the New York Daily News
4 published an article reporting the videos of the Aventadors catching fire.
5 Rather than immediately responding to this problem, Lamborghini delayed
6 issuing the Recall Notice until February 3, 2017, and, further, would not allow
7 certified dealerships to make the necessary modifications until February 24,
8 2017, twelve days too late for Gil Ben-Kely.

9 As a consequence of Defendants SpeedVegas and Lamborghini putting
10 profits over safety, two men died a horrific, fiery death, the bodies charred
11 beyond recognition. Through this Complaint the Ben-Kelys seek redress for
12 the death of their husband and father, Gil Ben-Kely.

13 **II. THE PARTIES, JURISDICTION AND VENUE**

14 **A. Plaintiffs**

15 1. Estate of Gil Ben-Kely by the duly appointed administrator of the
16 Estate, Antonella Ben-Kely.

17 2. Plaintiff Antonella Ben-Kely is the widow and an heir of decedent
18 Gil Ben-Kely, the driving instructor killed at SpeedVegas in a fiery crash on
19 February 12, 2017 (“Fatal Crash”).

20 3. Plaintiff Shon Ben-Kely is the only son and an heir of decedent Gil
21 Ben-Kely.

22 4. Plaintiff Nathalie Ben-Kely-Scott is the only daughter and an heir
23 of decedent Gil Ben-Kely.

24 **B. Defendants**

25 5. Upon information and belief, Defendant SpeedVegas LLC is and
26 was at all times relevant hereto, a foreign-limited liability company conducting
27 business in Clark County, Nevada, NV Business ID NV201116665874, as a
28

1 vehicle or tourism vehicle experience operating a track on Las Vegas
2 Boulevard ("Racetrack" or "Track").

3 6. Upon information and belief, Scott Gragson's company, Sloan
4 Ventures 90 LLC, owns the parcels of land upon which the SpeedVegas
5 Racetrack and facility was built.

6 7. During October 2015, Mr. Gragson invited professional racecar
7 driver and owner of Exotic Racing, Romain Thieven, and others to come and
8 see "his Racetrack" prior to the completion of construction. Mr. Thieven
9 understood that Scott Gragson owned SpeedVegas based upon his words and
10 his actions. While reviewing the design plans with Scott Gragson, Mr. Thieven
11 advised Scott Gragson that Turn One, as designed, was extremely dangerous
12 because of proximity to the concrete walls.

13 8. Upon information and belief, SpeedVegas has failed to follow
14 corporate formalities by failing to hold shareholder meetings, failing to provide
15 notice of any shareholder meetings, and failure to obtain shareholder approval
16 when converting shares of prior corporations into share of SpeedVegas.

17 9. Defendants are not entitled to the protection of the Nevada
18 Industrial Insurance Act ("NIIA") as the exclusive remedy for an employee
19 against his employer for workplace injuries unless SpeedVegas LLC was
20 current on its workers compensation payment.

21 10. Even if SpeedVegas was current on its NIIA workers compensation
22 insurance payments, Defendants are not entitled to the exclusive remedy
23 protection under the NIIA given that the NIIA creates disparate standards for
24 workers and employers, biased in favor of the employer with respect to the
25 accidental injury determination.

26 11. An employer seeking protection under NIIA must satisfy a
27 considerably lower burden of proof that the injury resulted from the worker's
28 willfulness or intentional self-infliction than a worker seeking to pursue

1 damages outside of NIIA.

2 12. An employee must prove that the employer possessed a conscious
3 and deliberate intent directed towards the purpose of inflicting an injury.

4 13. Given the disparate treatment between employers and employees,
5 the appropriate test to determine when an employee is permitted to seek
6 damages against his employer outside of the NIIA is whether the employer has
7 knowingly maintained the workplace in an unreasonably hazardous condition.
8 While an employer is usually not motivated by a desire to harm employees, an
9 employer is financially motivated to take a calculated risk with its employees
10 lives and safety because the employer knows that when the injury inevitably
11 occurs due to the workplace condition, the cost will be less because of the
12 exclusive remedy and limited compensation provisions under NIIA.

13 14. The SpeedVegas Defendants—SpeedVegas LLC and World Class
14 Driving, knowingly maintained the workplace in an unreasonably hazardous
15 condition resulting in the death of Gil Ben-Kely.

16 15. Upon information and belief, Defendant Sloan Ventures 90, LLC,
17 is a Nevada limited liability company that currently owns several parcels of the
18 land upon which SpeedVegas is built: Assessor's Parcel Numbers 191-20-
19 301-001, 191-801-003, 191-20-301-003, 191-20-201-004 and 191-19-701-
20 003.

21 16. Upon information and belief, Defendant World Class Driving is an
22 entity, the pedigree and provenance of which is unknown, that owns, operates
23 and/or otherwise profits from the Racetrack as the merchant who charges and
24 receives payment from SpeedVegas' customers for their vehicle driving
25 experience.

26 17. Upon information and belief, Defendant Robert Barnard is a
27 United States citizen who, following the Fatal Crash and prior to being served,
28 moved to Spain. Mr. Barnard has publicly admitted prior to the filing of this

1 Complaint that he was responsible for the design and construction
2 management of the SpeedVegas Racetrack as well as its "safety features" and
3 "operational procedures".

4 18. Following the Fatal Crash, the following statement of Mr. Barnard
5 was included in a March 15, 2017 letter from SpeedVegas to tour operators: "I
6 undertook the design and supervised the construction, provided input into the
7 overall site layout, and operations. . . . During the brief SPEEDVEGAS closure,
8 I took the opportunity to review both the physical and operational aspects,
9 and conclude that the facility continues to meet the safety standards above."

10 19. When attempting to serve Mr. Barnard with service of this action,
11 Plaintiffs learned that following the Fatal Crash, Mr. Barnard has left the
12 United States and now resides in Spain. Defendant Barnard declined to accept
13 service of this action when contacted by phone.

14 20. Upon information and belief, Defendant Motorsport Services
15 International, LLC is Defendant Robert Barnard's company, a limited liability
16 company formed in North Carolina, and also responsible for the design and
17 construction management of the Racetrack as well as its "safety features" and
18 its "operational procedures" (collectively with Robert Barnard referred to
19 herein as "Track Designer").

20 21. The day following attempted personal service on Defendant
21 Barnard by the process server, Defendant Barnard filed on behalf of his
22 company, Motorsport Services International, LLC, a Notice of Dissolution.

23 22. Upon information and belief, Defendant Aaron Fessler is the Chief
24 Executive Officer of SpeedVegas and is the owner, developer and operator of
25 SpeedVegas, responsible for the design and construction of the Racetrack, the
26 procedures and operations of the Racetrack, the fire and safety procedures of
27 the Racetrack, the swapping of the original manufacture brakes for the
28 Girodisk brand brakes, allowing which sports cars are offered to the public as

1 well as responsible for the hiring, firing and supervising of the employees,
2 including but not limited to the mechanic who swapped out the brakes and
3 allowed an assistant to work on the brakes the day before the Fatal Crash.

4 23. Upon further information and belief, Defendant Fessler, failed to
5 follow corporate formalities with respect to SpeedVegas, LLC. According to a
6 shareholder of SpeedVegas LLC, SpeedVegas has not held annual shareholder
7 meetings, has not complied with repeated requests for shareholder minutes,
8 has not permitted the inspection of the corporate records and did not obtain
9 shareholder approval for actions taken by Defendant Fessler.

10 24. Upon further information and belief, Defendant Fessler developed
11 the SpeedPass technology that fraudulently overstated the speeds of the sports
12 cars driving on the Racetrack.

13 25. Upon information and belief, Defendant Estate of Craig Sherwood
14 is the estate of the Canadian real estate agent who was driving the Aventador
15 at the time of the Fatal Crash. SpeedVegas has alleged that decedent
16 Sherwood had a medical condition that was the cause of the Fatal Crash and
17 therefore, relying upon this public allegation, upon information and belief his
18 Estate is named as a Defendant.

19 26. Upon further information and belief, Craig Sherwood had
20 previously taken medication for his medical condition, one that caused him to
21 suffer from seizures, but that Mr. Sherwood was not taking the medication on
22 the day of the Fatal Crash.

23 27. Automobili Lamborghini, LLC is and was at all times a foreign-
24 limited liability company that manufactured the 2015 Lamborghini Aventador
25 Roadster, VIN ZHWUR1ZD3FLA03687 (the "Aventador"), that caught fire and
26 exploded on the SpeedVegas Racetrack on February 12, 2017.

27 28. Plaintiffs designate herein Doe individual defendants and Roe
28 legal entity defendants who are liable to Plaintiffs for the claims set forth

1 hereinafter but whose true identities are presently unknown to Plaintiffs and,
2 therefore, Plaintiffs sue said Doe and Roe defendants by such fictitious names.
3 Plaintiffs will amend their Complaint to assert the true names and capacities
4 of these Defendants when Plaintiffs has ascertained sufficient information to
5 identify those Roe and Doe defendant who are believed:

- 6 a. To directly and/or indirectly, own, control, manage
7 and/or otherwise operate the SpeedVegas Racetrack or
8 "vehicle tourism experience" at all relevant times set
9 forth herein and/or was otherwise responsible for the
10 operation and/or conditions at the SpeedVegas
11 racetrack;
- 12 b. To have owned, leased, contributed or otherwise allowed
13 SpeedVegas, LLC to use the Aventador on the Racetrack;
- 14 c. To have made, authorized or otherwise allowed
15 aftermarket modifications to the Aventador;
- 16 d. To have owned, developed, contributed or otherwise
17 controlled the SpeedPass proprietary technology that
18 posted on a telemetry board the (allegedly) fastest speed
19 and fastest lap time achieved by drivers of the
20 SpeedVegas exotic sports cars on the SpeedVegas
21 racetrack;
- 22 e. To have constructed the SpeedVegas Racetrack and
- 23 f. To have manufactured, installed and/or designed any
24 aftermarket parts or equipment installed on the
25 Aventador that caused and/or contributed to the Fatal
26 Crash.

27 29. The actions and/or duties and obligations relevant to Plaintiffs'
28 claims in this Complaint occurred and/or arose in Clark County, Nevada,

1 thus, jurisdiction is proper in the Courts of this State and venue is proper in
2 this Judicial District.

3 **III.**

4 **GENERAL ALLEGATIONS**

5 **A. FATAL CRASH**

6 30. Plaintiffs repeat, re-allege and incorporate each and every
7 allegation in the preceding paragraphs of this Complaint as though fully set
8 forth herein.

9 31. On or about February 12, 2017, Gil Ben-Kely was killed in a fiery
10 crash ("Fatal Crash") at the SpeedVegas Racetrack.

11 32. All times relevant hereto, Gil Ben-Kely was legally upon the
12 SpeedVegas premises as an employee who was expressly or impliedly invited
13 upon said premises for the benefit of SpeedVegas, working as a driving
14 instructor.

15 33. At the time of his death, Gil Ben-Kely was sitting in the passenger
16 seat of a 2015 Lamborghini Aventador rented by driver Craig Sherwood from
17 Defendants SpeedVegas, LLC and/or World Class Driving, instructing
18 SpeedVegas customer, Craig Sherwood.

19 34. Upon information and belief, Craig Sherwood was a Canadian real
20 estate agent and tourist, visiting Las Vegas for a real estate convention.

21 35. Upon information and belief, Craig Sherwood had previously
22 suffered from a medical condition that caused him to suffer seizures and that
23 required medication to control.

24 36. Upon information and belief, Craig Sherwood had stopped taking
25 the medication and as of the day of the Fatal Crash was not taking the
26 medication.

27 37. Upon information and belief, Craig Sherwood met the only
28 SpeedVegas requirements for driving the most powerful sports car in the world

1 as he was over 18 years of age, had a valid driver's license and was wearing
2 closed-toe shoes.

3 38. At approximately 1:06 p.m., and for unknown reasons, the
4 Aventador being driven by Craig Sherwood left the surface of the Track at or
5 before Turn 1, traveling at a high rate of speed, and crashed into a concrete
6 barrier wall (the "Wall").

7 39. The Wall was located approximately twenty feet from the surface
8 of the Racetrack at Turn One.

9 40. At some point during the driving experience, the Aventador caught
10 fire and exploded.

11 41. Videos posted online and taken by people driving on Las Vegas
12 Boulevard show that at 1:14 p.m., SpeedVegas' Fire and Safety personnel were
13 using hand-held fire extinguishers in an unsuccessful attempt to put out the
14 fully engulfed fire.

15 42. Photographs taken by the Metropolitan Police Department of the
16 scene of the Fatal Crash appear to show that Craig Sherwood's undamaged
17 wristwatch stopped at 1:14 p.m., presumably from the parts melting from the
18 intense heat of the fire.

19 43. Upon information and belief, the Clark County Fire Department
20 arrived at approximately 1:21 p.m. and started to put out the massive fire
21 from the exploding car.

22 44. Gil Ben-Kely and Craig Sherwood were killed in the Fatal Crash;
23 their bodies were burned beyond recognition while trapped in the burning
24 Aventador.

25 45. In addition to his body being charred beyond recognition, Gil Ben-
26 Kely suffered fatal injuries that were severe and extreme, including: extensive
27 thermal injuries, multiple fractures to his ribs, femurs, tibia, fibula as well as
28 a torn aorta.

1 46. Based upon the autopsy report, Gil Ben-Kely was still alive while
2 the Aventador was burning.

3 47. Upon information and belief, the Aventador burned for over fifteen
4 minutes before the Clark County Fire Department arrived.

5 48. Flames from the explosion and fire could be seen for miles.

6 49. At the time of the Fatal Crash, SpeedVegas did not have an
7 emergency vehicle with a mounted fire extinguisher tank.

8 50. Upon information and belief, following the Fatal Crash,
9 SpeedVegas finally invested in an emergency vehicle with a professional fire
10 extinguisher tank mounted on the truck.

11 51. Due to the remote location that SpeedVegas built its Racetrack,
12 the nearest Fire Station is approximately ten miles away or a fifteen minute
13 response time to address an emergency.

14 52. Following the Fatal Crash, SpeedVegas shipped the remnants of
15 the Aventador to an unknown location, upon information and belief.

16 53. SpeedVegas has not provided the Ben-Kely Family with any report
17 regarding the cause of the Fatal Crash or of the examination of the Aventador.

18 **B. NO LOCAL, STATE OR FEDERAL LAWS, REGULATIONS OR**
19 **ORDINANCES REGULATE SPEEDVEGAS' RACETRACK OR REQUIRE**
20 **ANY PROFESSIONAL LICENSE OR QUALIFICATIONS FOR A TRACK**
21 **DESIGNER**

22 54. Plaintiffs repeat, re-allege and incorporate each and every
23 allegation in the preceding paragraphs of this Complaint as though fully set
24 forth herein.

25 55. SpeedVegas markets and advertises itself as a "Real Racetrack",
26 having the "longest and fastest racetrack in Las Vegas" and having "No Speed
27 Limit".

28 56. Upon information and belief, no racing sanctioning body, such as
the Sports Car Club of American (sanctioning body for driving experience

1 tracks), has ever approved of the design and/or operation of SpeedVegas'
2 Racetrack for a racing competition.

3 57. No local, state or federal statutes, regulations or ordinances
4 regulate the SpeedVegas Racetrack.

5 58. No local, state or federal legislation imposes any qualifications or
6 licensing requirements for a track designer of a driving experience track in
7 Nevada.

8 59. There is no professional license or any other type of license
9 required to be a track designer for a driving experience track or racetrack in
10 the State of Nevada.

11 60. No local, state or federal agency ever approved the design or
12 operation of SpeedVegas' Racetrack nor was such approval sought by
13 SpeedVegas.

14 61. The designer or designers of the SpeedVegas Racetrack was not
15 required to have any local, state or federal issued professional license in order
16 to design the SpeedVegas Racetrack.

17 **C. FIFTH CRASH WITHIN ONLY TEN MONTHS OF OPENING**

18 62. Plaintiffs repeat, re-allege and incorporate each and every
19 allegation in the preceding paragraphs of this Complaint as though fully set
20 forth herein.

21 63. The Fatal Crash was the fifth known crash on the SpeedVegas
22 Racetrack during its first ten months of operation.

23 64. At least five of SpeedVegas' exotic sports cars crashed into fixed
24 obstacles--the concrete barrier walls--located but a few yards from the
25 Racetrack.

26 65. Three of the five crashes occurred at the same place on the
27 Racetrack, namely: Turn 1, including the Fatal Crash.

28 66. Turn 1 is located at the end of the longest straightaway on the

1 Racetrack (approximately 1.5 miles long), allowing the high-powered exotic
2 sports cars to attain their highest rate of speed on the Racetrack.

3 67. SpeedVegas designed the Racetrack in order to market and
4 advertise it as having the longest straightaway with no speed limits.

5 68. SpeedVegas was on notice that the design of the Racetrack was
6 extremely dangerous prior to completing construction because more than one
7 professional racecar driver actually warned them how dangerous Turn 1 was
8 as designed.

9 69. Professional racecar drivers warned SpeedVegas and Scott
10 Gragson that the Racetrack, as designed, was dangerous because of the
11 proximity of the concrete walls to the race track.

12 70. During October 2015, professional racecar driver and owner of
13 Exotic Racing (the first driving experience track opened in Las Vegas) Romain
14 Thieven visited SpeedVegas while it was under construction Mr. Thieven was
15 lead to believe that Scott Gragson was the owner of SpeedVegas based upon
16 the latter's statements and his actions. During the visit, Mr. Thieven reviewed
17 the design of the Racetrack with Scott Gragson and advised him that "it was
18 dangerous because there was a concrete barrier wall located too close to Turn
19 1."

20 71. A second professional racecar driver and former SpeedVegas
21 driving instructor, Ian Holsop, while being driven around the Racetrack by
22 Roland Linder, a professional racecar driver and the original training
23 instructor of the SpeedVegas driving instructors, and upon seeing Turn 1 and
24 the location of the Wall, immediately said: "someone is going to die there."

25 72. Well prior to the date of the Fatal Crash, SpeedVegas' Director of
26 Operations, Darren Stahl, told SpeedVegas employees that if there is going to
27 be a crash on the Racetrack, it would be at Turn One.

28

D. SPEEDVEGAS ALLOWED THE LAMBORGHINI AVENTADOR ROADSTER TO BE USED ON THE COMMERCIAL RACETRACK DESPITE THE RECALL NOTICE OF THE UNREASONABLE SAFETY RISK OF FIRE, AFTERMARKET MODIFICATIONS THAT INCREASED THE RISK, BRAKING PROBLEMS AND STABILTY ISSUES AND WITHOUT INSTALLING A ROLL BAR OR CAGE

73. Plaintiffs repeat, re-allege and incorporate each and every allegation in the preceding paragraphs of this Complaint as though fully set forth herein.

74. Upon information and belief, the Aventador was a 2015 Roadster with a V12 engine and 729 bhp manufactured by Lamborghini and one of the most powerful exotic sports cars in the World.

75. Lamborghini advertises the Aventador as the most extraordinary car in Lamborghini's history given that it goes from 0-62 mph in just 3.0 seconds with a top speed of 217 mph, whether the removable top is on or off.

76. The Aventador was the fastest and most powerful supercar that SpeedVegas offered to its customers, outweighing the other cars by a half-ton.

77. The Aventador was difficult for even the experienced driving instructors to control on the Racetrack.

78. Despite the awesome power, speed and difficulty in controlling the Aventador, SpeedVegas did not require any additional training or qualifications for a customer to drive the Aventador.

79. Despite the Aventador being a removable top Roadster, SpeedVegas allowed the Aventador to be driven on its commercial Racetrack without installing a roll bar or a cage.

80. Photographs from the Fatal Crash show that the top of the Aventador came off at some point and can be seen lying in perfect condition on the Racetrack.

81. Without the top in place to protect the passenger compartment from the rear engine fire, Gil Ben-Kely and Craig Sherwood were directly

1 exposed to the flames, resulting in their extreme and severe thermal injuries
2 and charring their bodies beyond recognition.

3 82. On or about February 7, 2017, SpeedVegas swapped out the
4 Aventador's original Lamborghini brakes for Girodisk brakes and also had
5 installed a mechanical braking pedal for the driving instructor.

6 83. Upon information and belief, the instructor's brake pedal allowed
7 less than sixty percent braking power of the Aventador's braking ability.

8 84. SpeedVegas knew about the braking problems prior to the Fatal
9 Crash, as its assistant mechanic posted pictures on his Facebook page on
10 February 11, 2017, the day before the Fatal Crash, showing work being done
11 on the Aventador's new brakes.

12 85. Upon information and belief, SpeedVegas also knew about prior
13 problems with the exotic sports cars using the Girodisk brakes on commercial
14 tracks given that both its track manager, Robert Strohmeyer, and head
15 mechanic previously worked at another commercial track that experienced
16 problems with the Girodisk brakes.

17 86. Upon information and belief, track manager, Robert Strohmeyer,
18 quit his prior employment at another commercial track after a different
19 Aventador's brakes locked up and nearly crashed.

20 87. Prior to the Fatal Crash, SpeedVegas experienced numerous
21 problems with the maintenance of its exotic sports cars.

22 88. Upon information and belief, on more than one occasion, brake
23 pads had fallen off of the exotic sports cars while they were being driven at
24 high speeds on the Racetrack.

25 89. An on-line video shows a SpeedVegas sports car losing a brake
26 pad while a driving instructor is driving a customer on the Racetrack at a high
27 rate of speed.

28

1 90. In addition to the aftermarket modifications made by SpeedVegas
2 (the swapping of the original brakes to Girodisk brakes and adding a
3 mechanical brake to the braking system), SpeedVegas knew or should have
4 known the the additional aftermarket modifications made to the rear spoiler
5 and to the exhaust system created unreasonable safety risks.

6 91. The aftermarket modifications to the Aventador increased the risk
7 of fire and loss of stability and control at higher rates of speed.

8 **E. LAMBORGHINI KNEW OF THE AVENTADOR'S DESIGN DEFECT**
9 **THAT WAS CAUSING ENGINE FIRES AS EARLY AS 2015, BUT**
10 **FAILED TO ISSUE THE RECALL NOTICE UNTIL FEBRUARY 3, 2017**
11 **AND FAILED TO PERMIT DEALERSHIPS TO REMEDY THE DEFECT**
12 **UNTIL FEBRUARY 24, 2017, TWELVE DAYS TOO LATE**

13 92. Plaintiffs repeat, re-allege and incorporate each and every
14 allegation in the preceding paragraphs of this Complaint as though fully set
15 forth herein.

16 93. As early as 2015, Lamborghini knew that its Aventador models
17 had a fuel-system defect causing them to catch on fire.

18 94. On September 10, 2015, a *New York Daily News* article,
19 "*Lamborghini Supercar Meets Fiery End in Dubai*", reported that videos existed
20 showing Aventadors engulfed in flames from a fire starting near the mid-
21 mounted engine as a result of a manufacturing design defect.

22 95. In January 2016, after conducting an investigation of the
23 Aventadors catching fire, Lamborghini concluded that there was a correlation
24 between the emissions system's charcoal canister becoming soaked in fuel,
25 filled gas tanks and malfunctioning purge valves.

26 96. Despite having notice of the design defect and that Aventadors
27 were catching on fire and burning up all over the world (Miami, Dubai, New
28 York), Lamborghini failed to initiate a recall of the 2012-2017 Aventador
models until February 3, 2017: National Highway Traffic Safety Administration

1 (“NHTSA”) Campaign Number 17V073000 (“Recall Notice”).

2 97. A recall is issued when NHTSA or a manufacturer determines that
3 either the vehicle or the equipment “creates an unreasonable safety risk or
4 fails to meet minimum safety standards.”

5 98. Pursuant to the Recall Notice, Lamborghini voluntarily recalled its
6 2012-2017 Lamborghini Aventadors because “fuel may leak out of a full tank
7 and cause a fire”.

8 99. The Recall Notice further states: “Gasoline contact with an
9 ignition source such as a hot exhaust system can increase the risk of a fire.”

10 100. Upon information and belief, numerous Aventador Lamborghinis,
11 while being driven or even while stopped in traffic on city streets, have caught
12 fire and burned up due to the design defect of the gas tank and/or exhaust
13 system.

14 101. Despite issuing the Recall Notice on February 3, 2017,
15 Lamborghini refused to pay for repairs for the manufacturing defect until on
16 or after February 24, 2017, twelve days too late to save Gil Ben-Kely from fiery
17 Fatal Crash that charred his body beyond recognition.

18 102. Prior to the Fatal Crash, SpeedVegas knew that the Aventador was
19 the subject of the NHTSA Recall Notice warning of a high risk of catching fire,
20 particularly models with aftermarket modification to the emission system.

21 103. SpeedVegas did not pull the Aventador from use on its commercial
22 Racetrack but rather continued to encourage inexperienced drivers to drive as
23 fast as they can, and continued to encourage the unknowing customers to pay
24 to drive the sports car despite the risk of fire, placing both its customers and
25 driving instructors in danger.

26 104. Gil Ben-Kely never received the email sent by SpeedVegas on
27 February 11, 2017, (after work hours and well after the Aventador had been
28 fully fueled for the next day), advising of the Recall Notice and the risk of fire if

1 the Aventador was fully fueled or its fuel level fell below a certain level.

2 105. Upon information and belief, driving instructors complained to
3 SpeedVegas that the Aventador did not brake properly and that it was difficult
4 for them to control the car during the week before the Fatal Crash.

5 106. Upon information and belief, SpeedVegas had experienced
6 maintenance problems such as bald tires, brakes locking up for unknown
7 reasons that resulted in the crashes and/or the cars going off the surface of
8 the Racetrack.

9 **F. DEFENDANTS SPEEDVEGAS LLC, AARON FESSLER, ROBERT**
10 **BARNARD, MOTORSPORTS INTERNATIONAL LLC AND SLOAN**
11 **VENTURES 90 LLC ALLOWED THE RACETRACK TO BE DESIGNED,**
12 **CONSTRUCTED AND POSITIONED ON THE SLOAN VENTURES 90**
13 **LLC'S PARCELS IN ORDER TO MARKET THE RACETRACK AS**
14 **HAVING THE LONGEST STRAIGHTAWAY AND THE FASTEST**
15 **RACETRACK IN LAS VEGAS WITH NO SPEED LIMITS**

16 107. Plaintiffs repeat, re-allege and incorporate each and every
17 allegation in the preceding paragraphs of this Complaint as though fully set
18 forth herein.

19 108. Upon information and belief, Defendants SpeedVegas LLC, Robert
20 Barnard, Motorsports Services International LLC and Aaron Fessler were all
21 involved in the design, construction and/or positioning of the Racetrack on
22 Sloan Ventures 90 LLC's parcels of land.

23 109. The land upon which the Racetrack was constructed continues to
24 be owned by Scott Gragson's limited liability company, Sloan Ventures 90
25 LLC.

26 110. As a landowner, Sloan Ventures 90 LLC owes a general duty of
27 reasonable care to entrants for risks that exist on the landowner's property
28 regardless of the open and obvious nature of the dangerous conditions.

111. Upon information and belief, Defendants SpeedVegas LLC, Aaron
Fessler and Sloan Ventures 90 LLC allowed the Racetrack to be designed and

1 positioned on Sloan Ventures 90 LLC's parcels of land pursuant to marketing
2 strategy to advertise the Racetrack as having "the longest straightaway",
3 offering the "longest and fastest racetrack in Las Vegas" and having "No Speed
4 Limit".

5 112. SpeedVegas entices customers, having no or little relevant driving
6 experience, to drive the most powerful sports cars in the world at unsafe
7 speeds.

8 113. SpeedVegas posts on its social media sites congratulations to the
9 drivers who reached the highest speed on the Racetrack that day.

10 114. SpeedVegas also advertised its SpeedPass proprietary technology
11 that purported to record the fastest speed achieved by each driver on a
12 telemetry board.

13 **G. DEFENDANTS SPEEDVEGAS LLC AND AARON FESSLER ALLOWED**
14 **THE SPEEDPASS PROPRIETARY TECHNOLOGY AND TELEMETRY**
15 **BOARD TO FRAUDULENTLY INFLATE SPEEDS**

16 115. Plaintiffs repeat, re-allege and incorporate each and every
17 allegation in the preceding paragraphs of this Complaint as though fully set
18 forth herein.

19 116. Upon information and belief, Aaron Fessler created and/or
20 designed or is otherwise responsible for the SpeedPass proprietary technology
21 and the telemetry board that recorded the highest speed and lap times for
22 drivers on the SpeedVegas Racetrack.

23 117. The SpeedPass technology encouraged customers to drive faster
24 than was safe because of their own inflated top speed or another customer's
25 inflated top speed, thereby causing them to buy more laps to go faster and
26 faster in competition with their own or another customer's top speed.

27 118. SpeedVegas encourages and financially rewards its driving
28 instructors to upsell the customers to buy more driving laps.

1 119. Upon information and belief, the SpeedPass technology overstates
2 the actual speed attained by the sports cars by approximately fifteen percent.

3 120. As an example, the SpeedPass telemetry board would report and
4 display that a customer reached a speed of "140 mph" when the actual speed
5 reached was only 119 mph.

6 121. As a result, during the next lap the customer's attention is
7 focused upon the speedometer on the car, and believing from the telemetry
8 board that he has already attained 140 mph, then attempts to exceed the
9 overstated speed of 140 mph.

10 122. This resulted in customers driving at unsafe speeds, increasing
11 the risk of the customer losing control of the sports cars, leaving the surface of
12 the Racetrack and/or crashing.

13 123. The SpeedPass' fraudulent misrepresentation of the true speeds
14 also resulted in customers pressuring the driving instructors to allow them to
15 drive faster and faster.

16 124. Upon information and belief, SpeedVegas' CEO, Arron Fessler,
17 would question driving instructors whose customers did not achieve high rates
18 of speed.

19 125. Immediately following the Fatal Crash and pursuant to demands
20 from the remaining instructors, SpeedVegas removed the SpeedPass telemetry
21 board.

22 **H. SPEEDVEGAS RACTRACK IS INHERENTLY, EXCESSIVELY AND**
23 **UNNECESSARILY DANGEROUS IN BOTH DESIGN AND OPERATION**

24 126. Plaintiffs repeat, re-allege and incorporate each and every
25 allegation in the preceding paragraphs of this Complaint as though fully set
26 forth herein.

27 127. The SpeedVegas Racetrack is inherently, excessively and
28 unnecessarily dangerous in design and operation as constructed. (Exhibit 1,

1 Thake Affidavit).

2 128. The design of the SpeedVegas Racetrack is inherently, excessively
3 and unnecessarily dangerous because:

- 4 a. The Wall was located only twenty feet from Turn 1 and at
5 such an angle that cars crash straight into it;
- 6 b. Insufficient run-off exists to allow a car to decrease or
7 lose speed before it crashes into a concrete barrier wall
8 regardless of whether due to driver error or mechanical
9 failure;
- 10 c. Insufficient cushioning to reduce the impact into the Wall
11 given that SpeedVegas failed to bind the tire stacks
12 horizontally (only vertically), had insufficient rows of tires
13 and failed to affix the tire stacks to the Wall resulting in
14 the Aventador simply pushing aside the tires crashing
15 directly into the concrete;
- 16 d. The Racetrack is too technical and challenging for
17 inexperienced, amateur drivers driving at high rates of
18 speed given that the Racetrack challenges even
19 professional racecar drivers; at least two of the prior
20 crashes occurred when professional drivers were driving,
21 not the customer, and
- 22 e. The Racetrack has no forgiveness at Turns 1 and 2 (S
23 Turn) when the car leaves the surface of the Racetrack
24 whether because of driver error or mechanical failure of
25 the car; on the left is a concrete barrier wall; straight
26 ahead is a drop to a drainage ditch with an exposed
27 culvert or to the right the Wall.

28 (Exhibit 1, Thake Affidavit).

1 129. Upon information and belief Defendants SpeedVegas LLC, World
2 Class Driving and Aaron Fessler allowed the Racetrack to be operated in an
3 inherently and excessively dangerous and unsafe manner.

4 130. The SpeedVegas Defendants allowed the Racetrack to be operated
5 in an inherently and excessively dangerous and unsafe manner by:

- 6 a. Failing to maintain the sports cars in proper working order;
- 7 b. Swapping out the original manufacture equipment brakes
8 for Girodisk brakes;
- 9 c. Using Girodisk brakes in place of the original
10 manufacture brakes despite knowing of problems with
11 the Girodisk brakes overheating on another commercial
12 racetrack;
- 13 d. Allowing an Aventador Roadster with a removable top to
14 be used on the commercial Racetrack without a roll bar,
15 cage or providing fire protection racing suits in the event
16 the top came off, thereby exposing the passengers to the
17 flames from the rear engine fire;
- 18 e. Failing to immediately pull the Aventador from the
19 Racetrack upon receiving the Recall Notice, particularly
20 since the notice provided that Aventadors with
21 aftermarket modifications to the exhaust system were at
22 risk of fire;
- 23 f. Permitting the Aventador to be used on a commercial
24 Racetrack with its aftermarket modifications to its brakes,
25 exhaust system and the rear spoiler that result in braking
26 and stability problems at high rates of speed;
- 27 g. Failing to provide adequate safety equipment, emergency
28 procedures and/or safety features given the high risk of

1 death in the event of a crash and that the remote
2 location of the Racetrack--ten miles from the nearest Fire
3 Station—resulted in a fifteen minute response time to
4 provide fire and medical emergency services;

5 h. Using the SpeedPass proprietary technology that
6 misrepresented the actual speed of the cars that resulted
7 in customers driving at unsafe speeds given the
8 dangerous, unforgiving design of the Racetrack,

9 i. Failing to hire, retain and/or supervise competent and
10 knowledgeable mechanics to work on the cars and/or
11 experienced track managers to operate the Racetrack in a
12 safe and reasonable manner and

13 j. Having inadequate cushioning on the hard obstacles
14 located too close to the Racetrack.

15 (Exhibit 1, Thake Affidavit).

16 **I. RES IPSA LOQUITUR**

17 131. Plaintiffs repeat, re-allege, and incorporate the allegations in the
18 preceding paragraphs of this Complaint as though fully set forth herein.

19 132. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
20 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
21 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
22 Estate.

23 133. A res ipsa loquitur inference of negligence has been established
24 given that Defendants are responsible for one or more of the following acts
25 that (1) caused the harm to Gil Ben-Kely and his Estate, (2) that such harm
26 does not ordinarily occur in the absence of negligence and (3) that Defendants
27 are in a better position to explain the cause of the Fatal Crash than Plaintiffs
28 including but not limited to: (a) designing, constructing and/or operating a

1 Racetrack that is inherently, excessively and unnecessarily dangerous; (b)
2 improperly maintaining the Aventador; (c) permitting the Aventador Roadster
3 to be used on the commercial Racetrack; (d) not recalling and/or pulling the
4 Aventador from the Racetrack after learning of the design defect that was
5 causing engine fires; (e) driving the Aventador at the time of the Fatal Crash;
6 (e) allowing the SpeedPass technology and telemetry board to fraudulently or
7 negligently misrepresent the actual speed of the cars and encouraging the
8 customers to drive at unsafe speeds; (f) allowing the Aventador to be used on
9 the commercial Racetrack with its aftermarket modifications; (g) breaching its
10 general duty of care to entrants for risks that existed on the property and (h)
11 swapping out the original manufacturer brakes for the Girodisk brakes.

12 134. Plaintiff have established that it is more probable than not that
13 the injury occurred as a result of Defendants' breaches of duty.

14 135. Plaintiffs are entitled to damages as a result.

15 136. Defendants are not entitled to the protection of the Nevada
16 Industrial Insurance Act ("NIIA") as the exclusive remedy for an employee
17 against his employer for workplace injuries unless SpeedVegas LLC was
18 current on its workers compensation payment.

19 137. Defendants are further not entitled to the protection of the given
20 that the Nevada Industrial Insurance Act as currently interpreted because the
21 accidental injury determination creates disparate standards for workers and
22 employers, biasing the NIIA in favor of the employer.

23 138. An employer seeking protection under NIIA must satisfy a
24 considerably lower burden of proof that the injury resulted from the worker's
25 willfulness or intentional self-infliction) than a worker seeking to pursue
26 damages outside of NIIA.

27 139. An employee must prove that the employer possessed a conscious
28 and deliberate intent directed to the purpose of inflicting an injury.

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1 society, comfort and consortium, and damages for pain, suffering and
2 disfigurement of Gil Ben-Kely resulting from the direct and proximate cause of
3 Defendants' conduct as set forth herein.

4 148. Defendants knowingly risked the life of Gil Ben-Kely in order to
5 profit from the operation of the Racetrack.

6 149. Defendants' conduct was extreme and outrageous, warranting an
7 award of punitive damages.

8 **SECOND CAUSE OF ACTION—WILLFUL AND WANTON NEGLIGENCE**
9 **(Against Defendants SpeedVegas, LLC, World Class Driving, Robert**
10 **Barnard, Motorsport Services International LLC, the Estate of Craig**
11 **Sherwood and Automobili Lamborghini America, LLC)**

12 150. Plaintiffs repeat, re-allege, and incorporate the allegations in the
13 preceding paragraphs of this Complaint as though fully set forth herein.

14 151. Plaintiff Antonella Ben-Kely as the Administrator of Gil-Kely's
15 Estate, brings this claim for injuries and damages sustained by Gil Ben-Kely
16 prior to his death, for the benefit of the Heirs and the Estate of Gil Ben-Kely.

17 152. As a direct and proximate cause of Defendants' indifference to the
18 consequences of their actions, their conscious and reckless disregard for the
19 rights and safety of Gil Ben-Kely and for their willful and wanton negligent
20 actions, Gil Ben-Kely and his estate sustained loss of earnings, severe blunt
21 force injuries, thermal injuries, suffered great pain of body and mind, and
22 ultimately suffered death.

23 153. Gil Ben-Kely's injuries and death were a natural, probable and
24 foreseeable consequence of the negligent, gross negligent, willful, wanton,
25 reckless and/or otherwise tortious or wrongful acts or omissions of
26 Defendants with respect to the design and construction of the Racetrack, the
27 placement of the concrete barrier walls and exposed drainage pipe too close to
28 the Racetrack surface, the failure to hire and supervise competent mechanics
to properly service the exotic sports cars, the failure to pull the Aventador from
use on the Racetrack after being notified of the recall of Lamborghini's fuel-

1 system design defect that caused the Aventador models to catch on fire and
2 failing to establish adequate disclosures of customers before allowing them to
3 drive on the Racetrack.

4 154. As a result, Plaintiffs are entitled to recover damages, including
5 punitive damages.

6 **THIRD CAUSE OF ACTION—GROSS NEGLIGENCE**
7 **(Against Defendants SpeedVegas, LLC, World Class Driving, Robert**
8 **Barnard, Motorsport Services International LLC, the Estate of Craig**
9 **Sherwood and Automobili Lamborghini America, LLC)**

10 155. Plaintiffs repeat, re-allege, and incorporate the allegations in the
11 preceding paragraphs of this Complaint as though fully set forth herein.

12 156. Plaintiff Antonella Ben-Kely brings this action as Administrator of
13 Gil Ben-Kely's Estate for injuries sustained by Gil Ben-Kely prior to his death
14 for the benefit of the heirs of Gil Ben-Kely.

15 157. As a direct and proximate cause of Defendants' absence of care for
16 the safety and rights of Gil Ben-Kely as well as their reckless, overtly
17 dangerous and grossly negligent actions, Gil Ben-Kely and his Estate
18 sustained loss of earnings, severe and extreme injuries, suffered great pain of
19 body and mind and, ultimately, suffered death.

20 158. As a result, Plaintiffs are entitled to recover damages, including
21 punitive damages.

22 **FOURTH CAUSE OF ACTION—NEGLIGENCE**
23 **(Against all Defendants SpeedVegas, LLC, World Class Driving, Robert**
24 **Barnard, Motorsport Services International LLC, the Estate of Craig**
25 **Sherwood and Automobili Lamborghini America, LLC)**

26 159. Plaintiffs repeat, re-allege, and incorporate the allegations in the
27 preceding paragraphs of this Complaint as though fully set forth herein.

28 160. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
Estate.

1 161. As a direct and proximate cause of Defendants' actions, Gil Ben-
2 Kely and his Estate sustained loss of earnings, severe injuries, suffered great
3 pain of body and mind and, ultimately, suffered death.

4 162. Gil Ben-Kely's injuries and death were a natural, probable and
5 foreseeable consequence of the negligent, gross negligent, willful, wanton,
6 reckless and/or otherwise tortious or wrongful acts or omissions of
7 Defendants.

8 163. As a result, Plaintiffs are entitled to recover damages

9 **FIFTH CAUSE OF ACTION—VICARIOUS LIABILITY, RESPONDEAT**
10 **SUPERIOR, OSTENSIBLE AGENCY AND/OR AGENCY**

11 **(Against Defendants SpeedVegas LLC and World Class Driving)**

12 164. Plaintiffs repeat, re-allege, and incorporate the allegations in the
13 preceding paragraphs of this Complaint as though fully set forth herein.

14 165. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
15 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
16 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
17 Estate.

18 166. At all times relevant, the employees, agents, administrators, staff
19 and/or representatives of Defendants (collectively referred to as "Employees")
20 were employed by and/or acting on behalf of Defendants.

21 167. At all times relevant, the Employees acted within their respective
22 capacities and scopes of employment for Defendants.

23 168. The Employees recklessly, wantonly, willfully, grossly negligently
24 and/or negligently, directly and proximately caused, through their acts and
25 omissions, injury, pain, suffering and, ultimately, the death of Gil Ben-Kely.

26 169. As a direct and proximate cause of the acts and omissions of the
27 Employees, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
28 extreme injuries as well as suffered great pain of body and mind and,

1 ultimately, suffered death.

2 170. Gil Ben-Kely's injuries and death were a natural, probable and
3 foreseeable consequence of the negligent, gross negligent, willful, wanton,
4 reckless and/or otherwise tortious or wrongful acts or omissions of
5 Defendants.

6 171. As a result, Plaintiffs are entitled to recover damages

7 **SIXTH CAUSE OF ACTION—WRONGFUL MISREPRESENTATIONS**
8 **(Against Defendants SpeedVegas LLC and World Class Driving)**

9 172. Plaintiffs repeat, re-allege, and incorporate the allegations in the
10 preceding paragraphs of this Complaint as though fully set forth herein.

11 173. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
12 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
13 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
14 Estate.

15 174. Defendants knew or should have known of the prior crashes on
16 the Racetrack as well as the maintenance problems with the exotic sports
17 cars, including but not limited to problems with the brakes, brake pads falling
18 off of the sports cars while being driven on the Track at high speeds, the
19 design of the Track, the proximately and location of the concrete barrier wall,
20 complaints by instructors about problems with Turn 1 and the condition of
21 the sports cars and/or the recall of the Aventador (collectively "Safety Issues").

22 175. Despite the three prior crashes at Turn 1 and the Safety Issues,
23 Defendants advertised and/or otherwise promoted the Track as being safe to
24 drive upon.

25 176. Defendants' conduct in concealing the Safety Issues and prior
26 crashes constitute negligent misrepresentations to Gil Ben-Kely and others
27 similarly situated.
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1 177. As a direct and proximate result of Defendants'
2 misrepresentations, Gil Ben-Kely and his Estate suffered loss of earnings,
3 severe and extreme injuries, pain of body and mind and, ultimately death.

4 178. It was foreseeable to Defendants that Gil Ben-Kely would rely
5 upon Defendants' false information and misrepresentations to his detriment.

6 179. Gil Ben-Kely's injuries and death were a natural, probable and
7 foreseeable consequence of the negligent, gross negligent, willful, wanton,
8 reckless and/or otherwise tortious or wrongful acts or omissions of
9 Defendants.

10 180. Plaintiffs are entitled to damages as a result thereof.

11 **SEVENTH CAUSE OF ACTION—NEGLIGENT HIRING AND RETENTION**
12 **(Against Defendants SpeedVegas LLC and World Class Driving)**

13 181. Plaintiffs repeat, re-allege, and incorporate the allegations in the
14 preceding paragraphs of this Complaint as though fully set forth herein.

15 182. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
16 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
17 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
18 Estate.

19 183. Defendants were negligent, grossly negligent, reckless, wanton
20 and/or willful in their hiring and retaining the Employees, including the
21 mechanic, assistant mechanic, assistant track manager and track manager
22 who allowed the Aventador to be used on the commercial Racetrack and/or
23 failed to maintain the Aventador in proper working condition for use on a
24 commercial track and/or knew or should have known that Gil Ben-Kely was
25 instructing in a sports car unsuitable for use on the Track on February 12,
26 2017.

27 184. Defendants hired and retained Employees that were unfit for their
28 jobs, unqualified and/or ignorant of reasonable safety procedures.

1 185. Defendants knew or should have known that the Employees they
2 hired and retained to maintain the sports cars and/or manage the operations
3 of SpeedVegas were unfit for the jobs, unqualified and/or ignorant of safety
4 procedures, resulting in foreseeable and unreasonable risk to Gil Ben-Kely
5 and others similarly situated.

6 186. It was foreseeable to Defendants that hiring and/or retaining
7 these Employees created an unreasonable risk of harm to Gil Ben-Kely and
8 others similarly situated.

9 187. As a direct and proximate result of the negligent, grossly
10 negligent, reckless, willful, wanton and/or otherwise tortious conduct of
11 Defendants, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
12 extreme injuries, pain of mind and body and, ultimately suffered death.

13 188. Gil Ben-Kely's injuries and death were a natural, probable and
14 foreseeable consequence of the negligent, gross negligent, willful, wanton,
15 reckless and/or otherwise tortious or wrongful acts or omissions of
16 Defendants.

17 189. Plaintiffs are entitled to recover damages as a result thereof.

18 **EIGHTH CAUSE OF ACTION—NEGLIGENT SUPERVISION (Against**
19 **Defendants SpeedVegas LLC and World Class Driving)**

20 190. Plaintiffs repeat, re-allege, and incorporate the allegations in the
21 preceding paragraphs of this Complaint as though fully set forth herein.

22 191. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
23 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
24 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
25 Estate.

26 192. Defendants, at all time relevant hereto, were responsible for the
27 management, supervision and operations of SpeedVegas, including but not
28 limited to the management and supervision of the Employees.

1 193. Defendants knew or should have known that the Employees
2 Defendants hired and retained to maintain the Aventador and/or manage the
3 operation of the Track were unfit for the job, unqualified and/or ignorant of
4 the necessary safety procedures, resulting in a foreseeable and unreasonable
5 risk to Gil Ben-Kely and others similarly situated.

6 194. Defendants had a duty to supervise, manage and otherwise
7 operate SpeedVegas in a reasonably safe manner, including but not limited to,
8 hiring and retaining Employees knowledgeable and in compliance with the
9 necessary safety requirements to operate and/or maintain the Aventador in
10 proper working condition for use on a commercial track.

11 195. Defendants were negligent, grossly negligent, wanton, willful
12 and/or reckless in their supervision of their Employees in maintaining the
13 Aventador and/or the operation of the Track warranting in an award of
14 damages, including but punitive damages, in one or more of the following
15 manners, with each sufficient to support the relief sought:

- 16 a. Permitting or failing to prevent negligent, grossly negligent,
17 wanton, willful reckless and/or other tortious conduct by
18 persons, whether or not their agents and/or Employees, upon
19 the premises;
- 20 b. Permitting or failing to prevent negligent, grossly negligent,
21 wanton, willful, reckless and/or other tortious conduct by
22 persons, whether or not their agents and/or Employees, in the
23 use of any and all instrumentalities utilized in the operation of
24 the SpeedVegas;
- 25 c. Failing to ensure the proper maintenance of any and/all
26 instrumentalities utilized in the operation of the SpeedVegas;
- 27 d. Failing to properly manage the operations of SpeedVegas;
- 28 e. Failing to institute proper safety procedures and/or training to

1 prevent the ongoing maintenance problems;

2 f. Failing to supervise and/or insure Employees were properly
3 trained in the maintenance of the Aventador and/or the
4 operation of the Track;

5 g. Failing to supervise and insure employment of qualified
6 persons involved in the maintenance of the Aventador and/or
7 operation of the Track and

8 h. In any other manner that may be proven at trial in this matter.

9 196. Gil Ben-Kely's injuries and death were a natural, probable and
10 foreseeable consequence of the negligent, gross negligent, willful, wanton,
11 reckless and/or otherwise tortious or wrongful acts or omissions of
12 Defendants in failing to supervise the Employees responsible for maintaining
13 the Aventador and/or managing the Track.

14 197. As a direct and proximate cause of the acts or omissions of
15 Defendants, Gil Ben-Kely and his Estate suffered loss of earnings, severe and
16 extreme injuries, pain of body and mind and, ultimately, death.

17 198. Plaintiffs are entitled to recover damages as a result thereof.

18 **NINTH CAUSE OF ACTION—NEGLIGENT DESIGN OF TRACK**
19 **(Against Defendants SpeedVegas LLC, World Class Driving, Robert**
20 **Barnard and Motorsports International LLC)**

21 205. Plaintiffs repeat, re-allege, and incorporate the allegations in the
22 preceding paragraphs of this Complaint as though fully set forth herein.

23 206. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
24 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
25 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
26 Estate.

27 207. Upon information and belief, Defendants SpeedVegas LLC, Aaron
28 Fessler, Robert Barnard and Motorsports International LLC were all involved
in the design of the Racetrack.

1 208. Neither the State of Nevada nor Clark County required any
2 professional licensure to design the Racetrack.

3 209. No local or state laws require a track designer for this
4 driving experience" track to have any license or other professional
5 qualifications.

6 210. Defendants owed a duty of care to design and construct a safe
7 Track and create operational procedures for the Track to be operated in a
8 reasonable and safe manner.

9 211. Defendants breached their duty by failing to provide adequate
10 run-offs at critical points on the Racetrack where, due to either driver error or
11 mechanical failure, the high powered exotic sports car leave the surface of the
12 Track.

13 212. Defendants failed to design Track to allow the sports cars to
14 reduce speed before encountering concrete barrier walls.

15 213. Defendants also breached their duty to design and construct a
16 safe Track by allowing a concrete barrier wall to be placed approximately 20
17 feet from Turn One as well as allowing an exposed drainage culvert and ditch
18 near Turns 1 and 2.

19 214. Defendants further breached their duty of care to design and
20 construct a safe Track by failing to properly affix the tires barrier or other
21 customary materials in order to soften the impact of the car when the car hits
22 the concrete barrier walls or drainage pipe.

23 215. Defendants further breached their duty of care by failing to
24 provide adequate safety features when, not if, mechanical failure or driver
25 error results in a car leaving the surface of the Track.

26 216. Defendants further breached their duty of care by failing to
27 establish appropriate safety features and operational procedures given the
28 location of the nearest Fire Station (ten miles away and corresponding delayed

1 response time by emergency personnel) given the extremely dangerous nature
2 of having exotic sports cars being driven by inexperienced drivers, on a Track
3 having no speed limits and the high probability of life-threatening injuries
4 when an accident occurs.

5 217. Defendants further breached their duty of care by not requiring
6 adequate safety features and operational procedures and for SpeedVegas' Fire
7 and Safety personnel, including but not limited to only having handheld fire
8 extinguishers for responding to car fires on Track.

9 218. Plaintiffs are entitled to damages in an amount to be proven at
10 trial as a result thereof.

11 **TENTH CAUSE OF ACTION—NEGLIGENT ENTRUSTMENT**
12 **(Against Defendants SpeedVegas and World Class Driving)**

13 219. Plaintiffs repeat, re-allege and incorporate each and every
14 allegation in the preceding paragraphs of this Complaint as though fully set
15 forth herein.

16 220. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
17 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
18 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
19 Estate.

20 221. That at the time of the Fatal Crash, Defendants negligently
21 entrusted the Aventador to Craig Sherwood by failing to provide adequate
22 training and/or failed to ensure that Craig Sherwood did not suffer from a
23 medical condition.

24 222. Despite Craig Sherwood's lack of training, qualifications and/or
25 medical condition, Defendants permitted, allowed and invited Craig Sherwood
26 to operate the Aventador, one of the most powerful sports cars in the World.

27 223. As a direct and proximate result of Craig Sherwood's failure to
28 properly operate the Aventador, for which the Defendants are responsible, Gil

1 Ben-Kely and his Estate suffered injury and thereafter died.

2 224. Plaintiffs are entitled to damages in an amount to be proven at
3 trial as a result thereof.

4 **ELVENTH CAUSE OF ACTION—PRODUCT LIABILITY**
5 **(Against Defendant Lamborghini)**

6 225. Plaintiffs repeat, re-allege, and incorporate the allegations in the
7 preceding paragraphs of this Complaint as though fully set forth herein.

8 226. Plaintiff Antonella Ben-Kely as Administrator of the Estate of Gil
9 Ben-Kely brings this claim for the injuries and damages sustained by Gil Ben-
10 Kely prior to his death, for the benefit of the heirs of Gil Ben-Kely and his
11 Estate.

12 227. Defendant Lamborghini manufactured the Aventador.

13 228. The Aventador had a design defect which rendered it
14 unreasonably dangerous because it failed to perform in a manner reasonably
15 expected in light of its nature and intended function.

16 229. The fire and explosion of the Aventador constituted evidence of an
17 unexpected, dangerous malfunction that gives rise to an inference of a
18 manufacturing defect.

19 230. Defendant had reason to anticipate that danger would result from
20 use of its product and failed to give adequate warning of such danger.

21 231. Defendant had notice that its Aventadors were catching on fire
22 due to the design defect as early as September 2015, and during 2016 when it
23 investigated the prior incidents of the Aventador catching fire for no reason,
24 exploding, and burning up.

25 232. Defendant knew as of 2016 that a defect relating to the fuel tank
26 and emission were causing Aventadors to catch on fire and explode.

27 233. Defendant failed to send notice of the voluntary recall of the
28 Aventadors until February 3, 2017.

1 234. Defendant further failed to offer repairs of the Aventadors (2012-
2 2017 models) until February 24, 2017. Defendant recalled its 2012-2017
3 Aventadors because it had determined that the cars created an unreasonable
4 safety risk and/or failed to meet minimum safety standards.

5 235. An alternative safer design existed given that Lamborghini has
6 corrected the design flaw in other and/or new models of Aventadors as well as
7 offering the free repair of its 2012-2017 Aventador models pursuant to NHTSA
8 Recall Campaign #17V07300.

9 236. The defect existed at the time the Aventador left the manufacturer.

10 237. The defect caused injury to Gil Ben-Kely and his Estate.

11 238. At all material times and as early as 2015, Defendant
12 Lamborghini knew of the defective nature of the design of its Aventador and
13 continued to design, manufacture, market and sell the Aventadors so as to
14 maximize its sales and profits at the expense of public health and safety.
15 Defendant Lamborghini's conduct exhibits such an entire want of care as to
16 establish that its actions were a result of fraud, evil motive, actual malice, and
17 the conscious and deliberate disregard of foreseeable harm to Plaintiffs.

18 239. Plaintiffs are entitled to damages in an amount to be proven at
19 trial, including punitive damages.

20 **TWELTH CAUSE OF ACTION—NEGLIGENT PROPERTY OWNER**
21 **(Against Defendant Sloan Ventures 90 LLC)**

22 240. Plaintiffs repeat, re-allege and incorporate each and every
23 allegation in the preceding paragraphs of this Complaint as though fully set
24 forth herein.

25 241. Defendant Sloan Ventures 90 LLC is the owner of the real
26 property upon which the SpeedVegas Track was built and is operated upon,
27 has a nondelegable duty to answer for the well-being of those persons who are
28 on the premises.

1 242. Gil Ben-Kely was legally upon the SpeedVegas premises as an
2 employee.

3 243. Gil Ben-Kely, as a driving instructor employee of SpeedVegas, was
4 expressly or impliedly invited onto the premises for the benefit for SpeedVegas.

5 244. Defendant as owner of the real property owed a non-delegable
6 general duty of care to entrants on its property.

7 245. Any open or obvious nature of a dangerous condition does not
8 relieve a landowner from its general duty of reasonable care.

9 246. Defendants breached their duty by allowing the inherently,
10 excessively and/or unnecessarily dangerous Racetrack to be designed,
11 constructed and/or operated on its real property.

12 247. Plaintiffs are entitled to damages as a result thereof.

13 **THIRTEENTH CAUSE OF ACTION**
14 **(Alter Ego Against Defendant Aaron Fessler)**

15 248. Plaintiffs repeat, re-allege and incorporate each and every
16 allegation in the preceding paragraphs of this Complaint as though fully set
17 forth herein.

18 249. Upon information and belief, Defendant Aaron Fessler organized
19 or caused to be organized SpeedVegas LLC.

20 250. Upon information and belief, Aaron Fessler is the Chief Executive
21 Officer of SpeedVegas, LLC.

22 251. Upon information and belief, Defendant Fessler influenced and
23 governed SpeedVegas LLC.

24 252. Upon information and belief, there is such unity of interest and
25 ownership between SpeedVegas LLC and Defendant Fessler that they are
26 inseparable from each other.

27 253. Upon information and belief, Aaron Fessler failed to follow
28 corporate formalities with respect to SpeedVegas LLC, including but not

1 limited to failing to provide notice of shareholder meetings, holding annual
2 shareholder meetings, failing to obtain shareholder approval for the conversion
3 of stock shares from prior corporate entities and failing to obtain approval for
4 significant decisions regarding SpeedVegas LLC.

5 254. Upon information and belief, Aaron Fessler is the alter ego of
6 SpeedVegas and have been conducting, managing and controlling the affairs of
7 SpeedVegas LLC since its incorporation as though it was their own business.

8 255. Upon information and belief, SpeedVegas was undercapitalized at
9 the time it was incorporated.

10 256. Upon information and belief, SpeedVegas LLC was
11 undercapitalized at the time that Defendant Fessler formed it.

12 257. Adherence to the fiction of the separate corporate entity under the
13 circumstances would sanction a fraud or promote injustice.

14 258. The Ben-Kelys are entitled to pierce the corporate veil and recover
15 from Aaron Fessler individually.

16 259. The Ben-Kelys are entitled to damages in an amount to be proven
17 at trial, plus pre- and post-judgment interest.

18 260. As a direct and proximate result of Defendant Fessler's actions,
19 the Ben-Kelys have been required to retain the services of an attorney to
20 prosecute their claims and are entitled to be compensated for any costs
21 incurred in the prosecution of this action, including without limitation, any
22 and all costs and attorneys' fees.

23 **PUNITIVE DAMAGES AGAINST DEFENDANTS SPEEDVEGAS, WORLD**
24 **CLASS DRIVING, ROBERT BARNARD, MOTORSPORTS SERVICES**
25 **INTERNATIONAL, LLC, ESTATE OF CRAIG SHERWOOD AND AUTOMOBILI**
26 **LAMBORGHINI AMERCIA, LLC**

27 261. Plaintiffs repeat, re-allege and incorporate each and every
28 allegation in the preceding paragraphs of this Complaint as though fully set

1 forth herein.

2 262. As a direct and proximate result of Defendants' deliberate
3 indifference to the consequences of their actions and conscious reckless
4 disregard of the rights and safety of Gil Ben-Kely, absence of care for the
5 safety and rights of Gil Ben-Kely and overtly dangerous, reckless and grossly
6 negligent actions, Gil Ben-Kely and his Estate suffered severe and extreme
7 injuries, great pain of body and mind and, ultimately death.

8 263. Plaintiffs are entitled to an award of punitive damages in amount
9 as a jury may find appropriate at the trial in this matter.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief as follows:

- 12 1. For trial by jury;
- 13 2. For compensatory damages in an amount in excess of \$50,000.00
14 against all Defendants jointly and severally for an award of compensatory
15 damages for loss of earnings, funeral expenses, pain and suffering, as well as
16 other damages according to proof at trial;
- 17 3. For punitive damages in an amount against Defendant
18 SpeedVegas LLC, World Class Driving, Robert Barnard, Motorsport Services
19 International, LLC, Estate of Craig Sherwood and Automobili Lamborghini
20 America, LLC for punitive or exemplary damages in an amount sufficient to
21 punish and deter future similar conduct;
- 22 4. For reasonable attorneys' fees and costs;
- 23 5. For prejudgment interest;
- 24 6. For leave to amend as additional facts are gathered and
25 7. For such other and further relief as the Court deems just and
26 proper.

27 ...

28 ...

V.

JURY DEMAND

Pursuant to Rule 38(b) of the Nevada Rules of Civil Procedure and general state law, Plaintiff demands a jury trial in connection with the subject action.

Dated this 2nd day of January, 2019.

GENTILE CRITALLI
MILLER ARMENI SAVARESE

GENTILE CRISTALLI
MILLER ARMENI SAVARESE

DOMINIC GENTILE
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 #41086

JANIECE MARSHALL
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese, hereby certifies that on the 15th day of January, 2019, she caused to be served, a copy of the foregoing **THIRD AMENDED COMPLAINT**, by electronic service in accordance with Administrative Order 14.2, to all interested parties through the Court's **Odyssey E-File & Serve**, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Robert Caldwell, Esq.
Kolesar & Leatham
400 S. Rampart Blvd., #400
Las Vegas, Nevada 89145
RCaldwell@klnevada.com
Attorneys for Automobili Lamborghini America

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...

...

...

1 Joshua Cools, Esq.
2 Snell & Wilmer
3 3883 Howard Hughes Pkwy., #1100
4 Las Vegas, Nevada 89169
5 jcools@swlaw.com
6 *Attorneys for Motorsports Services International, LLC*

A handwritten signature in blue ink, appearing to read 'Gentile Cristalli', is written over a horizontal line.

An employee of
GENTILE CRISTALLI
MILLER ARMENI SAVARESE

EXHIBIT 1

AFFIDAVIT OF MARTYN THAKE

STATE OF NEVADA)
) ss.
COUNTY OF)

I, Martyn C. Thake, being duly sworn, deposes and says as follows:

1. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters state upon information and belief, I belief them to be true and accurate.

2. I have been retained as an expert by the law firm of Gentile, Cristalli, Miller, Armeni and Savarese on behalf of Plaintiffs relating to the litigation by the Estate of Gil Ben-Kely and his heirs (the "Ben-Kely Family") against the owners and operators of the SpeedVegas "Racetrack" as a consequence of the wrongful death of Gil Ben-Kely on February 12, 2017.

3. For the past thirty years, I have worked as a track designer and builder.

4. I am the President of Motorsports Consulting Services, LLC and previously worked as the Director of Circuit Development for the Indy car series. I have influenced the design of over 100 racetracks worldwide.

5. There are no local, state or federal laws, ordinances or regulations that govern the "driving experience" tracks such as SpeedVegas, neither its design, construction nor operation. Nor are there any professional licensing requirements for a track designer in Nevada.

6. Upon information and belief, SpeedVegas has never had any sanctioning body, such as the Sports Car Club of America (the "SCCA"), either approve or disapprove its design or operation. The SCCA is the entity that sets guidelines and requires changes before it will approve the type of driving experience track that SpeedVegas operates. Although SpeedVegas advertises itself as a "Racetrack" it is a "training" track since not racing has been approved.

7. Based upon my prior experience as a racecar driver, certified EMT and track designer and certified track inspector, it is my opinion to a reasonable degree of professional certainty that the SpeedVegas Racetrack is inherently, excessively and unnecessarily dangerous.

...

...

1 8. My opinion is based upon a reasonable degree of professional certainty and based
2 upon my March 3, 2017 on-site visit of the SpeedVegas Racetrack as well as my review and
3 analysis of the following: (a) State of Nevada Traffic Crash Report and photographs taken of the
4 February 12, 2017 crash included with that Report; (b) Clark County Coroner Autopsy Report,
5 Case Number 17-01739; (c) Clark County Coroner/Medical Examiner Report of Investigation
6 (d) NMS Labs Toxicology Report for Patient ID 17-01739 and (e) the SpeedVegas website.

7 9. With respect to my visit to the SpeedVegas Racetrack on March 3, 2017, I was
8 required to attend a briefing before driving on the Racetrack.

9 10. The brief lasted approximately 17-minute, consisting of a driving instructor standing
10 before a hand-drawn diagram of the Racetrack on a white board.

11 11. The SpeedVegas' briefing was deficient for the following reasons:

12 a. The instructor failed to explain the difficulty or the precision needed to
13 execute Turns 1 and 2, the turns that immediately follow the long straightaway on
14 the Racetrack, the most technical and difficult turns on the Racetrack and the
15 turns at which five crashes had occurred, including the fatal crash of February 12,
16 2017.

17 b. The instructor failed to instruct what to do if the car left the track surface
18 or went off of the Racetrack and

19 c. The instructor failed to advise when or how the instructor would take over
20 the braking or steering of the car and what the driver was to do if the instructor
21 took control of the car.

22 12. In addition to the deficient briefing, SpeedVegas failed to provide a sighting or
23 warm-up lap at a reduced speed in order for me to familiarize myself with the Racetrack before I
24 was actually driving on it and being encouraged by the instructor to drive at a high rate of speed.

25 13. Upon entering the Mercedes sports car, I immediately noted that the brake pad
26 warning light was illuminated and brought it to the attention of the driving instructor. The
27 instructor told me to ignore the warning light, stating that a mechanic check those things at night.
28 The instructor had me accelerate to 50 mph and then brake sharply twice before I entered the

1 track. The first time, I operated the brakes. The second time, the instructor operated his instructor
2 brakes. That was the extent of the brake testing.

3 14. The instructor encouraged me to accelerate and continued to encourage me to
4 accelerate throughout the five laps despite my reluctance to do so.

5 15. I was not given an opportunity to drive the track as a sighting or warm-up lap, but
6 immediately upon entering the straightaway I was encouraged to accelerate by the instructor.

7 16. I accelerated up to 100 mph without ever having driven on the Racetrack.

8 17. Throughout the 5 laps, the driving instructor constantly pushed me to increase my
9 speed to over 100 mph despite my refusal to do so.

10 18. During Lap 3, I smelled burning brakes from the Mercedes.

11 19. The driving instructor did not direct me to stop or slow down despite the warning
12 light continuing to be illuminated and the burning brakes.

13 20. Before, during and after driving the 5 laps, I examined the design and operation of
14 the SpeedVegas Racetrack.

15 21. The layout of Turns 1 and 2 present unnecessary dangers given that it is an
16 amateur driving experience and given the options that are and were available to the original track
17 designer with respect to placement of the Racetrack on the parcel of land.

18 22. It appears that the Racetrack was designed for purposes of advertising as the
19 longest straightaway rather than designing a racetrack for amateur and inexperienced drivers that
20 many are unlikely have driven an exotic sports car at high rates of speed.

21 23. Turns 1 and 2 at the end of the long straightaway are located too close to Las
22 Vegas Boulevard without sufficient run-off space when the car leaves the Racetrack surface at a
23 high rate of speed.

24 24. At the end of the long straightway, at Turns 1 and 2, there exist three dangers: an
25 exposed drainage ditch to the left, a concrete barrier wall also on the left and a concrete barrier
26 wall on the right.

27 25. The concrete barriers are placed too close to the surface of the Racetrack. The
28 barrier at the last turn creates a head-on impact with virtually no run-off. If the turn is entered at

1 a high rate of speed the car may become airborne and potentially flip over the barrier or run into
2 the concrete barrier wall.

3 26. The SpeedVegas Racetrack has is inadequate cushioning on the concrete barrier
4 walls and the walls are located too close to the Racetrack at Turns 1 and 2 given that the rate of
5 speed the cars reach on the long straightaway of the Racetrack.

6 27. SpeedVegas appears to be using used track tires instead of factory reject steel
7 belted new tires between 14 and 17 inches in diameter for cushioning on the concrete barrier
8 walls.

9 28. The used track tires have insufficient sidewall and degraded sidewall strength and
10 therefore, present less cushioning than new factory reject steel belted tires.

11 29. If a driver loses control on Turns 1 and 2, there is insufficient run-off for the car
12 to decrease its speed before encountering the drainage ditch or the concrete barrier walls.

13 30. In reviewing the photographs included with the Traffic Crash Report of the Fatal
14 Crash, it appears that SpeedVegas did not have sufficient tires on the concrete barrier wall to
15 cushion the Aventador Lamborghini that Gil Ben-Kely was riding in the passenger seat as the
16 driving instructor while Canadian tourist Craig Sherwood was driving.

17 31. The tires appeared to be assembled poorly and incorrectly as the vertical banded
18 stacks were not banded together resulting in the Aventador crashing directly into the concrete
19 barrier wall without the cushioning of the tires.

20 32. I observed no conveyor belt type of material over the banded tires to prevent the
21 Aventador from going under the tires and hitting the concrete barrier wall.

22 33. I noted the presence of several hand-held fire extinguishers that appear to have
23 been used to attempt to put out the fire.

24 34. Based upon my experience in fire-fighting, the hand-held fire extinguishers were
25 inadequate for putting out a fully involved automobile fire.


26 35. The extinguishers in the photographs appear to be only 20 pounds each.

27 36. A fully involved automobile fire requires in excess of 500 pounds of
28 extinguishant would be required.

1 37. The overall design of the track lacks continuity of safety and lacks basis track
2 design common sense.

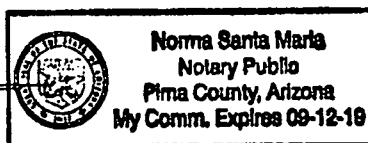
3 Further, Affiant sayeth naught.

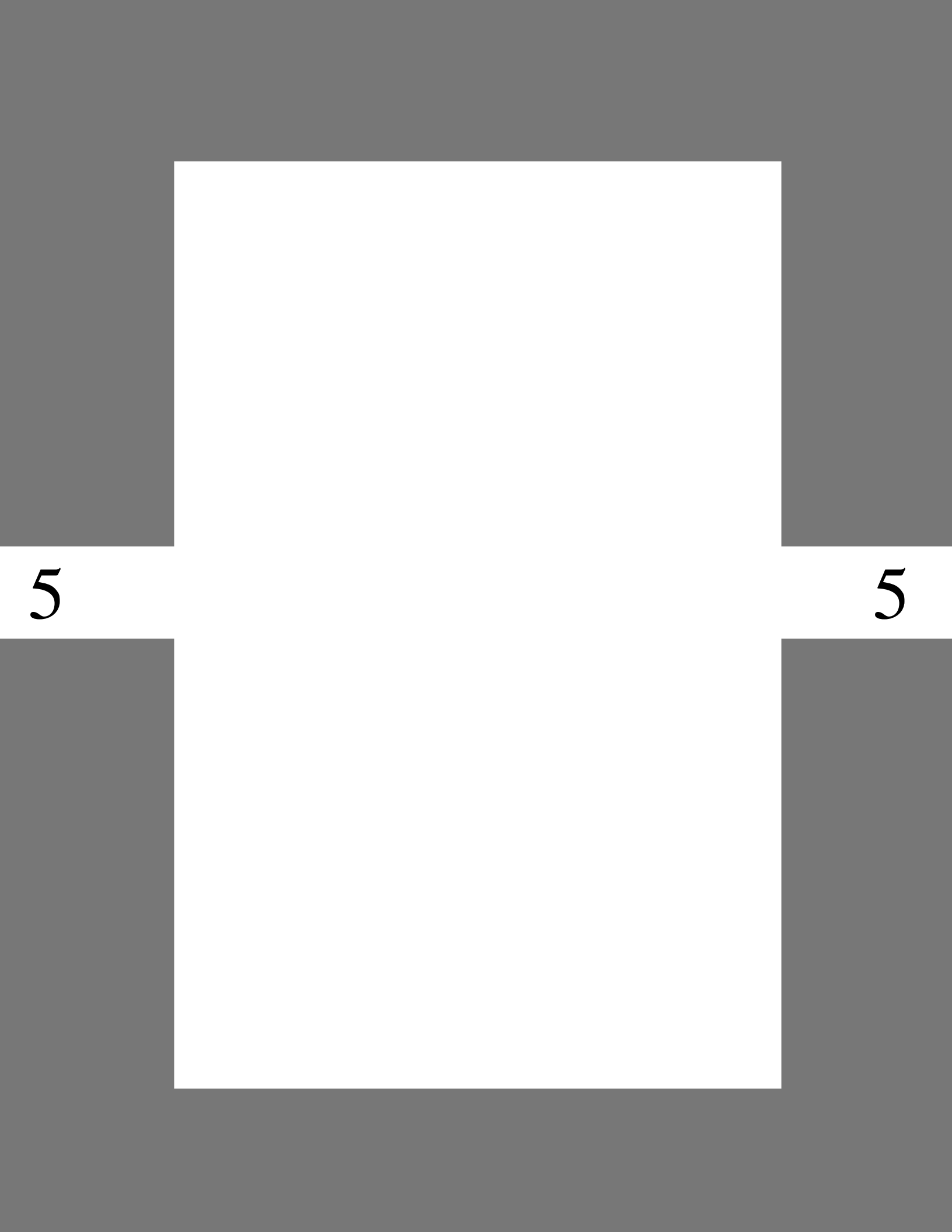
4 Executed this 16 day of February, 2018.

5
6 
7 MARTYN C. THAKE

8 SUBSCRIBED AND SWORN to before
9 me this 16th day of FEBRUARY, 2018.

10 
11 NOTARY PUBLIC in and for said
12 County and State





5

5

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10 Attorneys for Defendant, SPEEDVEGAS, LLC

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

15 ESTATE OF GIL BEN-KELY by ANTONELLA)	CASE NO.: A-17-757614-C
16 BEN-KELY as the duly appointed representative)	DEPT. NO.: XXVII
17 of the Estate and as the widow and heir of)	
18 Decedent GIL BEN-KELY, et al.,)	DEFENDANT SPEEDVEGAS, LLC'S
19 Plaintiffs,)	ANSWER AND AFFIRMATIVE DEFENSES
20 vs.)	TO PLAINTIFFS' THIRD AMENDED
21 SPEEDVEGAS, LLC, et al.,)	COMPLAINT
22 Defendants.)	
	DEFENDANT SPEEDVEGAS, LLC'S CROSS-
	CLAIM AGAINST ROBERT BARNARD AND
	MOTORSPORT SERVICES
	INTERNATIONAL, LLC

23 **DEFENDANT SPEEDVEGAS, LLC'S ANSWER TO PLAINTIFFS' COMPLAINT AND JURY**
24 **DEMAND**

25 Defendant SPEEDVEGAS, LLC ("this defendant") by and through its counsel of record, Alan
26 W. Westbrook, Esq. of the law firm of Perry & Westbrook and Donald Ornelas Jr. of Agajanian, McFall,
27 Weiss, Tetreault & Crist LLP, and for its Answer to Plaintiffs' Third Amended Complaint respectfully
28 answers as follows:

General Denial

This defendant denies that it is liable to plaintiffs in any way; that it is responsible for causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to any of the relief requested from this defendant.

ANSWERING THE SECTION ENTITLED

"I. INTRODUCTION"

Plaintiffs' 3AC contains six (6) pages of narrative entitled "I. INTRODUCTION". The paragraphs of narrative are not numbered; therefore, this defendant must answer in the similar manner. This defendant generally denies any allegations or cause of action Plaintiffs may allege in the "INTRODUCTION" to Plaintiffs' 3AC.

ANSWERING THE SECTION ENTITLED

"II. THE PARTIES, JURISDICTION AND VENUE"

A. Plaintiffs

1. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the same.

2. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the same.

3. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the same.

4. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the same.

B. Defendants

5. This defendant admits that was a foreign-limited liability company conducting business in

1 Clark County, Nevada, Business ID NV201116665874. This defendant is without knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
3 5 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the same.

4 6. This defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 6 of plaintiffs' Third Amended Complaint and, on that
6 basis, hereby denies the same.

7 7. This defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 7 of plaintiffs' Third Amended Complaint and, on that
9 basis, hereby denies the same.

10 8. This defendant denies the allegations contained in paragraph 8 of plaintiffs' Third
11 Amended Complaint. This defendant denies that it is in any way responsible for causing or contributing
12 to the injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any
13 way.

14 9. This defendant denies the allegations contained in paragraph 9 of plaintiffs' Third
15 Amended Complaint. This defendant denies that it is in any way responsible for causing or contributing
16 to the injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any
17 way. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
18 that an answer is not required.

19 10. This defendant denies the allegations contained in paragraph 10 of plaintiffs' Third
20 Amended Complaint. This defendant denies that it is in any way responsible for causing or contributing
21 to the injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any
22 way. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
23 that an answer is not required.

24 11. This defendant denies the allegations contained in paragraph 11 of plaintiffs' Third
25 Amended Complaint. This defendant denies that it is in any way responsible for causing or contributing
26 to the injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any
27 way. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
28 that an answer is not required.

1 12. This defendant denies the allegations contained in paragraph 12 of plaintiffs' Third
2 Amended Complaint. This defendant denies that it is in any way responsible for causing or contributing
3 to the injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any
4 way. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
5 that an answer is not required.

6 13. This defendant denies the allegations contained in paragraph 13 of plaintiffs' Third
7 Amended Complaint. This defendant denies that it is in any way responsible for causing or contributing
8 to the injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any
9 way. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
10 that an answer is not required.

11 14. This defendant denies the allegations contained in paragraph 14 of plaintiffs' Third
12 Amended Complaint. This defendant denies that it is in any way responsible for causing or contributing
13 to the injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any
14 way.

15 15. This defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 15 of plaintiffs' Third Amended Complaint and, on that
17 basis, hereby denies the same.

18 16. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 16 of plaintiffs' Third Amended Complaint and, on that
20 basis, hereby denies the same.

21 17. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 17 of plaintiffs' Third Amended Complaint and, on that
23 basis, hereby denies the same.

24 18. This defendant admits the allegations contained in paragraph 18 of plaintiffs' Third
25 Amended Complaint.

26 19. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 19 of plaintiffs' Third Amended Complaint and, on that
28 basis, hereby denies the same.

1 20. This defendant admits the allegations contained in paragraph 20 of plaintiffs' Third
2 Amended Complaint.

3 21. This defendant is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in paragraph 21 of plaintiffs' Third Amended Complaint and, on that
5 basis, hereby denies the same.

6 22. This defendant admits that Aaron Fessler, was, but is longer a member and employee of
7 SpeedVegas, LLC. This defendant denies the remaining allegations contained in paragraph 22 of
8 plaintiffs' Third Amended Complaint.

9 23. This defendant admits that Aaron Fessler, was, but is longer a member and employee of
10 SpeedVegas, LLC. This defendant denies the remaining allegations contained in paragraph 23 of
11 plaintiffs' Third Amended Complaint.

12 24. This defendant denies the allegations contained in paragraph 24 of plaintiffs' Third
13 Amended Complaint.

14 25. This defendant admits that it has alleged the decedent Craig Sherwood had a medical
15 condition that was the cause of the subject incident. This defendant is without knowledge or information
16 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 25 of
17 plaintiffs' Third Amended Complaint and, on that basis, hereby denies the same. This defendant denies
18 that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs' Third
19 Amended Complaint, denies that it is liable to plaintiffs in any way.

20 26. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 26 of plaintiffs' Third Amended Complaint and, on that
22 basis, hereby denies the same.

23 27. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 27 of plaintiffs' Third Amended Complaint and, on that
25 basis, hereby denies the same.

26 28. This defendant denies that it is in any way responsible for causing or contributing to the
27 injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any way,
28 and further denies all of the allegations in paragraph 28 to the extent that they are intended to relate to

1 this defendant. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the remaining allegations contained in paragraph 46 of plaintiffs' Third Amended Complaint
3 and, on that basis, hereby denies the same.

4 29. This defendant admits the vehicle accident occurred in Clark County, Nevada, and venue
5 and jurisdiction is proper with this Court. This defendant denies any other allegations stated in this
6 paragraph.

7 **III. GENERAL ALLEGATIONS**

8 **ANSWERING THE SECTION ENTITLED**

9 **"A. FATAL CRASH"**

10 30. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
11 and defenses to paragraph 1-29 of plaintiffs' Third Amended Complaint, set forth above.

12 31. This defendant admits Gil Ben-Kely died during a vehicle accident that occurred on
13 February 12, 2017.

14 32. This defendant admits the allegations contained in paragraph 32 of plaintiffs' Third
15 Amended Complaint.

16 33. This defendant admits the allegations contained in paragraph 33 of plaintiffs' Third
17 Amended Complaint.

18 34. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 34 of plaintiffs' Third Amended Complaint and, on that
20 basis, hereby denies the same.

21 35. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 35 of plaintiffs' Third Amended Complaint and, on that
23 basis, hereby denies the same.

24 36. This defendant is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 36 of plaintiffs' Third Amended Complaint and, on that
26 basis, hereby denies the same.

27 37. This defendant denies that it is in any way responsible for causing or contributing to the
28 injuries alleged in plaintiffs' Third Amended Complaint, denies that it is liable to plaintiffs in any way,

1 and further denies all of the allegations in paragraph 37 to the extent that they are intended to relate to
2 this defendant.

3 38. This defendant admits the allegations contained in paragraph 38 of plaintiffs' Third
4 Amended Complaint.

5 39. This defendant admits that there is a wall located away from the track surface at turn one.
6 This defendant is without knowledge or information sufficient to form a belief as to the truth of the
7 remaining allegations contained in paragraph 39 of plaintiffs' Third Amended Complaint and, on that
8 basis, hereby denies the same.

9 40. This defendant admits that the vehicle caught fire at some point after the collision with
10 the wall. This defendant is without knowledge or information sufficient to form a belief as to the truth
11 of the remaining allegations contained in paragraph 40 of plaintiffs' Third Amended Complaint and, on
12 that basis, hereby denies the same.

13 41. This defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 41 of plaintiffs' Third Amended Complaint and, on that
15 basis, hereby denies the same.

16 42. This defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 42 of plaintiffs' Third Amended Complaint and, on that
18 basis, hereby denies the same.

19 43. This defendant is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 43 of plaintiffs' Third Amended Complaint and, on that
21 basis, hereby denies the same.

22 44. This defendant admits that Gil Ben-Kely and Craig Sherwood each died before, during or
23 after a vehicle crash on February 12, 2017. This defendant denies the remaining allegations stated in this
24 paragraph.

25 45. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 45 of plaintiffs' Third Amended Complaint and, on that
27 basis, hereby denies the same.

28 46. This defendant is without knowledge or information sufficient to form a belief as to the

1 truth of the allegations contained in paragraph 46 of plaintiffs' Third Amended Complaint and, on that
2 basis, hereby denies the same.

3 47. This defendant is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in paragraph 47 of plaintiffs' Third Amended Complaint and, on that
5 basis, hereby denies the same.

6 48. This defendant is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 48 of plaintiffs' Third Amended Complaint and, on that
8 basis, hereby denies the same.

9 49. This defendant is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in paragraph 48 of plaintiffs' Third Amended Complaint and, on that
11 basis, hereby denies the same.

12 50. This defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 50 of plaintiffs' Third Amended Complaint and, on that
14 basis, hereby denies the same.

15 51. This defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 51 of plaintiffs' Third Amended Complaint and, on that
17 basis, hereby denies the same.

18 52. This defendant admits that the remains of the subject vehicle have been stored in a secure
19 location since the time of the incident.

20 53. This defendant denies that it has not provided plaintiffs' representatives with the
21 opportunity to examine the subject vehicle. This defendant admits that it has not provided a report to the
22 plaintiffs regarding the incident.

23 **ANSWERING THE SECTION ENTITLED**

24 **"B. NO LOCAL, STATE OR FEDERAL LAW, REGULATIONS OR ORDINANCES**
25 **REGULATE SPEEDVEGAS' RACETRACK OR REQUIRE ANY PROFESSIONAL LICENSE**
OR QUALIFICATIONS FOR A TRACK DESIGNER"

26 54. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
27 and defenses to paragraph 1-53 of plaintiffs' Third Amended Complaint, set forth above.

28 55. This defendant admits the allegations contained in paragraph 55 of plaintiffs' Third

1 Amended Complaint.

2 56. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 56 of plaintiffs' Third Amended Complaint and, on that
4 basis, hereby denies the same.

5 57. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 57 of plaintiffs' Third Amended Complaint and, on that
7 basis, hereby denies the same.

8 58. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 58 of plaintiffs' Third Amended Complaint and, on that
10 basis, hereby denies the same.

11 59. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 59 of plaintiffs' Third Amended Complaint and, on that
13 basis, hereby denies the same.

14 60. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 60 of plaintiffs' Third Amended Complaint and, on that
16 basis, hereby denies the same.

17 61. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 61 of plaintiffs' Third Amended Complaint and, on that
19 basis, hereby denies the same.

20 **ANSWERING THE SECTION ENTITLED**

21 **"C. FIFTH CRASH WITHIN ONLY TEN MONTHS OF OPENING"**

22 62. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
23 and defenses to paragraph 1-61 of plaintiffs' Third Amended Complaint, set forth above.

24 63. This defendant is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 63 of plaintiffs' Third Amended Complaint and, on that
26 basis, hereby denies the same.

27 64. This defendant is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in paragraph 64 of plaintiffs' Third Amended Complaint and, on that

1 basis, hereby denies the same.

2 65. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 65 of plaintiffs' Third Amended Complaint and, on that
4 basis, hereby denies the same.

5 66. This defendant admits that turn 1 is located at the end of the front straightaway and that
6 the front straightaway is the longest on the track. This defendant denies that the front straightaway is
7 one and a half miles long. This defendant is without knowledge or information sufficient to form a
8 belief as to the truth of the remaining allegations contained in paragraph 67 of plaintiffs' Third Amended
9 Complaint and, on that basis, hereby denies the same.

10 67. This defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 67 of plaintiffs' Third Amended Complaint and, on that
12 basis, hereby denies the same.

13 68. This defendant denies the allegations set forth in paragraph 68 of plaintiffs' Third
14 Amended Complaint. This defendant further alleges this paragraph states legal argument and
15 conclusions, not facts, and that an answer is not required.

16 69. This defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 69 of plaintiffs' Third Amended Complaint and, on that
18 basis, hereby denies the same.

19 70. This defendant is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 70 of plaintiffs' Third Amended Complaint and, on that
21 basis, hereby denies the same.

22 71. This defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 71 of plaintiffs' Third Amended Complaint and, on that
24 basis, hereby denies the same.

25 72. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 72 of plaintiffs' Third Amended Complaint and, on that
27 basis, hereby denies the same.

28 **ANSWERING THE SECTION ENTITLED**

“D. SPEEDVEGAS ALLOWED THE LAMBORGHINI AVENTADOR ROADSTER TO BE USED ON THE COMMERCIAL RACETRACK DESPITE THE RECALL NOTICE OF THE UNREASONABLE SAFETY RISK OF FIRE, AFTERMARKET MODIFICATIONS THAT INCREASED THE RISK, BRAKING PROBLEMS AND STABILITY ISSUES AND WITHOUT INSTALLING A ROLL BAR AND CAGE”

73. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers and defenses to paragraph 1-72 of plaintiffs’ Third Amended Complaint, set forth above.

74. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of plaintiffs’ Third Amended Complaint and, on that basis, hereby denies the same.

75. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of plaintiffs’ Third Amended Complaint and, on that basis, hereby denies the same.

76. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of plaintiffs’ Third Amended Complaint and, on that basis, hereby denies the same.

77. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of plaintiffs’ Third Amended Complaint and, on that basis, hereby denies the same.

78. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of plaintiffs’ Third Amended Complaint and, on that basis, hereby denies the same.

79. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of plaintiffs’ Third Amended Complaint and, on that basis, hereby denies the same.

80. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of plaintiffs’ Third Amended Complaint and, on that basis, hereby denies the same.

81. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of plaintiffs’ Third Amended Complaint and, on that

1 basis, hereby denies the same.

2 82. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 82 of plaintiffs' Third Amended Complaint and, on that
4 basis, hereby denies the same.

5 83. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 83 of plaintiffs' Third Amended Complaint and, on that
7 basis, hereby denies the same.

8 84. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 84 of plaintiffs' Third Amended Complaint and, on that
10 basis, hereby denies the same.

11 85. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 85 of plaintiffs' Third Amended Complaint and, on that
13 basis, hereby denies the same.

14 86. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 86 of plaintiffs' Third Amended Complaint and, on that
16 basis, hereby denies the same.

17 87. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 87 of plaintiffs' Third Amended Complaint and, on that
19 basis, hereby denies the same.

20 88. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 88 of plaintiffs' Third Amended Complaint and, on that
22 basis, hereby denies the same.

23 89. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 89 of plaintiffs' Third Amended Complaint and, on that
25 basis, hereby denies the same.

26 90. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 90 of plaintiffs' Third Amended Complaint and, on that
28 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and

1 conclusions, not facts, and that an answer is not required.

2 91. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 91 of plaintiffs' Third Amended Complaint and, on that
4 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
5 conclusions, not facts, and that an answer is not required.

6 **ANSWERING THE SECTION ENTITLED**

7 **"E.LAMBORGHINI KNEW OF THE AVENTADOR'S DESIGN DEFECT THAT WAS**
8 **CAUSING ENGINE FIRES AS EARLY AS 2015, BUT FAILED TO ISSUE THE RECALL**
9 **NOTICE UNTIL FEBRUARY 3, 2017 AND FAILED TO PERMIT DEALERSHIPS TO**
10 **REMEDY THE DEFECT UNTIL FEBRUARY 24, 2017, TWELVE DAYS TOO LATE"**

11 92. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
12 and defenses to paragraph 1-91 of plaintiffs' Third Amended Complaint, set forth above.

13 93. This defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 93 of plaintiffs' Third Amended Complaint and, on that
15 basis, hereby denies the same.

16 94. This defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 94 of plaintiffs' Third Amended Complaint and, on that
18 basis, hereby denies the same.

19 95. This defendant is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 95 of plaintiffs' Third Amended Complaint and, on that
21 basis, hereby denies the same.

22 96. This defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 96 of plaintiffs' Third Amended Complaint and, on that
24 basis, hereby denies the same.

25 97. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 97 of plaintiffs' Third Amended Complaint and, on that
27 basis, hereby denies the same.

28 98. This defendant is without knowledge or information sufficient to form a belief as to the
truth of the allegations contained in paragraph 98 of plaintiffs' Third Amended Complaint and, on that

1 basis, hereby denies the same.

2 99. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 99 of plaintiffs' Third Amended Complaint and, on that
4 basis, hereby denies the same.

5 100. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 100 of plaintiffs' Third Amended Complaint and, on that
7 basis, hereby denies the same.

8 101. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 101 of plaintiffs' Third Amended Complaint and, on that
10 basis, hereby denies the same.

11 102. This defendant denies the allegations set forth in paragraph 102 of plaintiffs' Third
12 Amended Complaint.

13 103. This defendant denies the allegations set forth in paragraph 103 of plaintiffs' Third
14 Amended Complaint.

15 104. This defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 104 of plaintiffs' Third Amended Complaint and, on that
17 basis, hereby denies the same.

18 105. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 105 of plaintiffs' Third Amended Complaint and, on that
20 basis, hereby denies the same.

21 106. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 106 of plaintiffs' Third Amended Complaint and, on that
23 basis, hereby denies the same.

24 **ANSWERING THE SECTION ENTITLED**

25 **"F. DEFENDANTS SPEEDVEGAS, LLC, AARON FESSLER, ROBERT BARNARD,**
26 **MOTORSPORTS INTERNATIONAL, LLC, SCOTT GRAGSON AND SLOAN VENTURES 90**
27 **LLC ALLOWED THE RACETRACK TO BE DESIGNED, CONSTRUCTED AND**
28 **POSITIONED ON THE SLOAN VENTURES 90 LLC'S PARCELS IN ORDER TO MARKET**
THE RACETRACK AS HAVING THE LONGEST STRAIGHTAWAY, THE FASTEST
RACETRACK IN LAS VEGAS WITH NO SPEED LIMITS"

107. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers

1 and defenses to paragraph 1-106 of plaintiffs' Third Amended Complaint, set forth above.

2 108. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 108 of plaintiffs' Third Amended Complaint and, on that
4 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
5 conclusions, not facts, and that an answer is not required.

6 109. This defendant is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 109 of plaintiffs' Third Amended Complaint and, on that
8 basis, hereby denies the same.

9 110. This defendant is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in paragraph 110 of plaintiffs' Third Amended Complaint and, on that
11 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
12 conclusions, not facts, and that an answer is not required.

13 111. This defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 111 of plaintiffs' Third Amended Complaint and, on that
15 basis, hereby denies the same.

16 112. This defendant denies the allegations set forth in paragraph 112 of plaintiffs' Third
17 Amended Complaint.

18 113. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 113 of plaintiffs' Third Amended Complaint and, on that
20 basis, hereby denies the same.

21 114. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 114 of plaintiffs' Third Amended Complaint and, on that
23 basis, hereby denies the same.

24
25
26 **ANSWERING THE SECTION ENTITLED**

27 **"G. DEFENDANTS SPEEDVEGAS, LLC AND AARON FESSLER ALLOWED THE**
28 **SPEEDPASS PROPRIETARY TECHNOLOGY AND TELEMETRY BOARD TO**
FRAUDULENTLY INFLATE SPEEDS"

1 115. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
2 and defenses to paragraph 1-114 of plaintiffs' Third Amended Complaint, set forth above.

3 116. This defendant is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in paragraph 116 of plaintiffs' Third Amended Complaint and, on that
5 basis, hereby denies the same.

6 117. This defendant denies the allegations set forth in paragraph 117 of plaintiffs' Third
7 Amended Complaint.

8 118. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 118 of plaintiffs' Third Amended Complaint and, on that
10 basis, hereby denies the same.

11 119. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 119 of plaintiffs' Third Amended Complaint and, on that
13 basis, hereby denies the same.

14 120. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 120 of plaintiffs' Third Amended Complaint and, on that
16 basis, hereby denies the same.

17 121. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 121 of plaintiffs' Third Amended Complaint and, on that
19 basis, hereby denies the same.

20 122. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 122 of plaintiffs' Third Amended Complaint and, on that
22 basis, hereby denies the same.

23 123. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 123 of plaintiffs' Third Amended Complaint and, on that
25 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
26 conclusions, not facts, and that an answer is not required.

27 124. This defendant is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in paragraph 124 of plaintiffs' Third Amended Complaint and, on that

1 basis, hereby denies the same.

2 125. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 125 of plaintiffs' Third Amended Complaint and, on that
4 basis, hereby denies the same.

5 **ANSWERING THE SECTION ENTITLED**

6 **"H. SPEEDVEGAS RACETRACK IS INHERENTLY, EXCESSIVELY AND**
7 **UNNECESSARILY DANGEROUS IN BOTH DESIGN AND OPERATION"**

8 126. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
9 and defenses to paragraph 1-125 of plaintiffs' Third Amended Complaint, set forth above.

10 127. This defendant denies the allegations set forth in paragraph 127 of plaintiffs' Third
11 Amended Complaint. This defendant further alleges this paragraph states legal argument and
12 conclusions, not facts, and that an answer is not required.

13 128. This defendant denies the allegations set forth in paragraph 128 of plaintiffs' Third
14 Amended Complaint. This defendant further alleges this paragraph states legal argument and
15 conclusions, not facts, and that an answer is not required.

16 129. This defendant denies the allegations set forth in paragraph 129 of plaintiffs' Third
17 Amended Complaint. This defendant further alleges this paragraph states legal argument and
18 conclusions, not facts, and that an answer is not required.

19 130. This defendant denies the allegations set forth in paragraph 130 of plaintiffs' Third
20 Amended Complaint. This defendant further alleges this paragraph states legal argument and
21 conclusions, not facts, and that an answer is not required.

22 **ANSWERING THE SECTION ENTITLED**

23 **"I. RES IPSA LOQUITUR"**

24 131. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
25 and defenses to paragraph 1-130 of plaintiffs' Third Amended Complaint, set forth above.

26 132. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 132 of plaintiffs' Third Amended Complaint and, on that
28 basis, hereby denies the same.

133. This defendant is without knowledge or information sufficient to form a belief as to the

1 truth of the allegations contained in paragraph 133 of plaintiffs' Third Amended Complaint and, on that
2 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
3 conclusions, not facts, and that an answer is not required.

4 134. This defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 134 of plaintiffs' Third Amended Complaint and, on that
6 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
7 conclusions, not facts, and that an answer is not required.

8 135. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 135 of plaintiffs' Third Amended Complaint and, on that
10 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
11 conclusions, not facts, and that an answer is not required.

12 136. This defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 136 of plaintiffs' Third Amended Complaint and, on that
14 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
15 conclusions, not facts, and that an answer is not required.

16 137. This defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 137 of plaintiffs' Third Amended Complaint and, on that
18 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
19 conclusions, not facts, and that an answer is not required.

20 138. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 138 of plaintiffs' Third Amended Complaint and, on that
22 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
23 conclusions, not facts, and that an answer is not required.

24 139. This defendant is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 139 of plaintiffs' Third Amended Complaint and, on that
26 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
27 conclusions, not facts, and that an answer is not required.

28 140. This defendant is without knowledge or information sufficient to form a belief as to the

1 truth of the allegations contained in paragraph 140 of plaintiffs' Third Amended Complaint and, on that
2 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
3 conclusions, not facts, and that an answer is not required..

4 141. This defendant denies the allegations set forth in paragraph 141 of plaintiffs' Third
5 Amended Complaint.

6 **ANSWERING THE SECTION ENTITLED**

7 **"CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION - WRONGFUL DEATH"**

9 142. Plaintiffs' Third Amended Complaint does not include a paragraph no. 142.

10 143. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
11 and defenses to paragraph 1-141 of plaintiffs' Third Amended Complaint, set forth above.

12 144. This defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 144 of plaintiffs' Third Amended Complaint and, on that
14 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
15 conclusions, not facts, and that an answer is not required.

16 145. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
17 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
18 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
19 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
20 allegations contained in paragraph 145 to the extent they relate to this defendant. This defendant is
21 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
22 contained in paragraph 145 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
23 same.

24 146. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
25 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
26 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
27 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
28 allegations contained in paragraph 146 to the extent they relate to this defendant. This defendant is

1 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
2 contained in paragraph 146 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
3 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
4 that an answer is not required.

5 147. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
6 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
7 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
8 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
9 allegations contained in paragraph 147 to the extent they relate to this defendant. This defendant is
10 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
11 contained in paragraph 147 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
12 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
13 that an answer is not required.

14 148. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
15 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
16 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
17 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
18 allegations contained in paragraph 148 to the extent they relate to this defendant. This defendant is
19 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
20 contained in paragraph 148 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
21 same.

22 149. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
23 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
24 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
25 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
26 allegations contained in paragraph 149 to the extent they relate to this defendant. This defendant is
27 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
28 contained in paragraph 149 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the

1 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
2 that an answer is not required.

3 **ANSWERING THE SECTION ENTITLED**

4 **"SECOND CAUSE OF ACTION - WILLFUL AND WANTON NEGLIGENCE"**

5 150. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
6 and defenses to paragraph 1-149 of plaintiffs' Third Amended Complaint, set forth above.

7 151. This defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 151 of plaintiffs' Third Amended Complaint and, on that
9 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
10 conclusions, not facts, and that an answer is not required.

11 152. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
12 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
13 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
14 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
15 allegations contained in paragraph 152 to the extent they relate to this defendant. This defendant is
16 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
17 contained in paragraph 152 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
18 same.

19 153. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
20 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
21 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
22 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
23 allegations contained in paragraph 153 to the extent they relate to this defendant. This defendant is
24 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
25 contained in paragraph 153 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
26 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
27 that an answer is not required.

28 154. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for

1 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
2 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
3 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
4 allegations contained in paragraph 154 to the extent they relate to this defendant. This defendant is
5 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
6 contained in paragraph 154 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
7 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
8 that an answer is not required.

9 **ANSWERING THE SECTION ENTITLED**

10 **"THIRD CAUSE OF ACTION - GROSS NEGLIGENCE"**

11 155. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
12 and defenses to paragraph 1-154 of plaintiffs' Third Amended Complaint, set forth above.

13 156. This defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 156 of plaintiffs' Third Amended Complaint and, on that
15 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
16 conclusions, not facts, and that an answer is not required.

17 157. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
18 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
19 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
20 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
21 allegations contained in paragraph 157 to the extent they relate to this defendant. This defendant is
22 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
23 contained in paragraph 157 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
24 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
25 that an answer is not required.

26 158. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
27 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
28 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies

1 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
2 allegations contained in paragraph 158 to the extent they relate to this defendant. This defendant is
3 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
4 contained in paragraph 158 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
5 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
6 that an answer is not required.

7 **ANSWERING THE SECTION ENTITLED**
8 **"FOURTH CAUSE OF ACTION - NEGLIGENCE"**

9 159. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
10 and defenses to paragraph 1-158 of plaintiffs' Third Amended Complaint, set forth above.

11 160. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 160 of plaintiffs' Third Amended Complaint and, on that
13 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
14 conclusions, not facts, and that an answer is not required.

15 161. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
16 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
17 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
18 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
19 allegations contained in paragraph 161 to the extent they relate to this defendant. This defendant is
20 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
21 contained in paragraph 161 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
22 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
23 that an answer is not required.

24 162. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
25 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
26 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
27 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
28 allegations contained in paragraph 162 to the extent they relate to this defendant. This defendant is

1 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
2 contained in paragraph 162 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
3 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
4 that an answer is not required.

5 163. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
6 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
7 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
8 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
9 allegations contained in paragraph 163 to the extent they relate to this defendant. This defendant is
10 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
11 contained in paragraph 163 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
12 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
13 that an answer is not required.

14 **ANSWERING THE SECTION ENTITLED**
15 **"FIFTH CAUSE OF ACTION - VICARIOUS LIABILITY, RESPONDEAT SUPERIOR,**
16 **OSTENSIBLE AGENCY AND/OR AGENCY"**

17 164. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
18 and defenses to paragraph 1-163 of plaintiffs' Third Amended Complaint, set forth above.

19 165. This defendant is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 165 of plaintiffs' Third Amended Complaint and, on that
21 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
22 conclusions, not facts, and that an answer is not required.

23 166. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
24 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
25 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
26 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
27 allegations contained in paragraph 166 to the extent they relate to this defendant. This defendant is
28 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations

1 contained in paragraph 166 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
2 same.

3 167. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
4 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
5 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
6 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
7 allegations contained in paragraph 167 to the extent they relate to this defendant. This defendant is
8 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
9 contained in paragraph 167 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
10 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
11 that an answer is not required.

12 168. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
13 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
14 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
15 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
16 allegations contained in paragraph 168 to the extent they relate to this defendant. This defendant is
17 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
18 contained in paragraph 168 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
19 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
20 that an answer is not required.

21 169. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
22 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
23 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
24 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
25 allegations contained in paragraph 169 to the extent they relate to this defendant. This defendant is
26 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
27 contained in paragraph 169 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
28 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and

1 that an answer is not required.

2 170. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
3 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
4 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
5 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
6 allegations contained in paragraph 170 to the extent they relate to this defendant. This defendant is
7 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
8 contained in paragraph 170 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
9 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
10 that an answer is not required.

11 171. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
12 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
13 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
14 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
15 allegations contained in paragraph 171 to the extent they relate to this defendant. This defendant is
16 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
17 contained in paragraph 171 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
18 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
19 that an answer is not required.

20 **ANSWERING THE SECTION ENTITLED**

21 **"SIXTH CAUSE OF ACTION - WRONGFUL MISREPRESENTATIONS"**

22 172. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
23 and defenses to paragraph 1-171 of plaintiffs' Third Amended Complaint, set forth above.

24 173. This defendant is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 173 of plaintiffs' Third Amended Complaint and, on that
26 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
27 conclusions, not facts, and that an answer is not required.

28 174. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for

1 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
2 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
3 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
4 allegations contained in paragraph 174 to the extent they relate to this defendant. This defendant is
5 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
6 contained in paragraph 174 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
7 same.

8 175. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
9 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
10 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
11 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
12 allegations contained in paragraph 175 to the extent they relate to this defendant. This defendant is
13 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
14 contained in paragraph 175 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
15 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
16 that an answer is not required.

17 176. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
18 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
19 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
20 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
21 allegations contained in paragraph 176 to the extent they relate to this defendant. This defendant is
22 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
23 contained in paragraph 176 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
24 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
25 that an answer is not required.

26 177. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
27 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
28 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies

1 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
2 allegations contained in paragraph 177 to the extent they relate to this defendant. This defendant is
3 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
4 contained in paragraph 177 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
5 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
6 that an answer is not required.

7 178. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
8 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
9 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
10 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
11 allegations contained in paragraph 178 to the extent they relate to this defendant. This defendant is
12 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
13 contained in paragraph 178 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
14 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
15 that an answer is not required.

16 179. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
17 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
18 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
19 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
20 allegations contained in paragraph 179 to the extent they relate to this defendant. This defendant is
21 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
22 contained in paragraph 179 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
23 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
24 that an answer is not required.

25 180. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
26 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
27 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
28 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the

1 allegations contained in paragraph 180 to the extent they relate to this defendant. This defendant is
2 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
3 contained in paragraph 180 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
4 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
5 that an answer is not required.

6 **ANSWERING THE SECTION ENTITLED**

7 **"SEVENTH CAUSE OF ACTION - NEGLIGENT HIRING AND RETENTION"**

8 181. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
9 and defenses to paragraph 1-180 of plaintiffs' Third Amended Complaint, set forth above.

10 182. This defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 182 of plaintiffs' Third Amended Complaint and, on that
12 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
13 conclusions, not facts, and that an answer is not required.

14 183. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
15 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
16 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
17 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
18 allegations contained in paragraph 183 to the extent they relate to this defendant. This defendant is
19 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
20 contained in paragraph 183 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
21 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
22 that an answer is not required.

23 184. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
24 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
25 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
26 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
27 allegations contained in paragraph 184 to the extent they relate to this defendant. This defendant is
28 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations

1 contained in paragraph 184 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
2 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
3 that an answer is not required.

4 185. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
5 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
6 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
7 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
8 allegations contained in paragraph 185 to the extent they relate to this defendant. This defendant is
9 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
10 contained in paragraph 185 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
11 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
12 that an answer is not required.

13 186. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
14 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
15 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
16 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
17 allegations contained in paragraph 186 to the extent they relate to this defendant. This defendant is
18 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
19 contained in paragraph 186 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
20 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
21 that an answer is not required.

22 187. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
23 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
24 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
25 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
26 allegations contained in paragraph 187 to the extent they relate to this defendant. This defendant is
27 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
28 contained in paragraph 187 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the

1 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
2 that an answer is not required.

3 188. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
4 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
5 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
6 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
7 allegations contained in paragraph 188 to the extent they relate to this defendant. This defendant is
8 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
9 contained in paragraph 188 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
10 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
11 that an answer is not required.

12 189. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
13 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
14 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
15 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
16 allegations contained in paragraph 189 to the extent they relate to this defendant. This defendant is
17 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
18 contained in paragraph 189 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
19 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
20 that an answer is not required.

21 **ANSWERING THE SECTION ENTITLED**

22 **"EIGHTH CAUSE OF ACTION - NEGLIGENT SUPERVISION"**

23 190. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
24 and defenses to paragraph 1-190 of plaintiffs' Third Amended Complaint, set forth above.

25 191. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 191 of plaintiffs' Third Amended Complaint and, on that
27 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
28 conclusions, not facts, and that an answer is not required.

1 192. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
2 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
3 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
4 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
5 allegations contained in paragraph 192 to the extent they relate to this defendant. This defendant is
6 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
7 contained in paragraph 192 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
8 same.

9 193. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
10 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
11 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
12 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
13 allegations contained in paragraph 193 to the extent they relate to this defendant. This defendant is
14 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
15 contained in paragraph 193 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
16 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
17 that an answer is not required.

18 194. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
19 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
20 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
21 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
22 allegations contained in paragraph 194 to the extent they relate to this defendant. This defendant is
23 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
24 contained in paragraph 194 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
25 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
26 that an answer is not required.

27 195. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
28 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in

1 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
2 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
3 allegations contained in paragraph 195 to the extent they relate to this defendant. This defendant is
4 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
5 contained in paragraph 195 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
6 same.

7 196. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
8 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
9 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
10 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
11 allegations contained in paragraph 196 to the extent they relate to this defendant. This defendant is
12 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
13 contained in paragraph 196 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
14 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
15 that an answer is not required.

16 197. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
17 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
18 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
19 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
20 allegations contained in paragraph 197 to the extent they relate to this defendant. This defendant is
21 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
22 contained in paragraph 197 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
23 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
24 that an answer is not required.

25 198. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
26 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
27 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
28 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the

1 allegations contained in paragraph 198 to the extent they relate to this defendant. This defendant is
2 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
3 contained in paragraph 198 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
4 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
5 that an answer is not required.

6 **ANSWERING THE SECTION ENTITLED**

7 **"NINTH CAUSE OF ACTION - NEGLIGENT DESIGN OF TRACK"**

8 205. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
9 and defenses to paragraph 1-204 of plaintiffs' Third Amended Complaint, set forth above.

10 206. This defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 206 of plaintiffs' Third Amended Complaint and, on that
12 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
13 conclusions, not facts, and that an answer is not required.

14 207. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
15 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
16 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
17 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
18 allegations contained in paragraph 207 to the extent they relate to this defendant. This defendant is
19 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
20 contained in paragraph 207 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
21 same.

22 208. This defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 208 of plaintiffs' Third Amended Complaint and, on that
24 basis, hereby denies the same.

25 209. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 209 of plaintiffs' Third Amended Complaint and, on that
27 basis, hereby denies the same.

28 210. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for

1 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
2 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
3 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
4 allegations contained in paragraph 210 to the extent they relate to this defendant. This defendant is
5 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
6 contained in paragraph 210 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
7 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
8 that an answer is not required.

9 211. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
10 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
11 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
12 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
13 allegations contained in paragraph 211 to the extent they relate to this defendant. This defendant is
14 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
15 contained in paragraph 211 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
16 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
17 that an answer is not required.

18 212. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
19 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
20 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
21 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
22 allegations contained in paragraph 212 to the extent they relate to this defendant. This defendant is
23 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
24 contained in paragraph 212 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
25 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
26 that an answer is not required.

27 213. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
28 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in

1 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
2 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
3 allegations contained in paragraph 213 to the extent they relate to this defendant. This defendant is
4 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
5 contained in paragraph 213 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
6 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
7 that an answer is not required.

8 214. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
9 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
10 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
11 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
12 allegations contained in paragraph 214 to the extent they relate to this defendant. This defendant is
13 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
14 contained in paragraph 214 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
15 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
16 that an answer is not required.

17 215. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
18 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
19 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
20 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
21 allegations contained in paragraph 215 to the extent they relate to this defendant. This defendant is
22 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
23 contained in paragraph 215 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
24 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
25 that an answer is not required.

26 216. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
27 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
28 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies

1 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
2 allegations contained in paragraph 216 to the extent they relate to this defendant. This defendant is
3 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
4 contained in paragraph 216 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
5 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
6 that an answer is not required.

7 217. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
8 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
9 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
10 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
11 allegations contained in paragraph 217 to the extent they relate to this defendant. This defendant is
12 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
13 contained in paragraph 217 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
14 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
15 that an answer is not required.

16 218. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
17 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
18 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
19 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
20 allegations contained in paragraph 218 to the extent they relate to this defendant. This defendant is
21 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
22 contained in paragraph 218 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
23 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
24 that an answer is not required.

25 **ANSWERING THE SECTION ENTITLED**

26 **"TENTH CAUSE OF ACTION - NEGLIGENT ENTRUSTMENT"**

27 219. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
28 and defenses to paragraph 1-218 of plaintiffs' Third Amended Complaint, set forth above.

1 220. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 220 of plaintiffs' Third Amended Complaint and, on that
3 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
4 conclusions, not facts, and that an answer is not required.

5 221. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
6 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
7 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
8 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
9 allegations contained in paragraph 221 to the extent they relate to this defendant. This defendant is
10 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
11 contained in paragraph 221 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
12 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
13 that an answer is not required.

14 222. This defendant admits that it allowed Craig Sherwood to operate the subject vehicle on
15 the date of the incident. This defendant denies the remaining allegations contained in paragraph 222 of
16 plaintiffs' Third Amended Complaint.

17 223. This defendant admits the Gil Ben-Kely died as a result of the subject accident. This
18 defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining
19 allegations contained in paragraph 223 of plaintiffs' Third Amended Complaint and, on that basis,
20 hereby denies the same. This defendant further alleges this paragraph states legal argument and
21 conclusions, not facts, and that an answer is not required.

22 224. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
23 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
24 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
25 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
26 allegations contained in paragraph 224 to the extent they relate to this defendant. This defendant is
27 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
28 contained in paragraph 224 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the

1 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
2 that an answer is not required.

3 **ANSWERING THE SECTION ENTITLED**

4 **“ELEVENTH CAUSE OF ACTION - PRODUCT LIABILITY”**

5 225. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
6 and defenses to paragraph 1-224 of plaintiffs’ Third Amended Complaint, set forth above.

7 226. This defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 226 of plaintiffs’ Third Amended Complaint and, on that
9 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
10 conclusions, not facts, and that an answer is not required.

11 227. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 227 of plaintiffs’ Third Amended Complaint and, on that
13 basis, hereby denies the same.

14 228. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 228 of plaintiffs’ Third Amended Complaint and, on that
16 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
17 conclusions, not facts, and that an answer is not required.

18 229. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 229 of plaintiffs’ Third Amended Complaint and, on that
20 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
21 conclusions, not facts, and that an answer is not required.

22 230. This defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 230 of plaintiffs’ Third Amended Complaint and, on that
24 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
25 conclusions, not facts, and that an answer is not required.

26 231. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 231 of plaintiffs’ Third Amended Complaint and, on that
28 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and

1 conclusions, not facts, and that an answer is not required.

2 232. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 232 of plaintiffs' Third Amended Complaint and, on that
4 basis, hereby denies the same.

5 233. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 233 of plaintiffs' Third Amended Complaint and, on that
7 basis, hereby denies the same.

8 234. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 234 of plaintiffs' Third Amended Complaint and, on that
10 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
11 conclusions, not facts, and that an answer is not required.

12 235. This defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 235 of plaintiffs' Third Amended Complaint and, on that
14 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
15 conclusions, not facts, and that an answer is not required.

16 236. This defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 236 of plaintiffs' Third Amended Complaint and, on that
18 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
19 conclusions, not facts, and that an answer is not required.

20 237. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 237 of plaintiffs' Third Amended Complaint and, on that
22 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
23 conclusions, not facts, and that an answer is not required.

24 238. This defendant is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 238 of plaintiffs' Third Amended Complaint and, on that
26 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
27 conclusions, not facts, and that an answer is not required.

28 239. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for

1 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
2 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
3 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
4 allegations contained in paragraph 239 to the extent they relate to this defendant. This defendant is
5 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
6 contained in paragraph 239 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
7 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
8 that an answer is not required.

9 **ANSWERING THE SECTION ENTITLED**

10 **"TWELFTH CAUSE OF ACTION - NEGLIGENT PROPERTY OWNER"**

11 240. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
12 and defenses to paragraph 1-239 of plaintiffs' Third Amended Complaint, set forth above.

13 241. This defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 241 of plaintiffs' Third Amended Complaint and, on that
15 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
16 conclusions, not facts, and that an answer is not required.

17 242. This defendant admits the allegations contained in paragraph 242 of plaintiffs' Third
18 Amended Complaint.

19 243. This defendant admits the allegations contained in paragraph 243 of plaintiffs' Third
20 Amended Complaint.

21 244. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 244 of plaintiffs' Third Amended Complaint and, on that
23 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
24 conclusions, not facts, and that an answer is not required.

25 245. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 245 of plaintiffs' Third Amended Complaint and, on that
27 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
28 conclusions, not facts, and that an answer is not required.

1 246. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 246 of plaintiffs' Third Amended Complaint and, on that
3 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
4 conclusions, not facts, and that an answer is not required.

5 247. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
6 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
7 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
8 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
9 allegations contained in paragraph 247 to the extent they relate to this defendant. This defendant is
10 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
11 contained in paragraph 247 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
12 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
13 that an answer is not required.

14 **ANSWERING THE SECTION ENTITLED**
15 **"THIRTEENTH CAUSE OF ACTION - ALTER EGO"**

16 248. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
17 and defenses to paragraph 1-247 of plaintiffs' Third Amended Complaint, set forth above.

18 249. This defendant admits the allegations contained in paragraph 249 of plaintiffs' Third
19 Amended Complaint.

20 250. This defendant denies the allegations contained in paragraph 250 of plaintiffs' Third
21 Amended Complaint.

22 251. This defendant denies the allegations contained in paragraph 251 of plaintiffs' Third
23 Amended Complaint.

24 252. This defendant denies the allegations contained in paragraph 252 of plaintiffs' Third
25 Amended Complaint. This defendant further alleges this paragraph states legal argument and
26 conclusions, not facts, and that an answer is not required.

27 253. This defendant denies the allegations contained in paragraph 253 of plaintiffs' Third
28 Amended Complaint. This defendant further alleges this paragraph states legal argument and

1 conclusions, not facts, and that an answer is not required.

2 254. This defendant denies the allegations contained in paragraph 254 of plaintiffs' Third
3 Amended Complaint. This defendant further alleges this paragraph states legal argument and
4 conclusions, not facts, and that an answer is not required.

5 255. This defendant denies the allegations contained in paragraph 255 of plaintiffs' Third
6 Amended Complaint. This defendant further alleges this paragraph states legal argument and
7 conclusions, not facts, and that an answer is not required.

8 256. This defendant denies the allegations contained in paragraph 256 of plaintiffs' Third
9 Amended Complaint. This defendant further alleges this paragraph states legal argument and
10 conclusions, not facts, and that an answer is not required.

11 257. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 257 of plaintiffs' Third Amended Complaint and, on that
13 basis, hereby denies the same. This defendant further alleges this paragraph states legal argument and
14 conclusions, not facts, and that an answer is not required.

15 258. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
16 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
17 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
18 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
19 allegations contained in paragraph 258 to the extent they relate to this defendant. This defendant is
20 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
21 contained in paragraph 258 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
22 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
23 that an answer is not required.

24 259. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
25 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
26 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
27 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
28 allegations contained in paragraph 259 to the extent they relate to this defendant. This defendant is

1 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
2 contained in paragraph 259 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
3 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
4 that an answer is not required.

5 260. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
6 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
7 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
8 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
9 allegations contained in paragraph 260 to the extent they relate to this defendant. This defendant is
10 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
11 contained in paragraph 260 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
12 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
13 that an answer is not required.

14 **ANSWERING THE SECTION ENTITLED**

15 **"PUNITIVE DAMAGES AGAINST DEFENDANTS SPEEDVEGAS, WORLD CLASS**
16 **DRIVING, ROBERT BARNARD, MOTORSPORTS SERVICES INTERNATIONAL, LLC,**
17 **ESTATE OF CRAIG SHERWOOD AND AUTOMOBILI LAMBORGHINI AMERICA, LLC"**

18 261. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
19 and defenses to paragraph 1-260 of plaintiffs' Third Amended Complaint, set forth above.

20 262. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
21 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
22 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
23 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
24 allegations contained in paragraph 262 to the extent they relate to this defendant. This defendant is
25 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
26 contained in paragraph 262 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
27 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
28 that an answer is not required.

1 263. This defendant denies that it is liable to plaintiffs in any way; that it is responsible for
2 causing or contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in
3 any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies
4 plaintiffs are entitled to any of the relief requested in this paragraph from this defendant, and denies the
5 allegations contained in paragraph 263 to the extent they relate to this defendant. This defendant is
6 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
7 contained in paragraph 263 of plaintiffs' Third Amended Complaint and, on that basis, hereby denies the
8 same. This defendant further alleges this paragraph states legal argument and conclusions, not facts, and
9 that an answer is not required.

10 **ANSWERING PLAINTIFFS' PRAYER FOR RELIEF**

11 This defendant denies that it is liable to plaintiffs in any way; that it is responsible for causing or
12 contributing to the injuries and damages alleged in plaintiffs' Third Amended Complaint in any way or
13 that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are
14 entitled to any of the relief requested, including punitive damages, attorney's fees and costs, and interest
15 at the statutory rate, from this defendant.

16 **AFFIRMATIVE DEFENSES**

17 1. That plaintiffs' Third Amended Complaint on file herein, and each of the purported
18 causes of action contained therein, fail to state a cause of action against this defendant.

19 2. This defendant alleges that any injury, damage or loss, if any, sustained by plaintiffs
20 herein were proximately caused and contributed to by the negligence on the part of the plaintiffs,
21 plaintiffs' decedent or others in that said individuals failed to exercise ordinary care on their own behalf
22 or for that of others at the times and places set forth in the Third Amended Complaint on file herein.

23 3. This defendant alleges that its purported acts or failure to act to protect against the risk of
24 injury created by the alleged danger were reasonable, taking into consideration the time and opportunity
25 to take action and weighing the probability and gravity of potential injuries to persons and property
26 foreseeably exposed to the risk of injury against the practicability and cost of protecting against the risk
27 of said injury.

28 4. This defendant alleges that at all times relevant on or before the date of the accident

1 alleged herein, plaintiffs and plaintiffs' decedent knew the hazards and risks involved and had full
2 knowledge of the conditions existing and appreciated the risks involved and had full knowledge of the
3 conditions existing and appreciated the risk of receiving injuries. Plaintiffs and plaintiffs' decedent
4 voluntarily assumed the risks, and their assumption of those risks with a knowledge of the magnitude of
5 them was the sole and proximate cause of the accident and of the injuries and damages sustained, if any.
6 This defendant therefore alleges that the plaintiffs and plaintiffs' decedent consented to a reduction in
7 this defendant's duty of care towards them and consequently the plaintiffs are barred from any recovery
8 on their own behalf or on behalf of plaintiffs' decedent.

9 5. While denying any and all liability, this defendant alleges that other persons or entities,
10 whether or not parties to this action, including plaintiffs and plaintiffs' decedent, were negligent in and
11 about the matters alleged in said Third Amended Complaint and thereby proximately caused the alleged
12 incident, injuries and damages, if any, sustained by the plaintiffs and plaintiffs' decedent, and therefore,
13 should any damages be awarded, they must be apportioned among all such persons or entities, with any
14 amount attributable to other persons or entities being offset against any damages, if any, awarded against
15 this defendant.

16 6. The negligence and/or the act or omission, if any, of this defendant was not a substantial
17 factor in bringing about the plaintiffs' or plaintiffs' decedent's alleged injuries, and therefore, was not a
18 contributing cause thereof, but was superseded by the acts or omissions of others, which were
19 independent, intervening and proximate causes of any injury or damage suffered by the plaintiffs or
20 plaintiffs' decedent.

21 7. In the event this defendant is found liable (which supposition is denied and merely stated
22 for the purpose of this affirmative defense), the damages in this case shall be apportioned and/or reduced
23 as the case may be.

24 8. That plaintiffs' Third Amended Complaint on file herein and each of the purported causes
25 of action contained therein fail to state a cause of action against this defendant, in that each and every
26 cause of action and the whole thereof, is barred by the applicable statute of limitations.

27 9. This defendant is informed and believes, and based upon such information and belief
28 alleges that at all times relevant hereto, the plaintiffs and plaintiffs' decedent could have, by the exercise

1 of reasonable diligence, limited or prevented their damages, if any, as a result of the incident alleged in
2 the Third Amended Complaint, and each and every cause of action contained therein, and that the
3 plaintiffs have failed or refused to do so. Such failure or refusal on the part of the plaintiffs and
4 plaintiffs' decedent constitutes a failure to mitigate their damages.

5 10. This defendant alleges that the plaintiffs and plaintiffs' decedent expressly in writing
6 waived and released all liability against this Defendants, including alleged liability based on the
7 negligence of this defendant. The plaintiffs and plaintiffs' decedent also expressly in writing agreed to
8 indemnify and hold this defendant harmless from all liability, including for alleged liability based on the
9 negligence of this defendant. The plaintiffs and plaintiffs' decedent furthermore expressly in writing
10 agreed to assume all risks and dangers broadly associated with the activities and events at issue,
11 including the risks and dangers posed by the alleged negligence of this defendant. As a result of the
12 foregoing, the plaintiffs relieved this defendant of a duty of care, and the claims of the plaintiffs and
13 plaintiffs' decedent herein are barred as a matter of law.

14 11. This defendant alleges that if it should be established that this defendant is in any manner
15 legally responsible for plaintiffs' alleged damages, which this defendant denies, this defendant would be
16 entitled to indemnity and/or contribution from plaintiffs in direct proportion to the negligence or other
17 actionable conduct which proximately caused or contributed to their alleged damages, if any there were.

18 12. All claims against this defendant are barred, in whole or in part, by laches and delay on
19 the part of the Plaintiffs, to the prejudice of this defendant.

20 13. Plaintiffs had full knowledge of all of this defendant's alleged actions, and each of them,
21 concerning the allegations contained in the Third Amended Complaint and did not object to any of those
22 actions at the time they were undertaken or within a reasonable time thereafter. As such, Plaintiffs have
23 waived any causes of action which may have arisen out of those alleged acts by this defendant.

24 14. Plaintiffs had full knowledge of all this defendant's alleged actions, and each of them,
25 concerning the allegations contained in the Third Amended Complaint and did not object to any of those
26 actions at the time they were undertaken or within a reasonable time thereafter. As such, Plaintiffs are
27 now estopped from asserting any causes of action which may have arisen out of those alleged acts by this
28 defendant.

1 15. Plaintiffs are not entitled to any recovery from this defendant because the alleged
2 damages, if any, are speculative.

3 16. This defendant alleges that the Third Amended Complaint fails to state facts sufficient to
4 state any claim upon which punitive damages can be awarded.

5 17. This defendant alleges that the Third Amended Complaint fails to state a cause of action
6 upon which attorneys' fees can be awarded.

7 18. The imposition of any punitive damages in this matter would deprive this defendant of its
8 property without due process of law under the Nevada State Constitution and the United States
9 Constitution. Further, the imposition of punitive damages in this matter would violate this defendant's
10 right to protection from "excessive fines" as provided in the Eighth Amendment of the United States
11 Constitution and Article I, section 17 of the Nevada State Constitution.

12 19. At all times relevant hereto, this defendant had neither actual nor constructive knowledge
13 of any alleged dangerous condition(s) on the premises. Further, the alleged dangerous condition(s) on
14 the premises had not existed for a length of time so that in the exercise of reasonable care this defendant
15 would have or should have discovered the condition in time to remedy it or to give warning before the
16 alleged incident occurred.

17 20. The product which allegedly caused injuries or damages to plaintiffs and plaintiffs'
18 decedent was reasonably fit for the uses for which it was intended.

19 21. Plaintiffs' claims may be barred due to a lack in privity between the parties.

20 22. The product at issue was in compliance with all federal, state and local codes, standards,
21 regulations, specifications and statutes regarding the manufacture, sale and use of the product at all times
22 pertinent to this action.

23 23. Plaintiffs are not entitled to recover to the extent any alleged damages or injuries were
24 caused by the misuse, abuse, or failure to properly maintain or care for the product.

25 24. Plaintiffs' claims are barred because the physical harm alleged by plaintiffs in this action
26 resulted from the misuse of the product at issue by some person not reasonably expected by this
27 defendant at the time the product at issue in this action was sold or otherwise conveyed to another party.

28 25. Plaintiffs' claims are barred because plaintiffs and plaintiffs' decedent knew of the

1 defects alleged in the Third Amended Complaint and were aware of the dangers and nevertheless
2 proceeded unreasonably to make use of such product.

3 26. Plaintiffs' claims may be barred because the physical harm complained of was caused by
4 a modification or alteration of the product at issue made by a person after the delivery to the initial user
5 or consumer which modification or alteration was the proximate cause of the physical harm complained
6 of by plaintiffs and such modification or alteration was not reasonably expected by this answering
7 defendant.

8 27. This defendant alleges that on balance, in light of the relevant factors, the benefits of the
9 design of the subject product outweigh the risks of danger, if any, inherent in the design and/or that the
10 subject product performed as safely as the ordinary consumer would expect when used in an intended or
11 reasonably foreseeable manner.

12 28. If plaintiffs' damages were caused by any product alleged to have been manufactured,
13 designed, assembled, produced, inspected, tested, sold, supplied, leased, rented, delivered or otherwise
14 distributed by this defendant, such product was intended for and sold to a knowledgeable and
15 sophisticated user over whom this defendant had no control and who was fully informed as to the risks
16 and dangers, if any, associated with that product and the precautions, if any, required to avoid those risks
17 and dangers. By reason thereof, this defendant had no duty to warn plaintiffs or plaintiffs' decedent or to
18 further warn the knowledgeable user of the risks and dangers, if any, associated with the product.
19 Whatever injury, if any, plaintiffs, plaintiffs' decedent or any other individual sustained was proximately
20 caused by the failure of the knowledgeable user of the product to use it for the purpose for which, and
21 the manner for which, it was intended to be used.

22 29. Plaintiffs' claims against this defendant are barred by the doctrine of preemption.

23 30. The vehicle described in plaintiffs' Third Amended Complaint, which is alleged to be
24 defective, and all relevant components thereof, complied with the state of the art and/or the industry for
25 passenger vehicles existing at the time that it was manufactured and distributed.

26 31. Any defect of the product and/or its component parts, if any, was open and obvious to the
27 plaintiffs and plaintiffs' decedent.

28 32. If this defendant had any involvement in this matter at all it was nothing more than the

1 provider of a service and cannot be held strictly liable for the plaintiffs' injuries or damages.

2 33. The product in question was sold on an "as-is" basis with all faults and thus the entire risk
3 as to the quality and performance of the product is with the plaintiffs and plaintiffs' decedent, as buyer.

4 34. While denying any liability or wrongdoing, this defendant states that any recovery by
5 plaintiffs from this defendant must be reduced or offset by amounts plaintiffs have received or will
6 receive from others for the same injuries claimed in this lawsuit.

7 35. This defendant cannot be held jointly and severally liable for injuries or damages caused
8 by the tortious conduct of other defendants under the terms and provisions of NRS 41.1411.

9 36. While denying any and all allegations of negligence, wrongdoing, fault, or liability, this
10 defendant states that any recovery by plaintiffs for personal injuries and/or damages must be diminished
11 by the percentage of the total tortious conduct attributable to plaintiffs or decedent under the terms and
12 provisions of NRS 41.141.

13 37. An award of punitive damages against this defendant in this case would violate the
14 United States and Nevada Constitutions to the extent it may award damages to plaintiffs for actions
15 allegedly performed outside of the State of Nevada.

16 38. This defendant is informed and believes, and on that basis alleges that the Commerce
17 Clause of the United States Constitution (U.S. Const. Art. 1, section 9, clause 3) precludes the
18 application of a State statute to commerce that takes place wholly outside of a State's borders, whether
19 or not the commerce has effects within the State, and protects against inconsistent verdicts and
20 legislation arising from the projection of one State regulatory scheme into the jurisdiction of another
21 State.

22 39. This defendant hereby incorporates by reference those affirmative defenses enumerated in
23 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
24 investigation or discovery reveals the applicability of said defenses, or any other appropriate affirmative
25 defense, this defendant reserves the right to seek leave of Court to amend its Answer to specifically
26 assert any such defense or defenses. Such defenses are incorporated herein by reference for the specific
27 purpose of not waiving any such defense or defenses.

28 40. This defendant adopts and incorporates by reference any affirmative defense asserted by

1 any other defendant to this action, to the extent such affirmative defenses apply to this defendant.

2 This defendant reserves the right to amend and/or assert any additional defenses as may be
3 disclosed during the course of additional investigation and discovery.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, this defendant prays that Plaintiffs take nothing by reason of their Third
6 Amended Complaint on file herein, and that this defendant be dismissed hence with their costs of suit
7 and attorneys' fees incurred herein, and for such other and further relief as the Court may deem just and
8 proper.

9
10 **CROSS-CLAIM**

11 **CROSS-CLAIMANT SPEEDVEGAS, LLC'S CROSS-CLAIM AGAINST ROBERT BARNARD**
12 **AND MOTORSPORT SERVICES INTERATIONAL, LLC**

13 Counter-Claimant repeats, re-alleges and incorporates each and every allegation in the preceding
14 paragraphs set forth herein above in the Answer section of this document.

15 **PARTIES**

16 1. SPEEDVEGAS, LLC is, and, at all times, was, a Delaware limited liability company with
17 its principal place of business in Clark County, Nevada, registered to do business in the State of Nevada.

18 2. Upon information and belief, ROBERT BARNARD is a United States citizen who,
19 following the subject vehicle incident and prior to being served, moved to Spain.

20 3. Upon information and belief, Mr. Barnard has publicly admitted prior to the filing of the
21 Cross-Claim that he was responsible for the design and construction management of the SpeedVegas
22 track as well as its safety features and operational procedures.

23 4. Following the subject incident, Mr. Barnard made the following statement in a March 15,
24 2017 letter wherein he represented that: "I undertook the design and supervised the construction,
25 provided input into the overall site layout and operations."

26 5. Upon information and belief, MOTORSPORT SERVICES INTERNATIONAL, LLC is
27 Robert Barnard's company, a limited liability company formed in North Carolina.

28 6. Upon further information and belief, Motorsport Services International, LLC was

1 responsible for the design and construction management of the SpeedVegas track as well as its safety
2 features and operational procedures.

3 7. Motorsport Services International, LLC has since filed for bankruptcy.

4 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
5 ROES I through XX, inclusive, are unknown to this Cross-Claimant who, therefore, sue said Cross-
6 Defendants by such fictitious names. Cross-Claimant will ask leave of Court to amend this Cross-Claim
7 to reflect the true names and capacities of the fictitiously named Cross-Defendants when they have been
8 ascertained. Cross-Claimant is informed and believes, and based upon such information and belief,
9 allege that such Cross-Defendants designated as ROES are legally responsible in some manner,
10 negligently, contractually or otherwise, for the events herein alleged and, therefore, are liable to this
11 Cross-Claimant for indemnity and/or equitable contribution.

12 9. Cross-Claimant is informed and believes and therefore alleges that at all times herein
13 mentioned, each of the Cross-Defendants was the agent, servant and employee of the remaining Cross-
14 Defendants, acting within the course and scope of that agency and employment, and that the acts and
15 omissions of each of the Cross-Defendants were ratified by the remaining Cross-Defendants.

16 10. Cross-Claimant is informed and believes and thereupon alleges that at all times
17 mentioned herein, Cross-Defendants, and each of them, were, and are now, individuals, sole
18 partnerships, partnerships, registered professionals, corporations, or other legal entities and/or business
19 organizations of unknown form, which were licensed or otherwise authorized to do business in the State
20 of California.

21 GENERAL ALLEGATIONS

22 Cross-Claimant repeats, re-alleges and incorporates each and every allegation in the preceding
23 paragraphs as if set forth fully herein.

24 11. Plaintiffs herein have filed the subject Third Amended Complaint for damages for
25 personal injuries against several defendants, including Cross-Claimant herein. The Third Amended
26 Complaint alleges, among other things, that Cross-Claimant negligently operated its private motorsports
27 facility and negligently designed the track at the facility, which led to the subject accident on February
28 12, 2017, wherein plaintiffs' decedent GIL BEN-KLEY, an employee of SpeedVegas and CRAIG

1 SHERWOOD, a customer, were killed.

2 12. Cross-Claimant is informed and believes, and based upon such information and belief,
3 allege that Cross-Defendants herein, designated as ROES or otherwise, are legally responsible in some
4 manner, negligently, contractually or otherwise, for the events herein alleged and, therefore, are liable to
5 Cross-Claimant for indemnity and/or equitable contribution.

6 **FIRST CAUSE OF ACTION**

7 (For Implied Indemnity against all Cross-Defendants)

8 Cross-Claimant repeats, re-alleges and incorporates each and every allegation in the preceding
9 paragraphs as if set forth fully herein.

10 13. An actual controversy has arisen, and now exists, between Cross-Claimant and Cross-
11 Defendants herein concerning each party's respective rights and duties in connection with the action
12 brought by Plaintiffs, who claim to have been damaged by Cross-Claimant and others.

13 14. Cross-Claimant is informed and believes, and based upon such information and belief,
14 allege that Cross-Defendants herein acted negligently or otherwise tortiously in and about the matters set
15 forth in Plaintiffs' Complaint and that the damages alleged in Plaintiffs' Third Amended Complaint were
16 solely the proximate result of said Cross-Defendants' negligence and/or otherwise tortious misconduct.

17 15. If, upon the trial of Plaintiffs' Third Amended Complaint, Cross-Claimant is found liable
18 to Plaintiffs, then Cross-Claimant is entitled to a judgment of indemnification against Cross-Defendants
19 herein for the total amount of any judgment awarded against Cross-Claimant.

20 16. Cross-Claimant hereby demands that Cross-Defendants herein indemnify and hold Cross-
21 Claimant harmless; assume the defense of this action on behalf of Cross-Claimant; take such necessary
22 and required steps to protect Cross-Claimant; and pay all claims, settlements, judgments, attorneys' fees
23 and other costs incurred by and/or awarded against Cross-Claimant.

24 **SECOND CAUSE OF ACTION**

25 (For Declaratory Relief against all Cross-Defendants)

26 Cross-Claimant repeats, re-alleges and incorporates each and every allegation in the preceding
27 paragraphs as if set forth fully herein.

28 17. Cross-Claimant is informed and believes, and based upon such information and belief

1 allege, that any and all events and happenings, injuries and damages, if any, referred to in Plaintiffs'
2 Complaint were proximately caused by the negligence and/or otherwise tortious misconduct of Cross-
3 Defendants herein.

4 18. Cross-Claimant is entitled, at a minimum, to a declaration of this Court as to the
5 respective degrees of negligence, or the percentages of fault of whatever nature, if any, of Cross-
6 Claimant and Cross-Defendants herein, which proximately caused or contributed to Plaintiffs' damages,
7 and Cross-Claimant is entitled to be indemnified, at a minimum, on the basis of comparative/partial
8 indemnity principles applied by, between and among Cross-Claimant and said Cross-Defendants.

9 **WHEREFORE**, Cross-Claimant prays for judgment against Cross-Defendants ROBERT
10 BARNARD and MOTORSPORTS SERVICES INTERNATIONAL, LLC as follows:

11 1. For a declaration that any responsibility and/or liability that is determined to exist for the
12 damages claimed by Plaintiffs are the responsibility of the primary and/or acts of negligence and/or
13 otherwise tortious conduct of said Cross-Defendants herein and only the secondary and/or passive
14 negligence and/or vicarious negligence and/or derivative negligence of Cross-Claimant.

15 2. For a declaration that Cross-Defendants herein are obligated to defend Cross-Claimant
16 against the claims of Plaintiffs pending against Cross-Claimant, to reimburse Cross-Claimant for
17 necessary and reasonable attorneys' fees pursuant to the applicable statutory provisions, as well as
18 applicable case law, and costs incurred by Cross-Claimant in defending against the claims of Plaintiffs
19 pending against it, and to indemnify Cross-Claimant for all sums which Cross-Claimant may be
20 compelled to pay as a result of the damages, judgment, settlement and/or recovery by Plaintiffs against
21 Cross-Claimant;

22 3. That in the event judgment is rendered in favor of Plaintiffs in this action and against
23 Cross-Claimant herein, the Court adjudge and decree that the negligence and/or wrongful conduct of
24 Cross-Claimant and said Cross-Defendants shall be apportioned;

25 4. That the Court make the resulting judgment against the parties according to the
26 apportioned negligence and/or other tortious conduct;

27 5. That Cross-Claimant be awarded partial and comparative indemnification against Cross-
28 Defendants herein;

1 6. For judgment declaring the respective responsibility and liability of the parties herein for
2 Plaintiffs' damages, if any;

3 7. For compensatory damages in an amount to be determined at trial;

4 8. For costs of suit incurred herein, including attorneys' fees; and

5 9. For such other and further relief as this Court may deem just and proper.

6 **JURY DEMAND**

7 SPEEDVEGAS, LLC hereby demands a trial by jury as to any and all issues so triable.

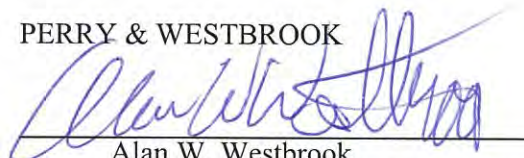
8 **Affirmation**

9 **(Pursuant to NRS 239B.030)**

10 The undersigned does hereby affirm that the preceding document filed in this court does not
11 contain the social security number of any person.

12
13 DATED: March 12, 2019

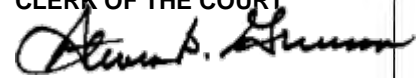
PERRY & WESTBROOK



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*Attorneys for Ben-Kely Plaintiffs, Ben-Kely Cross Claimants
and Ben-Kely Counterclaimants only*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY as the duly appointed representative of the Estate and as the widow and heir of Decedent GIL BEN-KELY; SHON BEN-KELY, son and heir of decedent GIL BEN-KELY; NATHALIE BEN-KELY-SCOTT, daughter and heir of the decedent GIL BEN-KELY,

Plaintiffs,

v.

SPEEDVEGAS, LLC, a foreign-limited liability company; VULCAN MOTOR CLUB, LLC d/b/a WORLD CLASS DRIVING, a New Jersey Limited Liability Company; SLOAN VENTURES 90, LLC, a Nevada limited liability company; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company; AARON FESSLER, an individual; the ESTATE OF CRAIG SHERWOOD; AUTOMOBILI LAMBORGHINI AMERICA, LLC, a foreign-limited liability company; TOM MIZZONE, an individual; SCOTT GRAGSON, an individual; PHIL FIORE aka FELICE FIORE, an individual; DOES I-X; and ROE ENTITIES XI-XX, inclusive,

Defendants.

Case No.: A-17-757614-C
Dept. No.: XXVII

**BEN KELY PLAINTIFFS'
FOURTH AMENDED
COMPLAINT**

Date of Hearing: N/A
Time of Hearing: N/A

Plaintiffs ESTATE OF GIL BEN-KELY, ANTONELLA BEN-KELY as the duly appointed

1 administrator of the Estate and as the surviving widow and heir of decedent Gil Ben-Kely, SHON
2 BEN-KELY, surviving son and heir of decedent Gil Ben-Kely, NATHALIE BEN-KELY, surviving
3 daughter and heir of decedent Gil Ben-Kely (collectively the “Ben-Kely Family”), by and through their
4 counsel, William R. Brenske, Jennifer R. Andreevski, and Ryan D. Krametbauer, with the law firm of
5 Brenske Andreevski & Krametbauer, complain and allege against Defendants SPEEDVEGAS, LLC, a
6 foreign-limited liability company; VULCAN MOTOR CLUB, LLC d/b/a WORLD CLASS
7 DRIVING, a New Jersey Limited Liability Company; SLOAN VENTURES 90, LLC, a Nevada
8 limited liability company; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina
9 limited liability company; AARON FESSLER, an individual; the ESTATE OF CRAIG SHERWOOD;
10 AUTOMOBILI LAMBORGHINI AMERICA, LLC, a foreign-limited liability company; TOM
11 MIZZONE, an individual; SCOTT GRAGSON, an individual; PHIL FIORE aka FELICE FIORE, an
12 individual; as follows:

13 INTRODUCTION

14 a. Fatal Event

15
16
17 1. On February 12, 2017, Craig Sherwood, a Canadian tourist, was legally on the premises
18 of SpeedVegas, located at 14200 S. Las Vegas, Blvd., in Las Vegas, Nevada.

19 2. Mr. Sherwood came as a paying customer with the intent of driving several laps around
20 the SpeedVegas track in vehicle(s) provided by SpeedVegas.

21 3. Gil Ben-Kely, a SpeedVegas driving instructor, was assigned and/or otherwise
22 designated, to accompany, instruct, and/or coach Mr. Sherwood as he drove a 2015 Lamborghini
23 Aventador Roadster, Vehicle Identification Number: ZHWUR1ZD3FLA03687 (hereinafter
24 “Lamborghini” or “Aventador” or “Lamborghini Aventador”), provided by SpeedVegas, around the
25 SpeedVegas racetrack.

26
27 4. At the time SpeedVegas furnished Mr. Sherwood with the Lamborghini Aventador, the
28

1 vehicle was under a recall notice.

2 5. At the time SpeedVegas furnished Mr. Sherwood with the Lamborghini Aventador, the
3 vehicle was equipped with an aftermarket spoiler and exhaust. The aftermarket spoiler and exhaust
4 had been installed on the vehicle, or was commissioned to be installed on the vehicle, prior to the time
5 SpeedVegas entered into a lease for the vehicle with Phil Fiore.

6
7 6. Pursuant to the lease agreement between Phil Fiore and Speed Vegas, LLC,
8 SpeedVegas, LLC agreed to pay Phil Fiore fifty percent (50%) of the total sales earned by
9 SpeedVegas for the rental of the Aventador, less maintenance, tire, and repair costs, plus an additional
10 \$3,000.00 per month. Regardless of sales, SpeedVegas, LLC agreed to pay at least a total of
11 \$6,000.00 per month for the rental of the Aventador.

12 7. As Mr. Sherwood and Mr. Ben-Kely approached and/or struck Turn 1 on the racetrack
13 on February 12, 2017, the Lamborghini suddenly burst into flames.

14
15 8. Upon noticing the fire, SpeedVegas Fire and Safety employees drove over to the
16 Lamborghini and began trying to extinguish the flames with hand-held fire extinguishers. At that
17 time, SpeedVegas did not have a fire extinguishment tank available for use by its Fire and Safety
18 employees.

19 9. Prior to February 12, 2017, SpeedVegas was aware of the cost and feasibility of making
20 a fire extinguishment tank available for use by its Fire and Safety employees, yet Speed Vegas chose
21 not to purchase or install a fire extinguishment tank.

22
23 10. SpeedVegas Fire and Safety employees were unable to extinguish the flames or remove
24 either Mr. Sherwood or Mr. Ben-Kely from the burning vehicle. The fire department was eventually
25 called to the site of the fire. Ultimately, both Mr. Sherwood and Mr. Ben-Kely were burned beyond
26 recognition and pronounced dead at the scene.

27 ///
28

1 **b. Marketing by SpeedVegas**

2 11. Based upon information and belief, SpeedVegas marketed its facility as providing a
3 “driving experience” with the “longest and fastest racetrack in Las Vegas” with the “longest
4 straightaway” and “No Speed Limit.”

5 12. SpeedVegas further marketed its track as being the “only driving experience in Las
6 Vegas purposely built to exceed the FIA Level 2 standard.”

7 13. Prior to, and at the time of, the incident in question, SpeedVegas further advertised
8 and/or employed the use of a “SpeedPass” telemetry board that displayed the fastest lap time driven
9 by the last eight cars on the track.

10 **c. Track Design**

11 14. Based upon information and belief, Robert Barnard and his company, Motorsport
12 Services International, LLC, were hired by SpeedVegas, Vulcan Motor Club, Aaron Fessler, Scott
13 Gragson, Sloan Ventures 90 LLC, and/or Tom Mizzzone to provide guidance and expertise regarding
14 the design of the SpeedVegas track.

15 15. Based upon information and belief, SpeedVegas did not have its track design or
16 operation approved by any racing sanctioning board, such as the Sports Car Club of America (the
17 “SCCA”).

18 16. No local, state, or federal laws, regulations, or ordinances governed the SpeedVegas
19 track.

20 17. No Nevada, or local, agency or body ever approved or disapproved of the design and/or
21 track operations of the SpeedVegas track, nor did SpeedVegas ever obtain certification or approval by
22 any local, state or federal government with respect to its “racetrack” or its operations.

23 18. No local, state, or federal law required any qualification or professional license to
24 design “driving experience” tracks in Nevada, such as the SpeedVegas track.
25
26
27
28

1 19. Although SpeedVegas marketed its track to amateur drivers with little or no driving
2 experience with high-powered sports cars, the turn(s) of the SpeedVegas track were located in close
3 proximity to concrete barrier wall(s).

4 20. The close proximity of the turn(s) to concrete barrier walls made it unreasonably
5 difficult for SpeedVegas's customers and/or its employees to avoid hitting the concrete barrier walls
6 if they lost control of their vehicle or if the vehicle experienced a mechanical failure.

7 21. Turn 1 of the SpeedVegas track was the most dangerous turn on the track.

8 22. Defendants knew, or should have known, Turn 1 of the SpeedVegas track could be
9 made safer by building a longer run-off between the curve of the track and the concrete barrier wall.

10 23. Defendants knew, or should have known, Turn 1 of the SpeedVegas track could also be
11 made safer by binding the tires cushioning the wall both vertically and horizontally and by adding
12 another row of tires in front of the concrete barrier.

13 24. The incident in question was at least the fifth crash at SpeedVegas in its first ten months
14 of operation.

15 **d. The Operation**

16 25. SpeedVegas entrusted powerful, fast, exotic sports cars to amateur drivers if they: (1)
17 had a drivers' license, (2) wore closed-toe shoes, and (3) were 18 years of age.

18 26. SpeedVegas did not require its customers to disclose medical conditions that may cause
19 them to endanger themselves or others while driving on the track.

20 27. At the time of the incident that is the subject of this lawsuit, SpeedVegas posted each of
21 the last eight vehicles driven on the track's highest speed (along with the names of the driver and the
22 coach) on a telemetry board, known as "SpeedPass."

23 28. The "SpeedPass" telemetry board stated the speeds driven by the drivers based on the
24 use of an iPhone app and may have overstated speed actually driven by each driver.

29. The "SpeedPass" telemetry board was created, designed, commissioned, requested, and/or put into operation by Defendant Aaron Fessler.

e. The Vehicles

30. The vehicles at SpeedVegas were not properly maintained, including the Lamborghini that was driven by Mr. Sherwood at the time of the incident that is the basis of this lawsuit.

31. At the time SpeedVegas leased the Lamborghini from Phil Fiore, it was equipped with an aftermarket spoiler and exhaust.

32. Defendants knew, or should have known, that the aftermarket spoiler and exhaust on the Lamborghini rendered it unreasonably dangerous for SpeedVegas's customers.

33. Prior to the time SpeedVegas provided Mr. Sherwood with the Lamborghini on February 12, 2017, SpeedVegas swapped out the subject Lamborghini's original manufacturer equipment brakes with Girodisk brand brakes.

34. Defendants knew or should have known the Girodisk brand brakes rendered the Lamborghini unreasonably dangerous for SpeedVegas's customers.

35. The subject Lamborghini had braking and handling issues. Defendants knew, or should have known, about these braking and/or handling issues on or prior to February 12, 2017.

36. The subject Lamborghini was the subject of a February 3, 2017 Recall Notice for a Lamborghini manufacturing defect that caused the 2012-2017 Aventadors to catch on fire and explode due to fuel coming into contact with the exhaust system.

37. SpeedVegas knew, or should have known, said recall notice had been issued for the subject Aventador prior to February 12, 2017.

38. Although the subject Lamborghini was part of a recall, SpeedVegas made it available to customers on the date in question.

39. Although Lamborghini issued the recall on February 3, 2017, Lamborghini knew, or

1 should have known, 2015 Lamborghini Aventadors, such as the one that was driven by Mr.
2 Sherwood, posed an “unreasonable safety risk” at least several months prior to the time Lamborghini
3 issued the recall.

4 40. Lamborghini did not allow certified dealerships to make the necessary modifications to
5 the parts subject to recall until February 24, 2017 – three weeks after the recall notice was finally
6 issued.

7 41. The subject Aventador’s fuel tank and/or fuel tank assembly was also defective and/or
8 welded in such a way that the welds could detach, thus creating an unreasonable safety risk.

9 42. Lamborghini knew or should have known the fuel tank and/or fuel tank assembly was
10 unreasonably dangerous at the time it left its possession and control.

11 **f. Alter Ego Allegations**

12 43. At all times relevant hereto, Defendant(s) Aaron Fessler, Tom Mizzone, Scott Gragson,
13 and/or Does I-X were the alter egos of Defendant SpeedVegas, LLC, Vulcan Motor Club, LLC and/or
14 Roes I-X.

15 44. Defendant SpeedVegas, LLC, was originally formed in Delaware on September 10,
16 2007, and was named Vulcan Motor Club, Inc. Vulcan Motor Club, Inc. was converted to an LLC a
17 few days later.

18 45. On October 28, 2014, the name of Vulcan Motor Club was amended to Speed Vegas,
19 LLC.

20 46. Defendant(s) Aaron Fessler, Tom Mizzone, Scott Gragson, and/or Does I-X caused the
21 company to be named Speed Vegas, LLC and to have its physical location moved across state lines to
22 Las Vegas, Nevada without following proper corporate procedures.

23 47. On December 15, 2014, SpeedVegas, LLC entered into a 25-year lease with Defendant
24 Sloan Ventures 90, LLC for the approximately 85-acre property on which the SpeedVegas track was
25

1 ultimately built.

2 48. Aaron Fessler was identified in the lease as the Guarantor of the Lease.

3 49. Aaron Fessler also executed an independent Guaranty unconditionally guaranteeing the
4 complete and timely payment and performance of each and all terms, covenants, and conditions in the
5 lease to be paid, kept, and performed by SpeedVegas, LLC.
6

7 50. In the Guaranty, Mr. Fessler indicated his liability was primary, joint and several.

8 51. In the Guaranty, Mr. Fessler agreed that although SpeedVegas is a corporation, Sloan
9 Ventures 90, LLC was not required to inquire into the powers of SpeedVegas or the officers, directors,
10 partners, members, or agents acting or purporting to act on SpeedVegas' behalf. Any obligations
11 made or created in reliance on such powers was personally guaranteed by Mr. Fessler.

12 52. Pursuant to the lease, SpeedVegas, LLC was to pay Sloan Ventures 90, LLC
13 \$53,125.00 per month from December 1, 2015 through November 1, 2016. On December 1, 2016
14 through November 1, 2017, the rent increased to \$69,062.50 per month. Thereafter, on December 1,
15 2017, the rent was to increase again to \$81,015.66 per month. Additional rent increases were
16 scheduled thereafter.
17

18 53. Speed Vegas defaulted and/or failed to pay many of its financial obligations, thus
19 showing it was undercapitalized, including but not limited to:

- 20 a. Speed Vegas failed to pay its security deposit in the amount of \$53,125.00 to
21 Sloan Ventures 90, LLC when it was due on December 14, 2014 and also did
22 not pay it after receiving a formal demand to pay it from Sloan Ventures on July
23 6, 2017.
24
25 b. Speed Vegas did not timely pay its rent to Sloan Ventures 90, LLC for
26 December 2016. After its due date, on December 5, 2016, Speed Vegas paid
27 Sloan Ventures \$53,125.00, leaving a deficiency of \$15,937.50 for the month.
28

- c. Speed Vegas did not timely pay its rent to Sloan Ventures 90, LLC for January 2017. After its due date, on January 11, 2017, Speed Vegas paid Sloan Ventures \$53,125.00, leaving a deficiency of \$15,937.50 for the month.
- d. On February 2, 2017, Speed Vegas paid Sloan Ventures 90, LLC \$53,125.00 in rent, leaving a deficiency of \$15,937.50 for the month.
- e. Speed Vegas did not timely pay its rent to Sloan Ventures 90, LLC for March 2017. After its due date, in March 2017, Speed Vegas paid Sloan Ventures \$53,125.00, leaving a deficiency of \$15,937.50 for the month.
- f. Speed Vegas did not pay its rent to Sloan Ventures 90, LLC for April 2017, leaving a deficiency of \$69,062.50.
- g. Speed Vegas did not pay its rent to Sloan Ventures 90, LLC for May 2017, leaving a deficiency of \$69,062.50.
- h. Speed Vegas did not pay its rent to Sloan Ventures 90, LLC for June 2017, leaving a deficiency of \$69,062.50.
- i. Speed Vegas did not pay its rent to Sloan Ventures 90, LLC for July 2017, leaving a deficiency of \$69,062.50.
- j. Speed Vegas did not timely pay its rent to Sloan Ventures 90, LLC for August 2017 leaving a deficiency of \$69,062.50.
- k. Speed Vegas did not timely pay its rent to Sloan Ventures 90, LLC for September 2017 leaving a deficiency of \$69,062.50.

54. Further evidence Speed Vegas was undercapitalized includes, but is not limited to:

- a. Speed Vegas entered into a construction contract with J.A. Tiberti Construction for \$7,363,285.00. The actual cost of the project exceeded the contracted price by \$1,154.360. Regardless, Speed Vegas only paid \$4,483,814 to J.A. Tiberti

- 1 Construction.
- 2 b. On January 24, 2017, J.A. Tiberti Construction Co., Inc recorded a lien against
- 3 the land upon which Speed Vegas was built in the amount of \$4,033,831.00.
- 4 Despite the lease agreement with Sloan Ventures 90, LLC, which required
- 5 Speed Vegas to bond or discharge the lien, it did not do so.
- 6
- 7 c. On or around March 18, 2016, SpeedVegas, LLC entered into a Note and
- 8 Warrant Purchase and Security Agreement which provided a Senior Loan to
- 9 SpeedVegas, LLC in the principal amount of \$5,000,000.00 (five million
- 10 dollars).
- 11
- 12 d. Upon information and belief, Aaron Fessler and Tom Mizzone both provided
- 13 money to fund this Senior Loan.
- 14
- 15 e. As of August 12, 2017, SpeedVegas, LLC had made no payments on the Senior
- 16 Loan and SpeedVegas, LLC believed its debt to the Senior Lenders was wholly
- 17 unsecured.
- 18
- 19 f. While SpeedVegas was negotiating its financial issues with the contractor, J.A.
- 20 Tiberti Construction, Defendant Aaron Fessler advanced \$75,000.00 to
- 21 SpeedVegas.
- 22
- 23 g. During this same time period, Defendant Scott Gragon advanced \$175,000.00
- 24 to SpeedVegas.
- 25
- 26 h. On August 12, 2017, a collateral agent working on behalf of Aaron Fessler and
- 27 other Senior Lenders of SpeedVegas filed an involuntary chapter 11 bankruptcy
- 28 petition against SpeedVegas..

55. As of December 31, 2016, Aaron Fessler owned 22.91% of Speed Vegas shares of
common units.

1 56. Defendant(s) Aaron Fessler, Tom Mizzone, Scott Gragson, and/or Does I-X were
2 members of the board of directors of SpeedVegas and/or shareholders in the company.

3 57. At all times relevant hereto, Defendant(s) Aaron Fessler, Tom Mizzone, Scott Gragson,
4 and/or Does I-X influenced and governed Defendant SpeedVegas, LLC, Vulcan Motor Club, LLC
5 and/or Roes I-X in numerous ways, including but not limited to, completely controlling, dominating,
6 managing, and/or operating the business and affairs of Defendant SpeedVegas, LLC, Vulcan Motor
7 Club, LLC and/or Roes I-X.

9 58. At all times relevant hereto, Defendant(s) Aaron Fessler, Tom Mizzone, Scott Gragson,
10 and/or Does I-X: 1) undercapitalized SpeedVegas, LLC, Vulcan Motor Club, LLC and/or Roes I-X;
11 2) comingled personal funds with the funds of SpeedVegas, LLC, Vulcan Motor Club, LLC and/or
12 Roes I-X; 3) failed to hold shareholder meetings and/or observe corporate formalities for SpeedVegas,
13 LLC, Vulcan Motor Club, LLC and/or Roes I-X; 4) made loans to SpeedVegas, LLC, Vulcan Motor
14 Club, LLC and/or Roes I-X without sufficient consideration; 5) failed to maintain proper corporate
15 records, including but not limited to bylaws, operating agreements, minutes of meetings, and/or
16 minutes of significant activities for SpeedVegas, LLC, Vulcan Motor Club, LLC and/or Roes I-X;
17 and/or, 6) used corporate entities to shield against personal obligations.

19 59. At all times relevant hereto, Defendants SpeedVegas, LLC, Vulcan Motor Club, LLC
20 and/or Roes I-X were not only influenced and governed by Defendant(s) Aaron Fessler, Tom
21 Mizzone, Scott Gragson, and/or Does I-X, but there was such a unity of interest and ownership that
22 the individuality, or separateness, of Defendant(s) Aaron Fessler, Tom Mizzone, Scott Gragson,
23 and/or Does I-X and Defendants SpeedVegas, LLC, Vulcan Motor Club, LLC and/or Roes I-X has
24 ceased, and the facts are such that an adherence to the fiction of the separate existence of these entities
25 would, under the particular circumstances, sanction a fraud or promote injustice.

27 60. Based upon information and belief, all acts of the business entities involved were
28