

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, de cease,

Real Parties in Interest.

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PETITIONERS' APPENDIX

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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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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

Respondent

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

1 possession, which is simply owner's manuals and service manuals,
2 and some information related to two other incidents that occurred
3 after the subject crash, that didn't involve any injuries and were
4 segregation property damage claims.

5 Moreover, Your Honor, there is nothing in this record --
6 the plaintiffs have had plenty of time in order to gather the necessary
7 evidence, and they simply have nothing to put forward with respect
8 to ALA's conduct.

9 In that regard, Your Honor, we don't think that a deferral of
10 the ruling is necessitated and nor did they appropriately seek for it
11 under 50/60.

12 THE COURT: Okay.

13 MS. VARGAS: Thank you, Your Honor.

14 THE COURT: And did that conclude your reply, as well?

15 MS. VARGAS: I beg your pardon?

16 THE COURT: Did that conclude your reply, as well?

17 MS. VARGAS: Oh, I thought I was only limited to -- oh, I'm
18 sorry, Your Honor. I misunderstood you.

19 Yes, Your Honor.

20 I wanted to speak to the specific discussion that
21 Mr. Samson made with respect to the design of the fuel tank, and
22 what was done when it was initially tested and what was done after
23 it was tested.

24 Again, all of the discussion that Mr. Samson presented to
25 you today, Your Honor, relates to a nonparty, in Italy, that designed

1 and manufactured the vehicle -- that is not a defendant in this case,
2 has never been a defendant in this case.

3 That conduct cannot be imputed to ALA. There is simply
4 no evidence in this record that there's any conduct on behalf of ALA
5 related to any design or manufacturing function.

6 So all of the discussion that Mr. Samson made during his
7 reply regarding clear indications of inevitability of thing defect of the
8 design and disregard of this alleged danger, all of that falls on a
9 nonparty who is not in this case. And they cannot simply make the
10 decision not to sue that entity, sue a different defendant, and then try
11 to impute that conduct or alleged conduct to the party before you.

12 Thank you.

13 THE COURT: All right. So with regard to the Automobili
14 request for summary judgment on the punitive damages, I am going
15 to grant that.

16 I just can't find that as a distributor there was conscious
17 disregard for the plaintiff's rights. And I -- unfortunately, that was
18 about the thing I could grant today.

19 So that will be granted for the reasons set forth in your
20 brief and consistent with your arguments.

21 And Ms. Vargas to prepare the order. Mr. Samson to
22 review and approve the form.

23 No competing orders.

24 Now, let's talk about scheduling because my schedule is a
25 mess for the next three weeks.

1 I start a jury trial on Monday the 12th, and I could only do
2 jury selection Wednesday afternoon and Thursday afternoon.

3 We have a program here -- Mr. Westbrook, I'm sure that
4 you know all about it -- but Monday and Tuesday we choose juries
5 for criminal cases; Wednesday and Thursday, several cases; and
6 Friday we do short trials. That's the only time that they -- that we
7 can choose a jury that I will have jurors available.

8 And I also have a jury trial starting on the 19th and a third
9 starting on the 26th of June, which makes my schedule almost
10 impossible.

11 The trial next week, because we choose the jury and have
12 full days, they think they can be get done in three to four days. So
13 it's possible I'll have Friday the 16th. I could give you all day, but I
14 won't know that until probably Tuesday.

15 After that, the first time I have a free time is the first week
16 of August, and for which I apologize profusely to all of you. It was a
17 trial that fell off the cracks -- fell in the cracks, and it has to be done
18 Monday.

19 So responses?

20 MS. VARGAS: Your Honor, may I request clarification?

21 THE COURT: Yes.

22 MS. VARGAS: With respect to all of the motions that are
23 set for hearing tomorrow afternoon and on Thursday afternoon, are
24 you saying, Your Honor, that none of those could be heard?

25 THE COURT: None of them can be heard, because I have

1 to do jury selection Wednesday at 1:00 and Thursday at 1:00.

2 Now, I have a 10 o'clock motion set in a different case. I
3 have the meeting at 1:00 Friday. It's possible I could meet with you
4 from 2:30 to 5:00 on Friday afternoon, if that would work.

5 MR. BRENSKE: Your Honor, attorney Bill Brenske on
6 behalf of Ben-Kelys.

7 You indicated that you had time at the very beginning of
8 August. If -- if we could just move these to those dates and times,
9 that would allow out-of-state counsel the ability to travel to
10 Las Vegas to argue those motions in a set time what I think would be
11 best for all counsel.

12 So it would be my most fervent hope and
13 recommendation that if you had something in early August, we can
14 get together and schedule what those motions would be, you know,
15 the -- you know, where we put them. And then get that to the Court
16 well in time for the Court to put its calendar together for that time.

17 THE COURT: Other comments, please? Or do you want
18 the chance to confer with your clients?

19 MR. SAMSON: What are the dates in early August,
20 Your Honor?

21 THE COURT: August 2 and 3, I think gives you two full
22 days. It would be a Monday, Tuesday.

23 Let me take a brief --

24 MR. BRENSKE: That's perfectly acceptable to the
25 Ben-Kelys, Your Honor.

1 THE COURT: Let me give you guys a five- or ten-minute
2 recess, because I know I'm putting you all on the spot. And this --
3 my JAE, my assistant of 15 years is out on an extended medical
4 leave. We've just been flying by the seat of our pants around here.

5 Thank you. I'll be back in five or 10 minutes.

6 [Recess taken from 2:51 p.m., until 3:05 p.m.]

7 THE COURT: Thank you, everyone. Please remain seated.

8 Okay. Is there any consensus on when we should argue
9 the rest of the motions? Mr. Samson, please?

10 MR. SAMSON: So Your Honor, I have a slight
11 complication, which is those dates in August 2 and 3 don't work for
12 me. I have a trial in front of Judge Lewis Fells [phonetic] that's a
13 13 case, and I expect it to be going.

14 Are there dates later in August that the Court has available
15 that are similar to those that we could all confer about?

16 THE COURT: Nicole, help me out here.

17 MR. SAMSON: Thank you.

18 THE COURT: I'm supposed to start a jury trial on the 9th,
19 that I think will go, August 9th. I have another firm setting on the
20 19th. You know, we are -- oh, you know what, hang on. Roe versus
21 Argoyas [phonetic], that might have gone on.

22 Hey, it looks like the case starting on the 19th is also
23 scheduled in August. Take a look at that with me. Because I've got
24 jury trial firm, but I also show it on August 9th -- on the August
25 calendar. Did we move it up?

1 Sorry, guys. I -- this is so embarrassing. You have no
2 idea. I show it on August 9th. Wait, no. It's not August 9th. I see it
3 on the 19th, firm.

4 THE CLERK: So we have jury selection on August 19th?
5 No.

6 THE COURT: No.

7 THE CLERK: You see it after mine.

8 THE COURT: I'm showing it as firm an 10:30. Maybe we
9 should -- let me look at the minutes real quick.

10 THE CLERK: I don't see it in August.

11 THE COURT: Look at July 19th.

12 THE CLERK: Yeah.

13 THE COURT: And then also look at August 16th. No, not
14 the 16th.

15 We don't usually do this in public. Well, you're going to
16 have to give us a minute. Sorry, guys.

17 MR. SAMSON: No problem, Your Honor.

18 MS. VARGAS: Of course, Your Honor.

19 THE COURT: And I totally understand that you're probably
20 all thinking that I'm crazy at this point.

21 Okay. Let's just go with my calendar. Will you help me?
22 We'll be right back.

23 [Recess taken from 3:07 p.m., until 3:07 p.m.]

24 MS. VARGAS: My suggestions, even. As Your Honor
25 noted earlier, that summary judgment motions should be heard

1 before *motions in limine*.

2 I would propose, Your Honor, that the two remaining
3 summary judgment motions be heard on this Friday between 2:30
4 and 5:00. I have confirmed with Mr. Murdock that we could have
5 people available to argue those summary judgment motions this
6 Friday, rather than to wait.

7 THE COURT: Let me hear from the two plaintiffs and then
8 the other defense counsel.

9 MR. SAMSON: I would defer to Mr. Brenske, as they're
10 both directed to him, Your Honor.

11 MR. BRENSKE: Your Honor, I'm scheduled to be out of the
12 jurisdiction that Friday afternoon, but if the Court has that time
13 available, then we'll make ourselves available.

14 THE COURT: Hang on. This Friday, what about the 16th?

15 MR. BRENSKE: They shouldn't take -- they shouldn't take
16 long, Your Honor, that --

17 THE COURT: I think that trial next week, they told me
18 three or four days, so you probably have Friday the 16th.

19 MR. BRENSKE: I'm fine with Friday the 16th.

20 THE COURT: Does anyone have a problem with Friday
21 the 16th to hear the last two summary judgment motions?

22 MR. MURDOCK: Your Honor, I need -- I'm sorry, I need to
23 check my calendar on that one --

24 THE COURT: Please.

25 MR. MURDOCK: -- because I was thinking it was this

1 Friday, and so --

2 MS. VARGAS: I was too, Your Honor. I thought it was this
3 Friday you were speaking of. But you're speaking of July 16th?

4 THE COURT: Well, we did have this Friday, but then
5 Mr. Samson has an issue, or Mr. -- no, I'm sorry, Mr. Brenske is out
6 of town this week on Friday.

7 MS. VARGAS: Okay.

8 THE COURT: So I -- the Friday the 16th, because my trial
9 should be over three to four days.

10 MR. BRENSKE: Your Honor --

11 THE COURT: Yes.

12 MR. BRENSKE: Your Honor, if the Court's available this
13 Friday the 16th, then I'll just make myself available. It's two simple
14 motions. You -- the Court's already ruled on portions of both, and I
15 just don't think they'll take long.

16 THE COURT: All right. Is everybody available?

17 MR. BRENSKE: They're pretty much copy cat motions
18 from -- that the Court's heard today.

19 THE COURT: I -- I've actually reviewed everything, so --
20 already.

21 All right. So the 16th for the last two summary
22 judgments?

23 MR. MURDOCK: I thought he was saying this Friday.

24 MS. VARGAS: This Friday, Your Honor.

25 THE COURT: I'm sorry. Now I'm frazzled. I'm sorry.

1 Gosh, we don't usually do this in public.

2 MR. BRENSKE: Your Honor, I'm available right now to
3 argue those motions.

4 THE COURT: I -- no, I --

5 MR. BRENSKE: Counsel's here now. I'm available. We
6 can do those motions right this minute.

7 THE COURT: All right. So does everybody want to do
8 them today? We could.

9 MS. VARGAS: I -- I --

10 MR. MURDOCK: That's fine with me.

11 MS. VARGAS: Yes, Your Honor.

12 THE COURT: Okay. Then let's -- let's go forward. I've
13 read them. I haven't made my notes. I also read everything first
14 before I make notes, so I don't have notes, but I have read
15 everything.

16 All right. So the things that were set for tomorrow, let me
17 look real quick -- is a summary judgment as to Felice Fiore, against
18 the plaintiffs' estate of Ben-Kely and the family. Let's take that one
19 first.

20 MR. MURDOCK: Yes, Your Honor. So we did cover some
21 of the same arguments previously. I do want to touch on a -- on a --
22 the issues are slightly different here. As with the Sherwood
23 plaintiffs, the Ben-Kely plaintiffs have limited their case now to the
24 strict products liability theory. They've forgone the negligence
25 claims that they had against Mr. Fiore, so this is a pretty discrete

1 issue.

2 Here, the -- again, Mr. Fiore is a member of the
3 SpeedVegas board. The -- his role there is what controls the
4 Court's -- the ability for the plaintiffs to sue him under the NIIA,
5 because he was a board member at the time of this incident. It
6 doesn't matter if he is sued in his capacity as a board member or
7 not. That is the controlling aspect of this case. And because he was
8 on the board, he is entitled to summary judgment on these claims.
9 He is not an appropriate defendant in this case.

10 Further, the issue here relates with Mr. Ben-Kely is a
11 slightly different one on the products liability aspect.

12 And I can go back over the prior arguments. I know
13 Your Honor has already heard those about they did not routinely
14 rent -- you know, did not place cars in the commerce streams, not
15 something he's leased multiple times. It was a single contract with
16 SpeedVegas related to the rental -- or to -- not to the rental -- to the
17 lease of this vehicle to SpeedVegas. He did not subsequently lease it
18 to anyone else, and he's not engaged in the business of that.

19 I stand on our arguments on that in the briefing, as well as
20 my remarks previously today.

21 There's also an additional wrinkle here, which is under
22 *Noland and Harris. Harris versus Rio Casino -- Hotel and Casino,*
23 *1117 Nev. 842,* and also -- well, essentially it's the *Noland versus*
24 *Westinghouse* case, *97 Nev. 268, 1981.* There is no dual capacity
25 argument here that, again, Mr. Fiore being sued -- personal capacity,

1 not personal, doesn't matter. Under NIIA those claims are barred.

2 Additionally, Mr. Fiore was -- as a member of the board for
3 SpeedVegas, he has a different relationship with Mr. Ben-Kely than
4 he did with Mr. Sherwood. Mr. Ben-Kely was actually also an
5 employee of SpeedVegas. And so for that reason, there's additional
6 protections against Mr. Fiore, in the same vein as it would apply to
7 SpeedVegas, in that there's a worker's comp bar that would preclude
8 Mr. Ben-Kely from pursuing claims against Mr. Fiore because he is
9 the same as SpeedVegas and, therefore, the claims are barred on
10 that basis as well.

11 If you have any other questions, I can address those. But I
12 know you're familiar with the briefing. I know you've read
13 everything. So with that, I'll turn my time over.

14 THE COURT: Thank you.

15 And the opposition, please, Mr. Brenske.

16 MR. BRENSKE: Thank you, Your Honor.

17 A couple of housekeeping matters, Your Honor.

18 The second cause of action is a cause of action against
19 Mr. Fiore. It's a negligence cause of action, and we're abandoning
20 that cause of action.

21 We -- the 7th Cause of Action under Vicarious Liability,
22 we're abandoning that cause of action. And the 13th Cause of Action
23 for punitive damages, we are abandoning that cause of action.

24 The only cause of action that is remaining is the products
25 liability cause of action. NIIA has no protections on Mr. Fiore

1 because he is somehow on the board of directors. This is a product
2 liability case. And whether or not he is in the business of leasing
3 and subletting his Lamborghini to SpeedVegas for customers' use is
4 the issue in the case. It's got nothing to do with NAll (sic) and any
5 other [indiscernible] liability stuff. This is a products case. That's all
6 it is. And that's what I've got.

7 THE COURT: And what's the -- the name of the MGM fire
8 case, where the firefighters were allowed to pursue products liability
9 claims?

10 MR. BRENSKE: You know, I was in that case. You would
11 think I would remember it.

12 THE COURT: That's okay. I can't think of it either.

13 Is there a reply, Mr. Murdock?

14 MR. MURDOCK: Your Honor, I don't believe that
15 Mr. Brenske has raised anything new or different in his arguments.
16 You know, I think he's kind of restated what was in his briefing.

17 If you would give me just a moment, though, let me take
18 look at my notes.

19 THE COURT: Sure. Take your time.

20 MR. MURDOCK: Again, Your Honor, as we have filed in
21 this case, we attached a number of cases throughout the country
22 that spoke to this specific issue. We would request the Court again
23 reflect on those, including the Simon [phonetic] case; the Griffin
24 case, Griffin Industries; Fernandez; Garcia -- again, they're all in the
25 same vein of where a single lease or single sale of a product does

1 not established liability as to the seller or lessor.

2 Secondly, the NIIA does establish the -- is a bar.

3 Mr. Brenske cited to no authority that states that the NIIA does not
4 apply to products liability claim. That bar is as to negligence and
5 products liability. So again, NIIA bars the claims against Mr. Fiore
6 based on the case law and authorities we've cited.

7 THE COURT: Thank you.

8 This is the defense SpeedVegas's Motion for Summary
9 Judgment with regard to the Ben-Kely products liability claims.

10 It will be denied for the reasons that I denied the first
11 motion today.

12 The issue of whether or not Mr. Fiore meets the definition
13 of emergent is up for the jury to make that factual determination,
14 and Nevada case law specifically recognizes that products liability
15 claims are not precluded by employment status.

16 So the motion will be denied.

17 Mr. Brenske to prepare the order. Mr. Murdock and his
18 team to approve the form of that order.

19 No competing orders. If you have objections,
20 Mr. Murdock, just file those to preserve your record.

21 And let's take the last motion for --

22 MR. MURDOCK: Your Honor, may I just add one question,
23 though?

24 THE COURT: Of course.

25 MR. MURDOCK: In light of *Noland versus Westinghouse*, I

1 would ask that Your Honor consider that -- that ruling. That was a
2 Nevada Supreme Court case where the Court essentially said that an
3 employee could not bring a claim for products liability against the
4 subcontractor due to the NIIA.

5 That's going to be the same issues presented here. And I
6 think Noland is a bar to the claim presented by the Ben-Kely
7 plaintiffs. But I understand.

8 THE COURT: No, no. Give me the case name again.

9 MR. MURDOCK: Yes. It's *Noland versus Westinghouse*
10 *Electric Corp.*, 97 Nev. 268. It's a 1981 case.

11 THE COURT: And while I read the case, Mr. Brenske, tell
12 me why you believe it's distinguishable here.

13 MR. BRENSKE: That's a -- Your Honor, just give me a
14 moment.

15 THE COURT: And I -- it has to do with the general
16 contractor versus the subcontractor?

17 MR. MURDOCK: It -- Your Honor, what it is, is that there
18 was a -- it was a defendant in the case manufactured, sold, supplied,
19 installed, and maintained the -- essentially, the instrumentality that
20 caused the injury.

21 And the Court found that the plaintiffs' claims were barred
22 for products liability against the subcontractor employer because of
23 the NIIA.

24 So it does speak to specifically product liability claims are
25 precluded under the NIIA.

1 MR. BRENSKE: Your Honor, if I could be heard.

2 THE COURT: You may.

3 MR. BRENSKE: Yeah. This is an employee of a
4 subcontractor bringing suit against another subcontractor, which
5 was the manufacturer of an elevator.

6 This is the classic workers compensation case where if you
7 are the general contractor, you get protection from your employee
8 suing the subcontractor because you're all considered employers.
9 That has nothing to do with this case.

10 This is a workers product -- this is not a worker's comp
11 case. This is a products liability case.

12 I would be more than happy to provide the Court with
13 additional points of authorities, if the Court needs it necessary, but it
14 does not. If you look at this case, it's got nothing to do with a
15 member of the stream of commerce providing a product to the
16 ultimate user.

17 THE COURT: Good enough.

18 You get the last word, Mr. Murdock.

19 MR. MURDOCK: Thank you, Your Honor.

20 MR. BRENSKE: It says --

21 MR. MURDOCK: Go ahead.

22 THE COURT: As soon as you're done, Mr. Brenske.

23 MR. BRENSKE: Yeah, that's fine. I'm good.

24 MR. MURDOCK: Your Honor, it's on page 22 and 23 of our
25 motion.

1 We state the actual finding of the Court. And the Nevada
2 Supreme Court said no case has been called to our attention, nor has
3 any independent research discovered any case, where statutory
4 immunity of coemployees has abrogated the dual capacity doctrine.
5 One of the principal purposes of the NIIA and similar workman's
6 compensation acts is to protect employees from the possible
7 financial burden arising from injuries to coemployees as a result of
8 their negligence. We perceive no valid reason to deny
9 Westinghouse the -- as a statutory coemployee of the appellant, the
10 immunity afforded to the NIIA merely because it may have been
11 serving the general contractor different from that as an appellant.

12 And again, this is a products liability claim against an
13 elevator. And the Court is saying coemployees can't sue each other
14 because of the NIIA.

15 Here, there Fiore and Mr. Ben-Kely were coemployees.
16 Mr. Fiore was on the board and Mr. Ben-Kely was the coach at the
17 time of the crash. The NIIA is very clear on this. This claim is
18 barred.

19 THE COURT: Okay. I'm going to deny your motion.

20 This -- the *Noland versus Westinghouse Electrical Corp.*
21 case to me deals with a contractor situation and a subcontractor. I
22 find it distinguishable from the law of Nevada, which allows
23 employees to bring products liability cases.

24 So the last motion, I believe, Ms. Vargas -- is it Vargas or
25 Varga?

1 MS. VARGAS: Vargas.

2 THE COURT: Okay. I don't want to make anymore
3 mistakes today.

4 I believe it's your motion with regard to Ben-Kely.

5 MS. VARGAS: Yes, Your Honor.

6 Your Honor, unlike the motion against the Sherwood
7 plaintiffs, this motion is one for summary judgment on all claims,
8 including the claim for punitive damages.

9 As we outlined in our motion, Your Honor, we believe that
10 there's undisputed evidence that shows that Mr. Ben-Kely died from
11 an aortic laceration, an injury that was caused by the forces of the
12 crash itself, and had nothing to do with the postcrash fire.

13 As stated in the *Neal-Lomax Versus Las Vegas Metro*
14 *Police* case, the plaintiff must produce medical expert testimony,
15 opining to a reasonable degree of medical certainty that the
16 allegedly defective product was what caused the plaintiff's injury.

17 And in this instance, if a tortfeasor inflicts injuries on a
18 plaintiff that are identical to what the plaintiff would have received,
19 notwithstanding some abstract defect in the involved product, the
20 manufacturer may be absolved of liability. And that's the *Price* case
21 cite in *Soule versus General Motors*.

22 So the causation standard here is proximate cause,
23 Your Honor. Was the defect in the Aventador door a cause of
24 Mr. Ben-Kely's injury, his fatal injury, the aortic laceration? And the
25 answer is simply no.

1 The medical experts have testified -- not just ALA's
2 medical expert, but Judy Melinek, Dr. Judy Melinek, who is the
3 Sherwood plaintiffs' medical expert. The Clark County medical
4 examiner, who is not retained by anyone, but just performed the
5 autopsy on Mr. Ben-Kely, has testified that the aortic laceration was
6 lethal -- was his lethal injury.

7 So there's no dispute here about whether or not that aortic
8 laceration was caused by the crash or by the fire. It was caused by
9 the crash, and that's absolutely undisputed.

10 The Ben-Kely's attempt in their opposition to confuse the
11 issue related to the proximate cause and their discussion about how
12 quickly Mr. Ben-Kely died. They attempt to say, well, their expert
13 said that he died in X period of time, and another expert said he died
14 in Y period of time, but that doesn't matter.

15 Because notwithstanding their arguments in the
16 opposition, the Ben-Kely plaintiffs' expert testified that the aortic
17 laceration was the lethal injury. So it doesn't matter whether or not
18 Mr. Ben-Kely died quickly, less quickly. The fact of the matter is the
19 crash fire had nothing to do with his death.

20 And I would note, Your Honor, that the Ben-Kely plaintiffs
21 tried to get around the rule with respect to causation by
22 misrepresenting the testimony of Dr. Simms, their medical expert.
23 They contended that Dr. Simms said that the postcrash fire was a,
24 quote, major cause, end quote, of Mr. Ben-Kely's death. But, in fact,
25 what Dr. Simms testified to was that the aortic laceration is a

1 nonsurvivable injury with a near 100 percent mortality. That is what
2 he testified to. And though he believes that the postcrash fire
3 accelerated Mr. Ben-Kely's death, he also made it clear in his
4 testimony that Mr. Ben-Kely would have died anyway, within a
5 matter of minutes, solely from the aortic laceration.

6 There is simply no causation relationship to that injury
7 with the postcrash fire.

8 And the Ben-Kely plaintiffs know this, Your Honor,
9 because they hired Harold John Miller, who goes by John Miller, to
10 testify that the Aventador's three-point restraint was defective,
11 though he didn't actually say that the restraint was defective itself,
12 but rather proposed that ALA should have been able to provide a
13 different type of racing harness-type restraint with the vehicle when
14 it's used on a racetrack, such as in this instance.

15 But what is important to note with respect to his
16 testimony, Your Honor, is that Mr. Miller admitted that such a
17 restraint system that he was proposing would have violated
18 federal -- U.S. Federal Motor Safety Vehicle Standards and could not
19 be sold with the vehicle. He made that admission in his deposition.

20 So clearly any discussion about whether a different
21 restraint system could have been used -- the one proposed by the
22 plaintiffs would have been illegal to use in this vehicle.

23 So with nothing else to argue, Your Honor, the Ben-Kely
24 plaintiffs tried to distinguish the *Neal-Lomax* case and *Endicott*
25 *versus Nissan*, which followed the civil court's reasoning, which was

1 cited by *Price*. There is no difference. In those cases no witness
2 testified to a reasonable degree of medical certainty that the plaintiff
3 or decedent would not have been injured if the alleged defect didn't
4 exist.

5 And the same is true here. There is no merit to their
6 argument, Your Honor, that the crash and the postcrash fire can be
7 considered concurrent causes of Mr. Ben-Kely's death.

8 So first, they didn't happen concurrently. The crash
9 occurred first. The forces of the crash caused the aortic laceration
10 first. And then the fire occurred, and then Mr. Ben-Kely expired.

11 Second, the strict liability claims, Your Honor, and
12 identical negligence claims that merge uses the substantial factor of
13 causation test. So a concurrent cause is not sufficient unless it's a
14 substantial factor in causing the death, which it was not here.

15 Again, Dr. Simms, their own expert, testified that it was a
16 lethal injury and that Mr. Ben-Kely would have died. Simply arguing
17 that the fire accelerated his death, but not that it actually caused it.

18 And while causation is a factual issue that Mr. Brenske
19 may argue is typically decided by the jury, the plaintiff must produce
20 sufficient facts that a trier of fact can make the reasonable conclusion
21 that the product caused the injury. And the mere possibility that the
22 product caused the injury is insufficient, and that's the *Lewandowski*
23 case *versus TASER International*.

24 So the Ben-Kely plaintiffs have had more than four years
25 to gather evidence, and they've not met their burden, with respect to

1 the claims on causation, Your Honor. It simply doesn't exist.

2 And even if the Court were not to grant summary
3 judgment on all claims, it should grant the claim on the negligence
4 cause of action, because the plaintiffs haven't produced any
5 evidence that ALA did anything negligent.

6 So it can't be held -- ALA can't -- just as in the prior
7 motion, Your Honor, ALA can't be held negligent for putting the
8 Aventador into the stream of commerce. You know, that's not part
9 of the negligence theory. That's simply the strict product liability
10 theory.

11 And they haven't produced evidence that ALA failed to
12 adhere, to some accepted standard of conduct. There's no evidence
13 in the record. There's nothing provided with respect to their
14 opposition in that regard. And with respect to again conflating of
15 ALA with the Lamborghini Italy entity, there's no evidence in the
16 record that somehow that was an alter ego so that their conduct can
17 be imputed. That simply doesn't exist here, Your Honor. There's no
18 such evidence in the record.

19 So with respect to the negligence claim, Your Honor, that
20 should be granted.

21 The wrongful death and vicarious liability claims are the
22 12th and 7th claims, Your Honor. And those are derivative claims.
23 And so for the same reasons, summary judgment should be granted
24 on those.

25 With respect to the punitive damages claim, Your Honor, I

1 think as evidenced from the motion that you heard earlier today,
2 again, in this record, there is simply no evidence of ALA conduct, no
3 evidence of a culpable mental state. There's no evidence of officer,
4 employee, director ratification. There's just simply no evidence of
5 conduct.

6 And again, the request for relief under NRCP 50/60 is
7 deficient and doesn't meet the required standard.

8 The Ben-Kely plaintiffs have presented no information
9 with respect to what possible genuine issue of triable fact that could
10 be presented to this Court in that regard.

11 And so again, Your Honor, I won't reiterate this -- the
12 arguments that I made with respect to the Sherwood plaintiffs, as I
13 know Your Honor is familiar with them.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Mr. Brenske.

17 MR. BRENSKE: Thank you, Your Honor. To begin with,
18 and I want the Court not to delay its decision today. But I do want to
19 make out to -- make the point to the Court that I received
20 18,000 pages of documents from this defendant on a holiday a July
21 the 5th.

22 I finally got appropriate answers -- well, I got answers to
23 interrogatories and response to requests to produce documents that
24 were due a year and a half ago -- I got those at July 6, 2021, at
25 12:08 p.m. that afternoon.

1 Now, with that -- I'm just letting the Court know that that
2 happened. I have more than enough argument to defeat this Motion
3 for Summary Judgment, very simply.

4 Number one, yes, the plaintiff does have an expert. It is
5 Dr. Lary Simms who is the chief medical examiner for the Clark
6 County Coroner's Office for 19 years and opined several things.
7 Number one, that this man ended up burning to death. He did have
8 an aortic laceration, and the combination of the heat, smoke, and fire
9 that burned this man beyond recognition was the cause of death.

10 Number two, although counsel seems to pooh-pooh
11 Dr. Miller, Dr. Miller is a biomechanical -- excuse me -- biomedical,
12 mechanical, and manufacturing engineer who indicated that the
13 product was defective, and it failed to provide either a four-point or
14 five-point shoulder harness.

15 During Dr. Miller's deposition, we showed Lamborghini
16 the four-point restraint system offered by the Huricon [phonetic]
17 system the following year.

18 So there's -- there is a plethora of evidence to show that
19 the fuel system in this vehicle created a ball of fire that immolated
20 my client, that the failure to provide either a four-point or five-point
21 system was directly -- well, let me restate that.

22 Dr. Miller indicated that the fact that the three-point
23 system was used assisted in the causation of the aortic artery tear.
24 And that if another system had been used, that would not have
25 happened. So I don't want to -- I mean, it's late in the day. That's all

1 I need.

2 Oh, Your Honor, we don't have a problem with
3 abandoning the punitive damage cause of action. We were going to
4 abandon that anyway.

5 And as part of our -- our pretrial memorandum that we
6 sent a draft to some time ago, we abandoned our negligence causes
7 of action.

8 THE COURT: Okay. And your --

9 MR. BRENSKE: And that's basically based upon the fact
10 that you can't use comparative negligence in a strict liability case.
11 It's got nothing to do with the evidence that we've gotten from the
12 defendant.

13 THE COURT: Thank you.

14 And the reply, please.

15 MS. VARGAS: Yes, Your Honor. First, I think the record
16 before Your Honor will indicate that Mr. Brenske's representations
17 with respect to Dr. Simms' testimony are inaccurate from a factual
18 standpoint and medical standpoint.

19 In addition, Mr. Brenske discusses Mr. Miller's testimony
20 with respect to how the three-point restraint contributed to the aortic
21 laceration.

22 And I would point out to Your Honor that Mr. Miller is not
23 a medical doctor; he cannot render opinions with respect to the
24 injury causation, as Mr. Brenske has just suggested to the Court he
25 has and should be permitted to.

1 With respect to the reference to the Huricon system that
2 was offered the following year, Your Honor, there is no evidence in
3 this record that, number one, that actually transpired. And in fact,
4 contrary to Mr. Brenske's representation, there is evidence in the
5 record that that system was not offered in a Huricon model in the
6 United States. It was not available in the United States.

7 And -- and lastly, with respect to the fuel system,
8 Mr. Brenske raised that the fuel system created a ball of fire resulting
9 in his client's death. Again, Your Honor, the issue doesn't relate to
10 the fuel system or any defect in it. The injury was caused by the
11 crash and the forces of the crash. And that is undisputed.

12 Thank you, Your Honor.

13 THE COURT: All right.

14 I'm just hesitant to grant the summary judgment,
15 Ms. Vargas, I -- your argument is compelling. But I'm being asked to
16 weigh the facts of the case, and they are in dispute.

17 So the -- the motion will be denied -- granted with regard
18 to the punitive damages, denied with the balance of your request.

19 Mr. Brenske to prepare the order.

20 Ms. Vargas, you'll approve the form of that with your
21 team.

22 And any questions? Because what I'm going to --

23 Oh, go ahead.

24 MS. VARGAS: Yes, Your Honor. A clarification. So
25 Mr. Brenske is abandoning the negligence and punitive damages

1 claims. I just --

2 THE COURT: That's what I understood today.

3 MS. VARGAS: Okay. I just want to be sure that I didn't
4 mishear you, Your Honor.

5 THE COURT: You -- Mr. Brenske, make sure you include
6 that in the order.

7 MR. BRENSKE: Yes, Your Honor, I will.

8 THE COURT: And the same with Mr. Samson for any
9 abandoned causes of action.

10 MR. SAMSON: We will, Your Honor.

11 THE COURT: Okay. Now, my suggestion is going to be on
12 scheduling that since that's not my forte, I'm going to throw Nicole
13 under the bus and she's going to work with you guys. And I thank
14 you in advance for you too. I saw you over there working together.
15 Thank you both.

16 Everybody stay safe and healthy. Everybody who is not
17 here, I hope to see everybody in person, without a mask soon.

18 MS. VARGAS: So, Your Honor, again, I'm sorry to pester
19 you, just --

20 THE COURT: Oh, no, no.

21 MS. VARGAS: -- a request for clarification.

22 THE COURT: Okay.

23 MS. VARGAS: So will the Court then send a minute order
24 or an order out to counsel with respect to available dates for the
25 *motions in limine*?

1 THE COURT: No. I -- I think you can settle it today with
2 Nicole.

3 MS. VARGAS: Oh, I see.

4 THE COURT: And -- and if you need time, fine. But these
5 guys, they're so professional. And it's really hard work, so don't
6 pester them. Okay?

7 MS. VARGAS: And just one -- one more thing,
8 Your Honor.

9 Mr. Hostetler [phonetic] and Mr. Kelfo [phonetic] came out
10 to do oral argument. And since they won't be able to do that, I
11 wanted to introduce both of them, Mr. Hostetler and Mr. Kelfo.

12 THE COURT: Well, I wondered who was here today.
13 Okay. All right. Not -- not my finest hour. But next time you're here,
14 we'll have a better go of it. Thank you all.

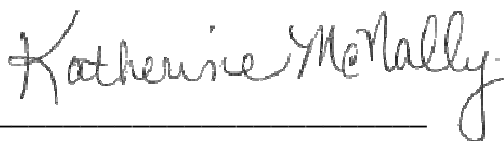
15 MS. VARGAS: Thank you, Your Honor.

16 MR. SAMSON: Thank you, Your Honor.

17 [Proceeding concluded at 3:39 p.m.]

18 * * * * *

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

22 

23 Katherine McNally
24 Independent Transcriber CERT**D-323
25 AZ-Accurate Transcription Service, LLC

20

20

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ESTATE OF GIL BEN-KELY by
17 ANTONELLA BEN-KELY, the duly appointed
representative of the ESTATE and as the widow
18 and heir of Decedent GIL BEN-KELY; SHON
BEN-KELY, son and heir of decedent GIL
19 BEN-KELY; NATHALIE BEN- KELY-
SCOTT, daughter and heir of the decedent GIL
20 BEN-KELY, GWENDOLYN WARD, as
Personal Representative of the ESTATE OF
21 CRAIG SHERWOOD, deceased;
GWENDOLYN WARD, Individually, and as
22 surviving spouse of CRAIG SHERWOOD,
deceased; GWENDOLYN WARD, as Mother
23 and Natural Guardian of ZANE SHERWOOD,
surviving minor child of CRAIG SHERWOOD,
24 deceased,

25 Plaintiffs,

26 v.

27 SPEED VEGAS, LLC, a Delaware Limited
liability company; SCOTT GRAGSON
28 WORLD CLASS DRIVING, an unknown

Case No. A-17-757614-C
Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER

entity; SLOAN VENTURES 90, LLC, a Nevada limited liability company; ROBERT BARNARD; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company; AARON FESSLER; the ESTATE OF CRAIG SHERWOOD; AUTOMOBILI LAMBORGHINI AMERICAN, LLC, a foreign limited liability company; FELICE J. FIORE, JR.; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive

Defendants.

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,

Crossclaim Plaintiffs,

v.

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY, the duly appointed representative of the ESTATE; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

ESTATE OF BEN-KELY by ANTONELLA BEN-KELY, duly appointed representative of the Estate and 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 decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

ESTATE OF CRAIG SHERWOOD; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

TO: **ALL INTERESTED PARTIES**; and

TO: **COUNSEL OF RECORD**:

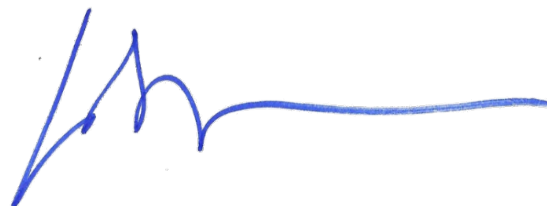
1 **PLEASE TAKE NOTICE** that on the 21st day of July, 2021, an Order Denying Motion
2 for Summary Judgment or, in the alternative, Partial Summary Judgment as to Defendant Felice J.
3 Fiore, Against Plaintiffs Estate of Craig Sherwood, Gwendolyn Ward, and Zane Sherwood, was
4 entered by this Court in the above-entitled action.

5 A true and correct copy is attached hereto.

6 **DATED** this 21st day of July, 2021.

7 **PANISH SHEA & BOYLE, LLP**

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PANISH SHEA & BOYLE, LLP and that on this 21st day of July, 2021, I caused the foregoing Notice of Entry of Order, to be served as follows:

[X] pursuant to N.E.F.C.R. 9 by serving it via this Court's Electronic Filing System ("EFS") to all parties listed in the Service Contact List of EFS.

By: /s/ Isolde Parr
An Employee of PANISH SHEA & BOYLE LLP

1 **ORD**

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23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 ESTATE OF GIL BEN-KELY by
26 ANTONELLA BEN-KELY, the duly
27 appointed representative of the ESTATE and as
28 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, deceased,

Plaintiffs,

v.

SPEED VEGAS, LLC, a Delaware Limited
liability company; SCOTT GRAGSON
WORLD CLASS DRIVING, an unknown

Case No. A-17-757614-C

Dept. No.: XXVII

**[PROPOSED] ORDER DENYING
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT AS TO
DEFENDANT FELICE J. FIORE,
AGAINST PLAINTIFFS ESTATE OF
CRAIG SHERWOOD, GWENDOLYN
WARD, and ZANE SHERWOOD**

1 entity; SLOAN VENTURES 90, LLC, a
2 Nevada limited liability company; ROBERT
3 BARNARD; MOTORSPORT SERVICES
4 INTERNATIONAL, LLC, a North Carolina
5 limited liability company; AARON FESSLER;
6 the ESTATE OF CRAIG SHERWOOD;
AUTOMOBILI LAMBORGHINI
AMERICAN, LLC, a foreign limited liability
company; FELICE J. FIORE, JR.; DOES I-X,
inclusive; and ROE CORPORATIONS I-X,
inclusive

7 Defendants.

8
9 GWENDOLYN WARD, as Personal
10 Representative of the ESTATE OF CRAIG
11 SHERWOOD, deceased; GWENDOLYN
12 WARD, Individually, and as surviving spouse
13 of CRAIG SHERWOOD, deceased;
14 GWENDOLYN WARD, as Mother and
15 Natural Guardian of ZANE SHERWOOD,
16 surviving minor child of CRAIG
17 SHERWOOD, deceased,

18 Crossclaim Plaintiffs,

19 v.

20 ESTATE OF GIL BEN-KELY by
21 ANTONELLA BEN-KELY, the duly
22 appointed representative of the ESTATE;
23 DOES I-X, inclusive; and ROE
24 CORPORATIONS I-X, inclusive,

25 Crossclaim Defendants.

26 ESTATE OF BEN-KELY by ANTONELLA
27 BEN-KELY, duly appointed representative of
28 the Estate and 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 her of
decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

ESTATE OF CRAIG SHERWOOD; DOES I-
X, inclusive; and ROE CORPORATIONS I-X,
inclusive,

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1 On July 6, 2021, Defendant Felice Fiore's motion for summary judgment as to the Sherwood
2 Plaintiffs was heard by this Court. The Sherwood Plaintiffs opposed the motion, and Defendant
3 Fiore filed a reply. Ian Samson appeared at the hearing for the Sherwood Plaintiffs and James D.
4 Murdock and Alan Westbrook appeared for Mr. Fiore. Having considered the arguments of counsel
5 and the briefing and evidence submitted in support of and in opposition to the motion, and good
6 cause appearing, the Court hereby rules as follows:

7 Defendant Felice Fiore's motion for summary judgment is **DENIED** in its entirety. Whether
8 Mr. Fiore is subject to Nevada's product liability laws is a question of fact for the jury to decide at
9 trial. Mr. Fiore's reliance on NRS 86.371 and NRS 86.381 are misplaced because Mr. Fiore was
10 not sued in an effort to pierce the corporate veil, but as an individual who performed a commercial
11 transaction. Those statutes do not apply.

12 **ORDER**

13 NOW THEREFORE, IT IS HEREBY ORDERED that Motion for Summary Judgment or,
14 in the Alternative, Partial Summary Judgment as to Defendant Felice J. Fiore, Against Plaintiffs
15 Estate of Craig Sherwood, Gwendolyn Ward, and Zane Sherwood is **DENIED** in its entirety.

16 DATED this 21 day of July, 2021.

17
18 Dated this 21st day of July, 2021

19 

20 DISTRICT COURT JUDGE T

21 **E1A 248 4DC1 15B5**

Nancy Alf

District Court Judge

22 Respectfully submitted:

23 PANISH SHEA & BOYLE LLP

24
25 By: /s/ Ian Samson

26 Ian Samson, Esq.

27 Nevada Bar No. 15089

28 *Attorneys for Plaintiff*

1 Approved as to form and content:¹

2 TAYLOR ANDERSON LLP

3

4

5 By: /s/ James Murdock

6 James D. Murdock, Esq.

7 Admitted *pro hac vice*

8 Attorneys for Defendant Felice J. Fiore

9

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¹ Defendant agrees that this order expresses the Court's reasoning and conclusions. Defendant does not agree with much of the reasoning, findings of fact, or conclusions of law articulated in this order.

From: [JD Murdock, II](#)
To: [Ian Samson](#)
Cc: [Paul Tetreault](#); [Brent Anderson](#); [Jin Hee Park](#); [Sarah Rayburn](#); [corey@erinjuryattorneys.com](#); [Isolde Parr](#)
Subject: RE: SpeedVegas - 7/6 Hearing
Date: Wednesday, July 21, 2021 9:59:54 AM

CAUTION: External Email

Hi Ian –

Yes, approved to incorporate my signature assuming you are good with the proposed edits.

Thank you for your approval on our order; we will go ahead and incorporate your signature and submit it today as well.

JD

James D. Murdock, II
TAYLOR | ANDERSON, LLP
 1670 Broadway, Suite 900
 Denver, CO 80202
 Direct: (720) 473-5941
 Cell: (720) 663-1281

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jmurdock@talawfirm.com
www.talawfirm.com

DENVER | ORANGE COUNTY | SAN DIEGO | SACRAMENTO | SCOTTSDALE | DALLAS

If you received this transmission in error, please immediately notify the sender and delete the transmission.

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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5		
6	Estate of Gil Ben-Kely,	CASE NO: A-17-757614-C
7	Plaintiff(s)	
8	vs.	DEPT. NO. Department 27
9	SpeedVegas, LLC, Defendant(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/21/2021

15	Michael Merritt	michael.merritt@mccormickbarstow.com
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20	Melanie Hermann	mail@rlattorneys.com
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1 **NEOJ**
COREY M. ESCHWEILER
2 Nevada Bar No. 6635
ER INJURY ATTORNEYS
3 4795 South Durango
Las Vegas, Nevada 89147

4 -and-

5 RAHUL RAVIPUDI
6 Nevada Bar No. 14750
ravipudi@psblaw.com

7 PAUL A. TRAINA
Admitted Pro Hac Vice
8 traina@psblaw.com

IAN P. SAMSON, ESQ.
9 Nevada Bar No. 15089
samson@psblaw.com

10 **PANISH SHEA & BOYLE, LLP**
8816 Spanish Ridge Avenue
11 Las Vegas, NV 89148
Telephone: 310.477.1700
12 Facsimile: 310.477.1699

13 Attorneys for Plaintiffs

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ESTATE OF GIL BEN-KELY by
17 ANTONELLA BEN-KELY, the duly appointed
representative of the ESTATE and as the widow
18 and heir of Decedent GIL BEN-KELY; SHON
BEN-KELY, son and heir of decedent GIL
19 BEN-KELY; NATHALIE BEN- KELY-
SCOTT, daughter and heir of the decedent GIL
20 BEN-KELY, GWENDOLYN WARD, as
Personal Representative of the ESTATE OF
21 CRAIG SHERWOOD, deceased;
GWENDOLYN WARD, Individually, and as
22 surviving spouse of CRAIG SHERWOOD,
deceased; GWENDOLYN WARD, as Mother
23 and Natural Guardian of ZANE SHERWOOD,
surviving minor child of CRAIG SHERWOOD,
24 deceased,

25 Plaintiffs,

26 v.

27 SPEED VEGAS, LLC, a Delaware Limited
liability company; SCOTT GRAGSON
28 WORLD CLASS DRIVING, an unknown

Case No. A-17-757614-C
Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER

entity; SLOAN VENTURES 90, LLC, a Nevada limited liability company; ROBERT BARNARD; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company; AARON FESSLER; the ESTATE OF CRAIG SHERWOOD; AUTOMOBILI LAMBORGHINI AMERICAN, LLC, a foreign limited liability company; FELICE J. FIORE, JR.; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive

Defendants.

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,

Crossclaim Plaintiffs,

v.

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY, the duly appointed representative of the ESTATE; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

ESTATE OF BEN-KELY by ANTONELLA BEN-KELY, duly appointed representative of the Estate and 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 decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

ESTATE OF CRAIG SHERWOOD; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

TO: **ALL INTERESTED PARTIES**; and

TO: **COUNSEL OF RECORD**:

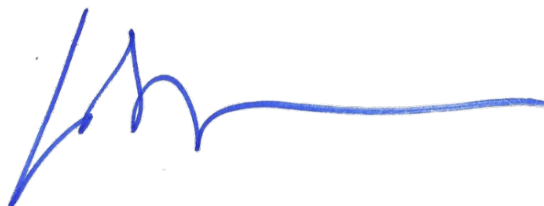
1 **PLEASE TAKE NOTICE** that on the 21st day of July, 2021, an Order Denying Motion for
2 Summary Judgment or, in the alternative, Partial Summary Judgment as to Defendant SpeedVegas,
3 LLC, Against Plaintiffs Estate of Craig Sherwood, Gwendolyn Ward, and Zane Sherwood, was
4 entered by this Court in the above-entitled action.

5 A true and correct copy is attached hereto.

6 **DATED** this 21st day of July, 2021.

7 **PANISH SHEA & BOYLE, LLP**

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RAHUL RAVIPUDI
Nevada Bar No. 14750
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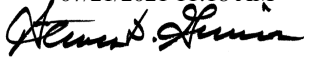
Attorneys for Gwendolyn Ward

001546

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CLERK OF THE COURT

1 **ORD**

2 COREY M. ESCHWEILER

3 Nevada Bar No. 6635

4 **ER INJURY ATTORNEYS**

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6 Las Vegas, Nevada 89147

7 -and-

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SPEED VEGAS, LLC, a Delaware Limited
liability company; SCOTT GRAGSON
WORLD CLASS DRIVING, an unknown

Case No. A-17-757614-C

Dept. No.: XXVII

**[PROPOSED] ORDER DENYING
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT AS TO
DEFENDANT SPEEDVEGAS LLC,
AGAINST PLAINTIFFS ESTATE OF
CRAIG SHERWOOD, GWENDOLYN
WARD, and ZANE SHERWOOD**

1 entity; SLOAN VENTURES 90, LLC, a
2 Nevada limited liability company; ROBERT
3 BARNARD; MOTORSPORT SERVICES
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1 On July 6, 2021, Defendant SpeedVegas LLC's motion for summary judgment as to the
2 Sherwood Plaintiffs was heard by this Court. The Sherwood Plaintiffs opposed the motion, and
3 Defendant SpeedVegas filed a reply. Ian Samson appeared at the hearing for the Sherwood
4 Plaintiffs and James D. Murdock and Alan Westbrook appeared for SpeedVegas. Having
5 considered the arguments of counsel and the briefing and evidence submitted in support of and in
6 opposition to the motion, and good cause appearing, the Court hereby rules as follows:

7 Defendant SpeedVegas's motion for summary judgment is **DENIED** in its entirety. There
8 are multiple questions of fact for the jury to determine in this matter. Those facts include the issues
9 raised in SpeedVegas's motion, including: whether or not there was adequate instruction, whether
10 there was proper control of the vehicle, whether the vehicle was driving too fast or on the wrong
11 driving line, whether or not the fire response or the presence of fire equipment could have affected
12 the outcome, whether or not the track was compliant with industry standards, and also the fact Mr.
13 Sherwood was not told about the turn where the crash occurred being the most dangerous part of
14 the course. Summary judgment is not appropriate because of these facts.

15 **ORDER**

16 NOW THEREFORE, IT IS HEREBY ORDERED that Motion for Summary Judgment or,
17 in the Alternative, Partial Summary Judgment as to Defendant SpeedVegas LLC, Against
18 Plaintiffs Estate of Craig Sherwood, Gwendolyn Ward, and Zane Sherwood is **DENIED** in its
19 entirety.

20 DATED this 21 day of July, 2021.

21
22
23 Dated this 21st day of July, 2021

24 Nancy L Alf T
DISTRICT COURT JUDGE

25 949 D53 1119 51C7
26 Nancy Alf
27 District Court Judge
28

1 Respectfully submitted:

2 PANISH SHEA & BOYLE LLP

3

4

By: /s/ Ian Samson
Ian Samson, Esq.
Nevada Bar No. 15089
Attorneys for Plaintiff

7

8 Approved as to form and content:¹

9 TAYLOR ANDERSON LLP

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Admitted *pro hac vice*
Attorneys for Defendant SpeedVegas LLC

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Gil Ben-Kely, Plaintiff(s)	CASE NO: A-17-757614-C
vs.	DEPT. NO. Department 27
SpeedVegas, LLC, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court’s electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/21/2021

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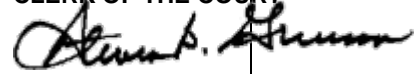
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*Attorneys for Defendants SpeedVegas, LLC
and Felice J. Fiore Jr.*

☐ Attorney for (Name):
☐ Plaintiff, In Proper Person
☒ Defendant, In Proper Person

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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 BENKEL Y-SCOTT, daughter
and heir of the decedent GIL BEN-KELY;
GWENDOLYN WARD, as personal

CASE NO. A-17-757614-C
Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER

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

Plaintiffs,

v.

SPEEDVEGAS, LLC, a Delaware 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.

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that an Order was filed in this matter on October 1, 2021 in the
above-captioned matter.

///

///

///

1 A filed stamped copy is attached hereto.

2
3 DATED this 1st of October, 2021.

4 PERRY & WESTBROOK
5 a Professional Corporation

6 /s/ Alan W. Westbrook
7 ALAN W. WESTBROOK, ESQ.
8 Nevada Bar No. 006167
9 11500 S. Eastern Avenue, Ste. 140
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14 Attorneys for Defendants

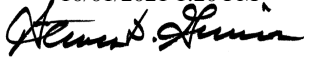
15 **CERTIFICATE OF SERVICE**

16 I HEREBY CERTIFY that on the 1ST day of October, 2021, a true and correct copy of
17 the foregoing **ORDER DENYING MOTION FOR SUMMARY JUDGMENT OR, IN THE**
18 **ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT FELICE J.**
19 **FIORE, AGAINST PLAINTIFFS ESTATE OF GIL BEN-KELY by ANTONELLA BEN-**
20 **KELY, the duly appointed representative of the ESTATE and as the widow and heir of**
21 **Decedent GIL BEN-KELY; SHON BENKELY, son and heir of decedent GIL BENKELY;**
22 **NATHALIE BEN-KELY-SCOTT, daughter and heir of the decedent GIL BEN-KELY** was
23 served upon the following counsel via the Eighth Judicial District Court's electronic filing
24 system addressed to:
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///

William R. Brenske, Esq. BRENSKE ANDREEVSKI & KRAMETBAUER 3800 Howard Hughes Pkwy., Ste. 500 Las Vegas, NV 89169 Attorneys for Plaintiffs, ESTATE OF GIL BEN-KELY, et al.	Ryan S. Petersen, Esq. WILEY PETERSEN 1050 Indigo Drive, Suite 200B Las Vegas, NV 89145 Attorneys for Defendant, AUTOMOBILI LAMBORGHINI AMERICA, LLC
Gary Guelker, Esq. RESNICK & LOUIS, P.C. 8925 W Russell Road Suite 220 Las Vegas, NV 89148 Attorney for Plaintiff, ESTATE OF GIL BEN-KELY	Susan V. Vargas, Esq. KING & SPALDING LLP 633 W. 5 th Street, Suite 1600 Los Angeles, CA 90071 Attorneys for Defendant, AUTOMOBILI LAMBORGHINI AMERICA, LLC
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/s/ Veronica Gonzalez
An Employee of PERRY & WESTBROOK,
A Professional Corporation


CLERK OF THE COURT

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Attorneys for Defendants,

SPEEDVEGAS, LLC; FELICE J. FIORE, JR.

DISTRICT COURT

CLARK COUNTY, NEVADA

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, deceased,

Plaintiffs,

Case No. A-17-757614-C

Dept. No.: XXVII

**[PROPOSED] ORDER DENYING
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT AS TO
DEFENDANT FELICE J. FIORE,
AGAINST PLAINTIFFS 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**

v.

SPEED VEGAS, LLC, a Delaware Limited liability company; SCOTT GRAGSON WORLD CLASS DRIVING, an unknown entity; SLOAN VENTURES 90, LLC, a Nevada limited liability company; ROBERT BARNARD; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company; AARON FESSLER; the ESTATE OF CRAIG SHERWOOD; AUTOMOBILI LAMBORGHINI AMERICAN, LLC, a foreign limited liability company; FELICE J. FIORE, JR.; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive

Defendants.

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,

Crossclaim Plaintiffs,

v.

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY, the duly appointed representative of the ESTATE; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

ESTATE OF BEN-KELY by ANTONELLA BEN-KELY, duly appointed representative of the Estate and 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 decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

ESTATE OF CRAIG SHERWOOD; DOES I-X, inclusive; and ROE CORPORATIONS I-X,

1 inclusive,
2 Crossclaim Defendants.

3
4 On July 6, 2021, Defendant Felice Fiore's motion for summary judgment as to the Ben-
5 Kely Plaintiffs was heard by this Court. The Ben-Kely Plaintiffs opposed the motion, and Defendant
6 Fiore filed a reply. William Brenske appeared at the hearing for the Ben-Kely Plaintiffs and James
7 Dr. Murdock and Alan Westbrook appeared for Mr. Fiore. Having considered the arguments of
8 counsel and the briefing and evidence submitted in support of and in opposition to the motion, and
9 good cause appearing, the Court hereby rules as follows:

10 Defendant Felice Fiore's motion for summary judgment is **DENIED** in its entirety. Whether
11 Mr. Fiore is subject to Nevada's product liability laws is a question of fact for the jury to decide at
12 trial. Mr. Fiore's reliance on NRS 86.371 and NRS 86.381 are misplaced because Mr. Fiore was
13 not sued in an effort to pierce the corporate veil, but as an individual who performed a commercial
14 transaction. Those statutes do not apply. The Court also finds that the NIIA does bar Mr. Fiore's
15 claim against Mr. Fiore.

16 **ORDER**

17 NOW THEREFORE, IT IS HEREBY ORDERED that Motion for Summary Judgment or,
18 in the Alternative, Partial Summary Judgment as to Defendant Felice J. Fiore, Against Plaintiffs
19 ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY, the duly appointed representative
20 of the ESTATE and as the widow and heir of Decedent GIL BEN-KELY; SHON BEN-KELY,
21 son and heir of decedent GIL BEN-KELY; NATHALIE BEN- KELY-SCOTT, daughter and heir
22 of the decedent GIL BEN-KELY is **DENIED** in its entirety.

23 DATED this 1st day of October, 2021.

24 Dated this 1st day of October, 2021

25 Nancy L Alf
26 DISTRICT COURT JUDGE TW

27 9EB 48D 2A5E 4129
28 Nancy Alf
District Court Judge

1 Respectfully submitted:

2 TAYLOR ANDERSON LLP

3

4

5 By: /s/ James D. Murdock
6 James D. Murdock, Esq.
7 Admitted *pro hac vice*
8 *Attorneys for Defendant Felice J. Fiore*

8

9 Approved as to form and content:

10 BRENSKE ANDREEVSKI & KRAMETBAUER

11 By: /s/ William Brenske
12 William Brenske, Esq.
13 Nevada Bar No. 1806
14 *Attorneys for Plaintiffs*

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From: Ryan Krametbauer <rkrametbauer@baklawlv.com>
Sent: Wednesday, September 29, 2021 12:50 PM
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Subject: Re: Ben-Kely Motions on OST - September 29, 2021 at 10:30 am

JD,

Bill took a look at this yesterday and gave his permission to use his e-signature.

Thanks again for preparing.

Ryan

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Subject: Re: Ben-Kely Motions on OST - September 29, 2021 at 10:30 am

JD,

Thanks. We will take a look and get back to you.

Ryan

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Date: Tuesday, September 28, 2021 at 12:48 PM

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Gil Ben-Kely,
Plaintiff(s)

CASE NO: A-17-757614-C

vs.

DEPT. NO. Department 27

World Class Driving,
Defendant(s)

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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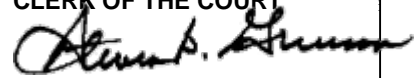
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DISTRICT COURT

CLARK COUNTY, NEVADA

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,

Plaintiffs,

v.

SPEED VEGAS, LLC, a Delaware limited liability
company d/b/a SPEEDVEGAS; The ESTATE of GIL
BEN-KELY by ANTONELLA BEN-KELY, the duly
appointed representative of the ESTATE;
AUTOMOBILI LAMBORGHINI AMERICA, LLC, a
foreign limited liability company; FELICE J. FIORE,
JR., an individual; DOES I-X, inclusive; and ROE
CORPORATIONS I-X, inclusive,

Defendants.

CASE NO. A-18-779648-C
DEPT. NO. Department 1

COMPLAINT

**EXEMPT FROM ARBITRATION:
DAMAGES IN EXCESS OF \$50,000**

Plaintiffs complain as follows:

THE PARTIES AND JURISDICTION

1. Plaintiff GWENDOLYN WARD ("Gwen") is, and, at all relevant times, was, an individual and resident of Toronto, Ontario, Canada.

2. Gwen is the surviving spouse, heir, and successor-in-interest to CRAIG SHERWOOD ("Craig"), the decedent, who also was a resident of Toronto, Ontario, Canada.

1 3. Plaintiff ZANE SHERWOOD ("Zane") is, and at all relevant times, was, an individual and
2 resident of Toronto, Ontario, Canada. Zane is the surviving child, heir, and successor-in-interest to CRAIG
3 SHERWOOD. GWEN is ZANE'S mother and natural guardian.

4 4. Upon information and belief, Defendant SPEED VEGAS, LLC d/b/a SPEEDVEGAS
5 ("SPEEDVEGAS") is, and, at all relevant times, was, a Delaware limited liability company with its
6 principal place of business in Clark County, Nevada, registered to do business in the State of Nevada.

7 5. Upon information and belief, Defendant GIL BEN-KELY ("Ben-Kely"), deceased, at all
8 relevant times, was a resident of Clark County, Nevada.

9 6. Upon information and belief, ANTONELLA BEN-KELY is the duly appointed
10 representative of the ESTATE OF GIL BEN-KELY.

11 7. Upon information and belief, Defendant AUTOMOBILI LAMBORGHINI AMERICA,
12 LLC ("Lamborghini") was a foreign limited liability company registered to do business in Clark County,
13 Nevada.

14 8. Upon information and belief, Defendant FELICE J. FIORE, JR. ("Fiore") is a resident of the
15 State of Connecticut.

16 9. The true names and capacities of the Defendants designated herein as Doe Individuals or
17 Roe Corporations are presently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious
18 names. When the true names and capacities of these Defendants are ascertained, Plaintiffs will amend this
19 Complaint accordingly.

20 10. At all times pertinent herein, Defendants were agents, servants, employees, or joint
21 venturers of every other Defendant, and at all times mentioned herein were acting within the scope and
22 course of said agency, employment, or joint venture, with the knowledge, permission, and consent of all
23 other named Defendants.

24 11. The actions complained of herein occurred in Clark County, Nevada.

25 GENERAL ALLEGATIONS

26 A. CRAIG'S LIFE

27 12. The decedent, Craig Sherwood, was born and raised in Toronto, Ontario, Canada. Growing
28 up in Toronto, Craig had a passion for baseball and basketball. Craig played baseball and basketball

1 throughout his youth, but excelled in basketball during high school where he attended the Runnymede
2 Collegiate Institute in Toronto. Craig had a successful high school career that included winning a couple of
3 high school championships. After completing high school, Craig attended York University in Toronto
4 where he played on the varsity basketball team. Craig chose to attend York University so he could remain
5 close to his parents, his older brother, Michael, and his group of friends. Remaining close to his friends and
6 family was important to Craig because of his close relationship with Michael. Craig looked up to Michael
7 as a role model and loved spending time with him and the rest of their family.

8 13. Craig obtained an Honors Degree in marketing and management from York University.
9 After graduating from college, Craig continued to live in Toronto and worked in sales with a Canadian
10 telecommunications company. This position provided Craig the opportunity to develop his proficiency in
11 sales. In fact, despite being part of a nearly 2,500-member sales force, Craig eventually became one of the
12 top-grossing sales representatives in the entire company. After spending several years in
13 telecommunications, Craig decided to begin selling real estate full time, once a friend saw Craig's skill in
14 sales and his rapport with people.

15 14. As in telecommunications, Craig's hard work combined with his passion, charisma,
16 optimism, and natural talent for sales caused Craig to excel in selling real estate. In just five years, Craig
17 moved from working as a real estate agent, to a broker/agent, to ultimately opening his own real estate
18 brokerage firm at Keller Williams Realty, a company that prides itself in treating its agents and brokers like
19 family. Craig was attracted to Keller Williams Realty because of the mentorship and training provided by
20 the company's veteran agents and brokers and the collegial and team-based selling atmosphere. In other
21 words, Craig's experience at Keller Williams Realty reminded him of his own family, and Craig never
22 hesitated to provide advice or mentorship to his colleagues, despite the competitive nature of the real estate
23 industry.

24 15. Craig continued to enjoy great success in real estate and through his hard work became one
25 of the top grossing broker/agents throughout all of Canada. As one of Craig's colleagues explained in an
26 interview, Craig "just soared. Where the rest of us are still making average money, he quadrupled it. He
27 kinda just hit his stride in terms of building his team and his system and his customer service and getting
28 ...

1 everything in place.”¹ In fact, Craig was actively seeking to expand his company with the addition of new
2 agents to keep up with the increased demand for Toronto real estate.

3 16. Craig’s passion for basketball never subsided. He continued to play pick-up games in his
4 spare time and was an avid Toronto Raptors fan. Craig went to many Raptors games, and if he could not
5 attend in person, Craig would be watching on television. As Michael remembers: Craig “liked to watch it –
6 play it – talk about it. And when he wasn’t watching it, playing it, or talking about it, he was likely
7 thinking about it!”

8 17. Craig’s passion for real estate and basketball was only eclipsed by his love and passion for
9 family. Craig was devoted to his wife, Gwen, whom he married in 2010. Craig and Gwen enjoyed
10 spending time together, including watching movies and going on movie night dates together. Craig was
11 just as devoted to his young son, Zane, and his step-daughter, Dakota. He loved talking about or playing
12 basketball with Zane and Dakota; or just hanging out at home with them together. The family spent
13 significant time together, and Gwen, Zane, and Dakota relied on Craig for support, companionship, society,
14 and comfort. This was all taken from them on February 12, 2017, when Craig suffered a preventable death
15 at the SPEEDVEGAS race track located south of Las Vegas.

16 **B. THE RACETRACK**

17 18. SPEEDVEGAS opened in 2016 in an unincorporated and generally undeveloped and
18 unimproved area of Clark County, Nevada, located about 12 miles south of the Las Vegas Strip.

19 19. At all relevant times herein, SPEEDVEGAS was operating under a temporary Clark County
20 business license issued for a “Race track driving experience with Retail Gift Shop and Café.” As will be
21 explained in more detail below, SPEEDVEGAS was as flippant with its customers’ safety as it was with
22 basic, business licensing rules.

23 20. The SPEEDVEGAS racetrack was designed and constructed by Robert Barnard and
24 Motorsport Services International.

25 21. While SPEEDVEGAS claims its racetrack is “purpose built to exceed the FIA Level 2
26 standard,” the racetrack does not, in fact, meet FIA Level 2 requirements.

27 ...

28 ¹ See “<https://www.thestar.com/news/gta/2017/03/06/thornhill-rising-star-killed-in-las-vegas-lamborghini-crash.html>”.

1 22. Specifically, FIA Level 2 requires drivers to be equipped with a safety harness and a fire
2 suit. It requires special safety equipment for vehicles, including plumbed in fire extinguishers and fuel
3 bladders to prevent fires. The certification further requires safety equipment for the racetrack, including
4 emergency service trucks with foam extinguishment systems and certified safety barriers.

5 23. Upon information and belief, SPEEDVEGAS did not provide any of these safety features to
6 its customers despite its advertising to the contrary.

7 24. Upon information and belief, neither the SPEEDVEGAS racetrack nor SPEEDVEGAS's
8 operations have been certified or otherwise sanctioned by any racing organization or sanctioning body.

9 25. This, because SPEEDVEGAS is not actually a racetrack. Despite applying to be licensed as
10 a racetrack, SPEEDVEGAS is a novelty driving track seeking to lure tourists and amateur vehicle
11 enthusiasts with the thrill of driving high-performance, luxury super cars on a "monster" track that has "no
12 speed limit"—all without any training or experience.

13 26. To that end, SPEEDVEGAS proudly claims: "The moment you arrive at SPEEDVEGAS,
14 you'll know you've never experienced anything like it. SPEEDVEGAS brings your exotic car racing
15 fantasies to life on the longest and fastest racetrack in Las Vegas. And that's just the beginning."

16 27. SPEEDVEGAS invites customers to "Choose from a multi-million dollar collection of
17 exotic supercars: Ferrari, Lamborghini, Porsche, Mercedes & more" and to "Experience vehicle handling
18 and grip on 12 incredible turns and chicanes. Dive into the corners with impressive 20 degree banks. No
19 cones propped up in a parking lot here. Over 60 feet of track elevation change on each lap will leave you
20 giggling like a schoolgirl." In other words, "SPEEDVEGAS lets you drive your dream car the way it was
21 meant to be driven: Free from the confines of speed limits and traffic."

22 28. The SPEEDVEGAS website contains multiple references to its "monster 1.5 mile track,
23 with a half mile straight" and encourages customers to "Surrender to speed on the endless 2,650' monster
24 front straight and 1,000' back straight. More jaw-dropping thrills, more passing zones."

25 29. SPEEDVEGAS specifically encourages customers to achieve high speeds and provides
26 "Tips from the Track Pro" urging customers to drive as fast as possible through the long straightaway: "As
27 you approach the start line, get hard on the accelerator, reaching your maximum possible speed near the
28 end of the 2,650' straight."

1 30. SPEEDVEGAS also employed certain technology that purported to track driver's lap
2 speeds. SPEEDVEGAS published the top speeds on an electronic display for customers to observe and
3 ostensibly to foster competition between drivers. Upon information and belief, SPEEDVEGAS artificially
4 inflated the speeds displayed on the electronic readout, improperly encouraging drivers to drive faster and
5 faster to beat the inflated lap times with no regard for driver safety.

6 31. This, all while also claiming no prior experience is necessary and that the SPEEDVEGAS
7 "experience is open to everyone. Even if you've never driven on a racetrack, SPEEDVEGAS will feel
8 natural the moment you arrive."

9 32. In other words, anyone 18 years of age or older with "a valid driving license in the country
10 of their residence" and closed toed shoes is permitted to drive one of SPEEDVEGAS's high performance,
11 race cars on its "monster" track.

12 **C. THE LAMBORGHINI AVENTADOR ROADSTER**

13 33. One of the sports cars available to drive at SPEEDVEGAS was a 2015 Lamborghini
14 Aventador LP 700-4 Roadster (the "Roadster").

15 34. The Roadster version of the Aventador was introduced for model year 2013, and was
16 described by Lamborghini as:

17 the newest open-top version of Lamborghini's flagship vehicle. With a 700-
18 horsepower, 6.5-liter V12 engine, the Aventador Roadster reaches 60 mph in less
19 than three seconds and boasts a top speed of 217 mph. The vehicle's removable top
features high-tech, lightweight carbon fiber technologies to achieve a low weight of
just 26 pounds.

20 35. The Roadster is one of the fastest and most powerful production "supercars" in the world
21 and has a price of more than \$500,000.

22 36. The Roadster was also the fastest, heaviest, and most powerful super car SPEEDVEGAS
23 offered to its customers. At 3,582 pounds, the Roadster outweighed SPEEDVEGAS's other cars by at least
24 1,000 pounds.

25 37. SPEEDVEGAS leased the Roadster from its owner, Defendant Fiore. Fiore is also an owner
26 and/or creditor of SPEEDVEGAS.

27 ...

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1 38. Upon information and belief, once SPEEDVEGAS took possession of the Roadster from
2 Fiore, SPEEDVEGAS's driving instructors immediately expressed concerns with the braking and handling
3 capabilities of the Roadster.

4 39. SPEEDVEGAS installed a brake pedal on the passenger side of the Roadster. This,
5 presumably so that the SPEEDVEGAS instructor could apply the car's brakes while sitting in the vehicle's
6 passenger seat. Upon information and belief, even if properly applied, the passenger side brake only
7 provided a little more than one-half the Roadster's available braking power.

8 40. SPEEDVEGAS was well aware of the Roadster's braking problems, and photographs posted
9 by a SPEEDVEGAS employee on Facebook confirm SPEEDVEGAS mechanics were working on the
10 Roadster's brakes as late as February 11, 2017.

11 41. SPEEDVEGAS made additional aftermarket modifications to the Roadster's rear spoiler and
12 exhaust system that created additional unreasonable safety risks, including the risk of fire and loss of
13 stability and control at higher speeds.

14 42. Upon information and belief, SPEEDVEGAS instructors complained on more than one
15 occasion about shoddy maintenance of the SPEEDVEGAS fleet, including problems with bald tires,
16 cracked brake rotors, and other braking and handling problems.

17 43. Further, Aventador Roadsters have shown a propensity to catch fire without a collision even
18 taking place, resulting in multiple recalls by the National Highway Traffic Safety Administration
19 (NHTSA).

20 44. This includes a February 3, 2017, recall of the vehicle's entire fuel EVAP system due to a
21 defect that "could cause fuel vapors not treated properly [sic]. With not properly treated fuel vapors,
22 particular maneuvers, as example engine over revving at idle, could imply contact between fuel vapor and
23 hot gasses. Especially if combined with a not approved aftermarket exhaust system this could lead to risk
24 of fire." Upon information and belief, Lamborghini was aware of the Aventador's faulty design for at least
25 one year before issuing a recall, and, even then, forced dealers to wait until late February, 2017, to begin
26 replacing the necessary components.

27 45. Even more egregious, Lamborghini could have plumbed a fire extinguishment tubing system
28 into the Roadster's engine compartment. This type of fire suppression system consists of polymer tubing

1 that is connected to a fire extinguisher and routed around and above the vehicle's engine compartment.
2 Upon detection of a fire, the polymer tubing bursts, releasing the extinguishing agent to quickly and
3 effectively suppress a fire, all at a fraction of the Roadster's \$500,000 price tag.

4 46. Alternatively, Defendants also could have installed a fire shield panel around the
5 Lamborghini's fuel system. This system is premised on the notion that any object that could puncture or
6 ignite gasoline must first pass through a breakable, protective wrap containing fire suppressing powder that
7 is installed around the dual fuel tanks. As the protective wrap is shattered by the puncturing object, a cloud
8 of fire suppressing powder is released preventing ignition of the fuel or quickly suppressing any fire. This,
9 at a commercially feasible cost of approximately \$400.

10 47. Even though the Roadster was difficult for even the most experienced driving instructors to
11 control while on the SPEEDVEGAS track, SPEEDVEGAS did not place any restrictions on operating the
12 Roadster, other than requiring drivers to be at least 18 years of age, wear closed toe shoes, and have "a
13 valid driving license."

14 48. Fiore, as owner of the Lamborghini, would have received all NHTSA recall notices. He also
15 should have known that simply having a drivers' license did not qualify someone to drive a super car on a
16 racetrack with no speed limit.

17 **D. THE CRASH**

18 49. In mid-February, 2017, Craig was visiting Las Vegas to attend the 2017 Keller Williams
19 Realty Family Reunion, Keller William's annual, company-wide conference.

20 50. On February 12, 2017, Craig and one of his colleagues decided to take an excursion to
21 SPEEDVEGAS.

22 51. Craig opted to drive laps in the Roadster.

23 52. Notably, on information and belief, SPEEDVEGAS did not require Craig to provide a
24 driver's license, contrary to—arguably the most important of—SPEEDVEGAS's own policies.

25 53. In fact, Aaron Fessler, CEO of SPEEDVEGAS, emailed the Clark County Coroner's office
26 within a couple weeks of the crash to obtain a copy of Craig's driver's license in an effort to cover
27 SPEEDVEGAS's tracks with regard to its own policy failure:

28 . . .

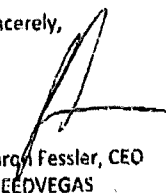
Clark County Office of the Coroner/Medical Examiner
1704 Pinto Lane
Las Vegas, NV 89106
Attention: Cynthia Aguirre

To Whom It May Concern:

Further to our conversation earlier today, I am requesting a copy of the current Driver's License for Mr. Craig Sherwood. I would appreciate if it could be emailed to my attention at aarun@speedvegas.com.

Thank you for your assistance.

Sincerely,



Aaron Fessler, CEO
SPEEDVEGAS

54. Defendant Gil Ben-Kely, one of SPEEDVEGAS's employee driving instructors, was assigned to accompany Craig in the Roadster.

55. Other than placing Ben-Kely in the Roadster's passenger seat, ostensibly to tell Craig when to brake or accelerate, SPEEDVEGAS and Ben-Kely made minimal efforts to ensure Craig's safety in the Roadster.

56. SPEEDVEGAS failed to provide Craig with any hands-on or simulator training in an Aventador Roadster or any car prior to allowing Craig to drive the "supercar" on the SPEEDVEGAS track.

57. SPEEDVEGAS failed to provide Craig with proper safety equipment for racing.

58. This includes failing to provide Craig with a fire suit, i.e., protective, fire retardant clothing that was readily available and commercially feasible at the time.

59. SPEEDVEGAS also failed to provide Craig with a 5-point harness restraint system.

60. Notwithstanding all of this, SPEEDVEGAS permitted Craig to drive the Roadster for seven laps on the SPEEDVEGAS track.

61. The Roadster began its seventh and final lap by accelerating down the SPEEDVEGAS "monster" straightaway that led into an S curve that composes Turns 1 and 2 of the track.

62. As the Roadster approached the end of the straightaway and the entrance to Turn 1 at top speed, the car failed to negotiate Turn 1 and instead continued heading in a straight direction at a high rate of speed.

63. At that point, the Roadster careened off the track at Turn 1 and continued travelling across an asphalt area between Turns 1 and 2. The Roadster, then, travelled across Turn 2 and left the track surface a second time.

64. Despite the instructor-side brake pedal in the Roadster, upon information and belief, the instructor failed to utilize the brake in order to reduce speed at any point prior to the crash. He also failed to provide adequate instruction on braking and accelerating.

65. As a result, the Roadster had nowhere else to go and slammed into a concrete barrier positioned only 20 feet from the paved driving surface on the edge of Turn 2. Because the used tires placed in front of the concrete wall were not secured horizontally, the tires easily moved to the side on impact exposing the concrete wall and failing to provide any significant crash protection.

66. Based on tire marks and the injuries sustained by Ben-Kely, the Roadster most likely struck the wall with its passenger side front, then rebounded into a clockwise rotation, ultimately coming to rest with the front of the vehicle resting against the concrete barrier.

67. Upon information and belief, this was the fifth crash at SPEEDVEGAS in its first 10 months of operation, and the third crash at Turn 1.

E. THE AFTERMATH AND CRAIG'S DEATH

68. Once the Roadster came to a stop it immediately became engulfed in flames.

69. Photographs from the crash show the Roadster's removable top lying in pristine condition on the track, indicating the top of the Roadster separated from body of the car at some point during the crash and before the fire.

70. Without the top in place to protect the passenger compartment from the rear engine fire, the fire rapidly progressed into the occupant compartment.

71. The fire began to consume the available fuel loads present in the occupant compartment, including the plastic components and wiring insulation, rubber from the left front tire, and other combustible components.

72. Despite the inherent and ever-present risk of fire at its driving track, SPEEDVEGAS was not prepared to extinguish a fire of this nature.

...

1 73. For example, SPEEDVEGAS's "fire safety team" had no training in extinguishing fires, and
2 SPEEDVEGAS failed to provide its "fire safety team" with any fire-fighting procedures.

3 74. Instead, SPEEDVEGAS had nine, portable, handheld fire extinguishers available at the
4 facility. Those extinguishers, however, were not rated to extinguish a fuel-fed fire of this nature. More
5 problematic, the fire extinguishers contained improper and inadequate amounts of extinguishment.

6 75. SPEEDVEGAS also failed to position a proper emergency fire vehicle or appropriate
7 extinguishment equipment on a vehicle between the dangerously sharp S curve in Turns 1 and 2, or at least
8 in the middle of the track to provide a rapid response time to fires. This resulted in at least a 2-3 minute
9 delay in getting to the Roadster after the crash. In fact, it was only after Craig's crash that SPEEDVEGAS
10 obtained an emergency fire vehicle equipped with a fire extinguishment tank, a routine piece of equipment
11 at most other racetracks.

12 76. In sum, SPEEDVEGAS and its employees were woefully unprepared to extinguish the fire
13 and were forced to call the Clark County Fire Department.

14 77. SPEEDVEGAS also failed to take into consideration the distances/time frames of the
15 nearest fire department, a particularly egregious oversight considering SPEEDVEGAS's remote location
16 and the critical nature of time in extinguishing fires.

17 78. Consequently, it took the Clark County Fire Department at least eight minutes to arrive on
18 scene after being called by SPEEDVEGAS, and upon information and belief, fifteen minutes to arrive after
19 the fire started.

20 79. As a result of the Defendants' failures, Craig passed away from thermal injuries. Craig was
21 37 years old.

22 80. Instead of allowing Craig's family to grieve after this tragedy, Defendants immediately
23 sought to distract from their own failures by reporting to the press, without evidence or information, that
24 "[t]here is evidence to suggest that the driver suffered a medical condition that may have caused the fatal
25 crash."²

26 ...

27 ...

28 ² See "<https://www.foxsports.com/motor/story/car-crash-fatal-lamborghini-speedvegas-las-vegas-medical-040617>".

1 81. As the Coroner's report and toxicology tests revealed, however, there was no medical
2 episode. In fact, it is virtually impossible from a medical perspective that Craig suffered any medical
3 episode while driving or that a medical episode caused the crash.

4 **FIRST CAUSE OF ACTION**
5 **(Wrongful Death—All Defendants)**

6 82. Plaintiffs incorporate paragraphs 1 through 81 of this Complaint as if those paragraphs were
7 fully incorporated herein.

8 83. The acts and omissions of Defendants set forth herein directly and proximately caused the
9 wrongful death of Craig Sherwood.

10 84. As a direct and proximate result of the wrongful death of Craig Sherwood, his heirs at law
11 have been deprived of his probable support, companionship, society, comfort, and consortium. Plaintiffs,
12 as the heirs and successors-in-interest of Craig Sherwood, and the Estate of Craig Sherwood, are thereby
13 entitled to recover from Defendants all damages caused by Defendants' conduct, including loss of
14 consortium, loss of society, comfort, and companionship, loss of wages/financial support, loss of services,
15 loss of inheritance, recovery for grief, mental anguish, emotional distress, pain and suffering, and medical,
16 funeral, and burial expenses, and all other such damages allowed by law.

17 85. Plaintiffs bring this wrongful death action pursuant to NRS 41.085 as the heirs of Craig
18 Sherwood and on behalf of the Estate of Craig Sherwood for damages against Defendants for their
19 "wrongful acts or neglect" in causing the death of Craig Sherwood on February 12, 2017.

20 **SECOND CAUSE OF ACTION**
21 **(Negligence—All Defendants)**

22 86. Plaintiffs incorporate paragraphs 1 through 85 of this Complaint as if those paragraphs were
23 fully incorporated herein.

24 87. Defendants owed Craig a duty of care to provide a reasonably safe race track driving
25 experience and vehicle.

26 88. Defendants breached their duty of care by, *inter alia*, designing, constructing, and operating
27 an unreasonably dangerous racetrack and vehicle; and failing to utilize, employ, and maintain adequate fire
28 safety and other safety precautions and procedures.

...

1 89. Craig died as a direct and proximate result of Defendants' breach of their duty of care.

2 90. As a direct and proximate result of the aforementioned acts and omissions of Defendants,
3 Craig died at 37 years of age survived by his wife, young son, and a stepdaughter.

4 91. Defendants' misconduct and omissions entitle Plaintiffs, in their capacities as heirs to, and
5 successors-in-interest of, the Estate of Craig Sherwood, to recover damages for the extreme pain and
6 suffering felt by Craig during the subject crash and the resulting fire. Plaintiffs are entitled to recover from
7 Defendants all damages caused by Defendants' conduct.

8 92. As a direct and proximate result of the aforementioned defects, Plaintiffs have been
9 damaged in an amount in excess of \$15,000.00.

10 **THIRD CAUSE OF ACTION**
11 **(Negligent Hiring, Retention, Training, and Supervision—SPEEDVEGAS)**

12 93. Plaintiffs incorporate paragraphs 1 through 92 of this Complaint as if those paragraphs were
13 fully incorporated herein.

14 94. SPEEDVEGAS hired, retained, and supervised employees who were unfit for their jobs,
15 unqualified, and/or ignorant of reasonable procedures regarding vehicle fire safety, vehicle maintenance
16 and repair, and racetrack operations and management.

17 95. SPEEDVEGAS knew or should have known that the employees it hired, retained, and
18 supervised to maintain the sport cars and/or manage the operations of SPEEDVEGAS were unfit for the
19 jobs, unqualified, and/or ignorant of safety procedures, resulting in foreseeable and unreasonable risk to
20 Craig and others similarly situated.

21 96. SPEEDVEGAS was negligent, grossly negligent, reckless, wanton, and/or willful in its
22 hiring, retaining, training, and supervising by failing to establish appropriate safety features and operational
23 procedures given the location of the nearest fire station (ten miles away and corresponding delayed
24 response time by emergency personnel) given the extremely dangerous nature of having exotic sport cars
25 being driven by inexperienced drivers, on a racetrack having no speed limit and the high probability of life-
26 threatening injuries when a crash occurs.

27 ...

28 ...

1 97. SPEEDVEGAS was negligent, grossly negligent, reckless, wanton, and/or willful in its
2 hiring, retaining, training, and supervising fire safety employees who failed to adequately extinguish the
3 fire resulting from the subject crash.

4 98. SPEEDVEGAS was negligent, grossly negligent, reckless, wanton, and/or willful when it
5 only made handheld fire extinguishers available to its employees for responding to vehicle/gasoline fuel-
6 fed fires on the racetrack and failed to train its employees how to properly use the fire extinguishers.

7 99. SPEEDVEGAS was negligent, grossly negligent, reckless, wanton, and/or willful by failing
8 to position emergency trucks with foam extinguishment systems on the track, in particular at the end of the
9 straightaway between Turns 1 and 2.

10 100. SPEEDVEGAS was negligent, grossly negligent, reckless, wanton, and/or willful when its
11 employees failed to require that Craig have a valid drivers' license.

12 101. SPEEDVEGAS was negligent, grossly negligent, reckless, wanton, and/or willful in its
13 hiring, retaining, training, and supervising its driving instructors, including Ben-Kely, who failed to
14 adequately instruct Craig on braking and accelerating and failed to prevent the Roadster from careening off
15 the track.

16 102. It was foreseeable to SPEEDVEGAS that hiring, retaining, and/or supervising these
17 employees created an unreasonable risk of harm to Craig and others.

18 103. As a direct and proximate result of the negligent, grossly negligent, reckless, willful,
19 wanton, and/or otherwise tortious conduct of SPEEDVEGAS, Craig and his estate suffered loss of
20 earnings, severe and extreme injuries, pain of mind and body, and, ultimately, death.

21 104. Craig's injuries and death were a natural, probable, and foreseeable consequence of the
22 negligent, gross negligent, willful, wanton, reckless and/or otherwise tortious or wrongful acts or omissions
23 of SPEEDVEGAS.

24 105. As a direct and proximate result of the aforementioned defects, Plaintiffs have been
25 damaged in an amount in excess of \$15,000.00.

26 ...

27 ...

28 ...

FOURTH CAUSE OF ACTION
(Respondeat Superior—SPEEDVEGAS)

106. Plaintiffs incorporate paragraphs 1 through 105 of this Complaint as if those paragraphs were fully incorporated herein.

107. Upon information and belief, SPEEDVEGAS's employees, including but not limited to Ben-Kely, were acting within the course and scope of his/her employment with SPEEDVEGAS at the time of the subject crash.

108. SPEEDVEGAS is therefore liable for the negligent actions of its employees, including, without limitation:

(a) the failure of SPEEDVEGAS's employees to require Craig to have a driver's license;

(b) SPEEDVEGAS's mechanics' negligent modifications to the Roadster's brakes, exhaust, and rear spoiler;

(c) the failure of Craig's instructor, Ben-Kely, to apply the instructor brake and otherwise provide proper instruction on accelerating and braking and ensure Craig's safety;

(d) the failure of SPEEDVEGAS's employees to extinguish the fire that caused Craig's death;

(e) the failure of SPEEDVEGAS's management to implement safety procedures for handling all foreseeable fire risks, including a gasoline fuel-fed fire; and

(f) the failure of SPEEDVEGAS's management to train the "fire safety team" and ensure the fire safety team is competent to extinguish the potential types of fire risks at the track, including a gasoline fuel-fed fire.

109. As a direct and proximate result of the aforementioned defects, Plaintiffs have been damaged in an amount in excess of \$15,000.00.

FIFTH CAUSE OF ACTION
(Negligent Entrustment—Fiore)

110. Plaintiffs incorporate paragraphs 1 through 109 of this Complaint as if fully set forth herein.

111. Upon information and belief, in addition to Fiore's ownership of the Roadster, Fiore also possesses an ownership interest in SPEEDVEGAS and/or is a creditor of SPEEDVEGAS.

...

1 112. Upon information and belief, Fiore was aware of SPEEDVEGAS's internal safety policies,
2 or SPEEDVEGAS's lack of policies, including proper fire extinguishment policies, procedures, and
3 training.

4 113. Upon information and belief, Fiore knew of the prior crashes at SPEEDVEGAS.

5 114. Fiore, therefore, knew or should have known SPEEDVEGAS and its employees were ill
6 equipped and unprepared to extinguish a vehicle/gasoline fuel-fed fire at its facility.

7 115. As an owner of the Roadster, Fiore would have received the NHTSA recall notice(s) for the
8 Roadster.

9 116. Fiore, therefore, knew the Roadster was defectively designed and manufactured and that a
10 gasoline fire in the vehicle was a foreseeable risk, further placing SPEEDVEGAS customers at risk of
11 injury or death.

12 117. Fiore also knew or should have known the average customer was not qualified to drive a
13 high powered super car on a racetrack without adequate training or instruction.

14 118. Fiore, therefore, knew or should have known that entrusting the Roadster to SPEEDVEGAS
15 for the purpose of allowing the public to operate the unreasonably dangerous vehicle at SPEEDVEGAS's
16 unreasonably dangerous racetrack without proper safety and fire precautions created an unreasonable risk
17 of harm to SPEEDVEGAS customers, including Craig.

18 119. As a direct and proximate result of Fiore's negligent entrustment of the Roadster to
19 SPEEDVEGAS, Plaintiffs have suffered damages in excess of \$15,000.

20 **SIXTH CAUSE OF ACTION**
21 **(Negligent Products Liability—SPEEDVEGAS, Fiore, and Lamborghini)**

22 120. Plaintiffs incorporate paragraphs 1 through 119 of this Complaint as if those paragraphs
23 were fully incorporated herein.

24 121. At all times relevant herein, Lamborghini designed, manufactured, assembled, analyzed,
25 recommended, merchandised, advertised, promoted, supplied, loaned, leased, and/or sold to distributors
26 and retailers for sale, the vehicle known as 2015 Lamborghini Aventador Roadster, and/or its component
27 parts, including the subject vehicle at issue in this lawsuit.

28 ...

1 122. At all times relevant herein, SPEEDVEGAS and/or Fiore advertised, promoted, supplied,
2 loaned, and/or leased the Roadster at issue in this lawsuit.

3 123. Lamborghini, SPEEDVEGAS, and Fiore owed Plaintiffs and Craig a duty to exercise
4 reasonable care in the design, testing, manufacture, assembly, sale, distribution, and servicing of the
5 Roadster, including a duty to assure that the subject vehicle did not cause Craig, other users, bystanders, or
6 the public unnecessary injury or death.

7 124. Upon information and belief, the cause of fire was the ignition of released fuel vapors from
8 the Roadster's dual fuel tanks/system located in the engine compartment just aft of the occupant's seat.

9 125. The ignition source from the fire was most likely a hot surface of the exhaust manifold, or
10 possibly mechanical sparks or the Roadster's electrical system that was energized at the time of the crash.

11 126. SPEEDVEGAS, Fiore, and Lamborghini knew or should have known of the Roadster's
12 propensity to catch fire.

13 127. This, based on at least one documented instance of a Roadster catching fire while idling on a
14 city street and because of the multiple recalls regarding the Roadster's fuel system.

15 128. In addition, Speed Vegas driving instructors reported seeing flames come out of the
16 Roadster's exhaust while travelling down the straightaway.

17 129. This includes Fiore, who, as an owner of the Roadster, would have received all NHTSA
18 recall notices for the vehicle.

19 130. Despite all of this, SPEEDVEGAS, Fiore, and Lamborghini failed to warn Craig of the
20 Roadster's unreasonably dangerous propensity to catch fire or to otherwise correct the improperly designed
21 and manufactured Roadster.

22 131. SPEEDVEGAS and/or Fiore failed to exercise ordinary care and breached their duties by,
23 among other things:

24 (a) allowing the public to operate the unreasonably dangerous Roadster at the
25 SPEEDVEGAS racetrack;

26 (b) failing to use reasonable care in the modification and servicing of the Roadster,
27 including a duty to assure that the subject vehicle did not cause Craig, other users, bystanders, or the public
28 unnecessary injuries or death;

- (c) failing to provide adequate fire safety, training, and equipment;
- (d) failing to install a fire suppression system in the Roadster; and
- (e) such other acts of negligence as discovery shall reveal.

132. Lamborghini, SPEEDVEGAS, and Fiore knew or should have known the Roadster was defectively designed, manufactured, maintained, modified, and/or serviced and was therefore prone to problems under normal driving conditions, potentially causing injuries and/or death.

133. Lamborghini, SPEEDVEGAS, and Fiore failed to exercise ordinary care and breached its duties by, among other things:

(a) failing to use due care in the manufacture, distribution, design, sale, testing, and servicing of the Roadster and its component parts in order to avoid the aforementioned risks to individuals;

(b) failing to provide adequate warnings of the aforementioned risks to individuals, lack of crash protection, improper fuel tank, and their propensity to cause and/or contribute to an accident;

(c) failing to incorporate within the vehicle and its design reasonable safeguards and protections against the aforementioned risks to individuals, lack of crash protection, and improper fuel tank, and the consequences thereof;

(d) failing to make timely correction to the design of the Roadster to correct the aforementioned risks to individuals, lack of crash protection, and improper fuel tank;

(e) failing to adequately identify and mitigate the hazards associated with the aforementioned risks to individuals, lack of crash protection, and improper fuel tank in accordance with good engineering practices and other ways; and

(f) such other acts of negligence as discovery shall reveal.

134. The aforementioned negligent acts and omissions of SPEEDVEGAS, Fiore, and Lamborghini were the direct and proximate cause of Craig's death and Plaintiffs' damages.

135. As a direct and proximate result of the aforementioned negligence, Plaintiffs have been damaged in an amount in excess of \$15,000.00.

...

...

...

SEVENTH CAUSE OF ACTION
(Strict Products Liability—SPEEDVEGAS, Fiore, and Lamborghini)

136. Plaintiffs incorporate paragraphs 1 through 135 of this Complaint as if those paragraphs were fully incorporated herein.

137. At all times herein mentioned, Lamborghini, SPEEDVEGAS, and Fiore designed, manufactured, assembled, analyzed, recommended, merchandised, advertised, promoted, distributed, supplied, leased, modified, serviced, loaned, and/or sold to distributors and retailers for sale, the Lamborghini Aventador Roadster at issue in this lawsuit.

138. Lamborghini, SPEEDVEGAS, and Fiore manufactured, designed, promoted and/or sold the Roadster and its component parts to the public, knowing the Roadster would be purchased and/or used without inspection for defects by the general public.

139. At all times herein mentioned, Craig used and operated the Roadster in its intended and reasonably foreseeable manner.

140. The Roadster was unsafe for its intended use by reason of defects in its manufacture, design, testing, modification, servicing, components, and constituents, so that it would not safely serve its purpose, but would instead expose the users of said product to serious injuries because of the failure of Lamborghini, SPEEDVEGAS, and Fiore to properly guard and protect the users of the Roadster from the defective design and manufacturing of said product.

141. Lamborghini, SPEEDVEGAS, and Fiore designed, manufactured, modified, and/or serviced the Roadster defectively, causing it to fail to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.

142. This includes the Roadster's defective dual fuel tanks/system.

143. This also includes the failure to install a fire suppression system in the Roadster.

144. Craig was not aware of the aforementioned defects regarding the Roadster at any time prior to Craig's death.

145. Lamborghini, SPEEDVEGAS, and Fiore failed to adequately warn of the substantial dangers known or knowable at the time of the defective Roadster's design, manufacture, and distribution.

...

WHEREFORE, Plaintiffs, expressly reserving the right to amend this Complaint prior to or at the time of trial of this action, to insert those items of damage not yet fully ascertainable, pray judgment against all Defendants, and each of them, as follows:

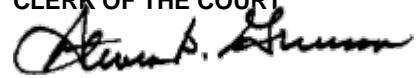
1. For general damages in an amount in excess of \$15,000.00;
2. For special damages in an amount in excess of \$15,000.00;
3. For punitive damages;
4. For reasonable attorney's fees and costs;
5. For interest at the statutory rate; and
6. For such other relief as the Court deems just and proper.

By:

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24

24



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Attorneys for Defendant, SPEEDVEGAS, LLC d/b/a SPEEDVEGAS

DISTRICT COURT
CLARK COUNTY, NEVADA

GWENDOLYN WARD, as Personal
Representative of the ESTATE OF CRAIG
SHERWOOD, deceased, et al.,

Plaintiffs,

vs.

SPEEDVEGAS, LLC, a Delaware limited
liability company, d/b/a SPEEDVEGAS, et
al.

Defendants.

SPEEDVEGAS, LLC, a Delaware limited
liability company

Counter-claimant,

vs.

ROBERT BARNARD, an individual;
MOTORSPORT SERVICES
INTERNATIONAL, LLC; and ROE
ENTITIES I-XX, inclusive,

Counter-defendants.

CASE NO.: CASE NO: A-18-779648-C
DEPT. NO.: I

**DEFENDANT SPEEDVEGAS, LLC D/B/A
SPEEDVEGAS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS' COMPLAINT AND JURY
DEMAND**

**COUNTERCLAIM BY
COUNTERCLAIMANT SPEEDVEGAS,
LLC AGAINST ROBERT BARNARD AND
MOTORSPORT SERVICES
INTERNATIONAL, LLC AND ROE
ENTITIES I-XX**

DEFENDANT SPEEDVEGAS, LLC D/B/A SPEEDVEGAS' ANSWER TO PLAINTIFFS'
COMPLAINT AND JURY DEMAND

1 Defendant SPEEDVEGAS, LLC d/b/a SPEEDVEGAS (“this defendant”) by and through its
2 counsel of record, Alan W. Westbrook, Esq. of the law firm of Perry & Westbrook and for its Answer to
3 Plaintiffs’ Complaint respectfully answers as follows:

4 **General Denial**

5 This defendant denies that it is liable to plaintiffs in any way; that it is responsible for causing or
6 contributing to the injuries and damages alleged in plaintiffs’ Complaint in any way; or that it is indebted
7 to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to any of the
8 relief requested from this defendant.

9
10 **ANSWERING THE SECTION ENTITLED**

11 **“THE PARTIES AND JURISDICTION”**

12 1. This defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 1 of plaintiffs’ Complaint and, on that basis, hereby
14 denies the same.

15 2. This defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 2 of plaintiffs’ Complaint and, on that basis, hereby
17 denies the same.

18 3. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 3 of plaintiffs’ Complaint and, on that basis, hereby
20 denies the same.

21 4. This defendant admits the allegations contained within paragraph 4 of plaintiffs
22 Complaint.

23 5. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 5 of plaintiffs’ Complaint and, on that basis, hereby
25 denies the same.

26 6. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 6 of plaintiffs’ Complaint and, on that basis, hereby
28 denies the same.

1 7. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 7 of plaintiffs' Complaint and, on that basis, hereby
3 denies the same.

4 8. This defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 8 of plaintiffs' Complaint and, on that basis, hereby
6 denies the same.

7 9. This defendant denies that it is in any way responsible for causing or contributing to the
8 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
9 denies all of the allegations in paragraph 9 to the extent that they are intended to relate to this defendant.
10 This defendant is without knowledge or information sufficient to form a belief as to the truth of the
11 remaining allegations contained in paragraph 9 of plaintiffs' Complaint and, on that basis, hereby denies
12 the same.

13 10. This defendant denies that it is in any way responsible for causing or contributing to the
14 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
15 denies all of the allegations in paragraph 10 to the extent that they are intended to relate to this
16 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
17 of the remaining allegations contained in paragraph 10 of plaintiffs' Complaint and, on that basis,
18 hereby denies the same.

19 11. This defendant denies that it is in any way responsible for causing or contributing to the
20 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
21 denies all of the allegations in paragraph 11 to the extent that they are intended to relate to this
22 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
23 of the remaining allegations contained in paragraph 11 of plaintiffs' Complaint and, on that basis,
24 hereby denies the same.

25 **ANSWERING THE SECTION ENTITLED**

26 **"GENERAL ALLEGATIONS"**

27 12. This defendant is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in paragraph 12 of plaintiffs' Complaint and, on that basis, hereby

1 denies the same.

2 13. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 13 of plaintiffs' Complaint and, on that basis, hereby
4 denies the same.

5 14. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 14 of plaintiffs' Complaint and, on that basis, hereby
7 denies the same.

8 15. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 15 of plaintiffs' Complaint and, on that basis, hereby
10 denies the same.

11 16. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 16 of plaintiffs' Complaint and, on that basis, hereby
13 denies the same.

14 17. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 17 of plaintiffs' Complaint and, on that basis, hereby
16 denies the same.

17 18. This defendant admits the allegations contained within paragraph 18 of plaintiffs
18 Complaint.

19 19. This defendant is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 19 of plaintiffs' Complaint and, on that basis, hereby
21 denies the same.

22 20. This defendant admits the allegations contained within paragraph 20 of plaintiffs
23 Complaint.

24 21. This defendant admits that its racetrack is purpose built to exceed to the FIA Level 2
25 standard. This defendant denies that its racetrack does not meet this standard.

26 22. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 22 of plaintiffs' Complaint and, on that basis, hereby
28 denies the same.

1 23. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 23 of plaintiffs' Complaint and, on that basis, hereby
3 denies the same.

4 24. This defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 24 of plaintiffs' Complaint and, on that basis, hereby
6 denies the same.

7 25. This defendant admits that "races" do not occur on its track. This defendant admits that
8 tourists and amateur drivers are among its customers, but denies that these are the sole patrons of this
9 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
10 of the remaining allegations contained in paragraph 25 of plaintiffs' Complaint and, on that basis,
11 hereby denies the same.

12 26. This defendant admits that its website contains the language set forth in the allegations
13 contained in paragraph 26 of plaintiffs' Complaint. This defendant denies that it is in any way
14 responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is
15 liable to plaintiffs in any way.

16 27. This defendant admits that its website contains the language set forth in the allegations
17 contained in paragraph 27 of plaintiffs' Complaint. This defendant denies that it is in any way
18 responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is
19 liable to plaintiffs in any way.

20 28. This defendant admits that its website contains the language set forth in the allegations
21 contained in paragraph 28 of plaintiffs' Complaint. This defendant denies that it is in any way
22 responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is
23 liable to plaintiffs in any way.

24 29. This defendant admits that its website contains the language set forth in the allegations
25 contained in paragraph 29 of plaintiffs' Complaint. This defendant denies that it is in any way
26 responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is
27 liable to plaintiffs in any way.

28 30. This defendant admits that it utilized a telemetry system to record driver's lap times

1 during the relevant time period. This defendant denies the remaining allegations contained in paragraph
2 30 of plaintiffs' Complaint. This defendant denies that it is in any way responsible for causing or
3 contributing to the injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any
4 way.

5 31. This defendant admits that its website contains the language set forth in the allegations
6 contained in paragraph 31 of plaintiffs' Complaint. This defendant denies that it is in any way
7 responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is
8 liable to plaintiffs in any way.

9 32. This defendant admits that its website contains the language set forth in the allegations
10 contained in paragraph 32 of plaintiffs' Complaint. This defendant denies that it is in any way
11 responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is
12 liable to plaintiffs in any way.

13 33. Upon information and belief, this defendant admits that on February 12, 2017 a 2015
14 Lamborghini Aventador Roadster was one of the vehicles that it offered to make available to its
15 customers. This defendant denies that it is in any way responsible for causing or contributing to the
16 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way.

17 34. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 34 of plaintiffs' Complaint and, on that basis, hereby
19 denies the same.

20 35. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 35 of plaintiffs' Complaint and, on that basis, hereby
22 denies the same.

23 36. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 36 of plaintiffs' Complaint and, on that basis, hereby
25 denies the same.

26 37. This defendant admits that it leased the subject vehicle from Phil Fiore. This defendant
27 denies that Phil Fiore is an owner of SpeedVegas, LLC. This defendant admits that Phil Fiore was a
28 creditor of SpeedVegas, LLC during its bankruptcy proceeding. This defendant denies that it is in any

1 way responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it
2 is liable to plaintiffs in any way.

3 38. This defendant admits that it took possession of the vehicle from Fiore. This defendant
4 denies the remaining allegations contained in paragraph 38 of plaintiffs' Complaint. This defendant
5 denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs'
6 Complaint, denies that it is liable to plaintiffs in any way.

7 39. This defendant admits that it installed a brake pedal on the passenger side of the vehicle
8 and that this brake pedal could be used by an instructor to apply the brakes while in the passenger seat.
9 This defendant denies the remaining allegations contained in paragraph 39 of plaintiffs' Complaint.
10 This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged
11 in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way.

12 40. This defendant denies that the subject vehicle had braking problems. 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 40 of plaintiffs' Complaint and, on that basis, hereby denies the same. This
15 defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in
16 plaintiffs' Complaint, denies that it is liable to plaintiffs in any way.

17 41. This defendant denies the allegations contained in paragraph 41 of plaintiffs' Complaint.
18 This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged
19 in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way.

20 42. This defendant denies the allegations contained in paragraph 42 of plaintiffs' Complaint.
21 This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged
22 in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way.

23 43. This defendant denies that it is in any way responsible for causing or contributing to the
24 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
25 denies all of the allegations in paragraph 43 to the extent that they are intended to relate to this
26 defendant.

27 44. Upon information and belief, this defendant admits that it received a recall regarding the
28 vehicle's EVAP system, albeit after the occurrence of the subject incident. This defendant is without

1 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
2 contained in paragraph 44 of plaintiffs' Complaint and, on that basis, hereby denies the same.

3 45. This defendant is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in paragraph 45 of plaintiffs' Complaint and, on that basis, hereby
5 denies the same.

6 46. This defendant denies that it is in any way responsible for causing or contributing to the
7 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
8 denies all of the allegations in paragraph 46 to the extent that they are intended to relate to this
9 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
10 of the remaining allegations contained in paragraph 46 of plaintiffs' Complaint and, on that basis,
11 hereby denies the same.

12 47. This defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 47 of plaintiffs' Complaint and, on that basis, hereby
14 denies the same.

15 48. This defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 48 of plaintiffs' Complaint and, on that basis, hereby
17 denies the same.

18 49. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 49 of plaintiffs' Complaint and, on that basis, hereby
20 denies the same.

21 50. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 50 of plaintiffs' Complaint and, on that basis, hereby
23 denies the same.

24 51. This defendant admits that Craig Sherwood drove laps in the subject Lamborghini
25 Aventador on the date of the incident. This defendant is without knowledge or information sufficient to
26 form a belief as to the truth of the remaining allegations contained in paragraph 51 of plaintiffs'
27 Complaint and, on that basis, hereby denies the same.

28 52. This defendant admits that it did not require Craig Sherwood to provide a driver's

1 license. This defendant denies the remaining allegations contained in paragraph 52 of plaintiffs'
2 Complaint.

3 53. This defendant admits that Aaron Fessler requested a copy of Craig Sherwood's driver's
4 license. This defendant denies the remaining allegations contained in paragraph 53 of plaintiffs'
5 Complaint.

6 54. This defendant admits that Gil Ben-Kely was an employee, that he was a driving
7 instructor at its facility, and that he was in the subject vehicle with Craig Sherwood at the time of the
8 incident.

9 55. This defendant admits that Gil Ben-Kely was in the passenger's seat at the time of the
10 subject incident. This defendant denies that it is in any way responsible for causing or contributing to
11 the injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
12 denies all of the remaining allegations in paragraph 55 to the extent that they are intended to relate to
13 this defendant.

14 56. This defendant denies the allegations contained in paragraph 56 of plaintiffs' Complaint.
15 This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged
16 in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way.

17 57. This defendant denies that it is in any way responsible for causing or contributing to the
18 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
19 denies all of the allegations in paragraph 57 to the extent that they are intended to relate to this
20 defendant.

21 58. This defendant denies that it is in any way responsible for causing or contributing to the
22 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
23 denies all of the allegations in paragraph 58 to the extent that they are intended to relate to this
24 defendant.

25 59. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 59 of plaintiffs' Complaint and, on that basis, hereby
27 denies the same.

28 60. This defendant admits that the subject incident occurred during Craig Sherwood's

seventh lap on the SpeedVegas track. This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the remaining allegations in paragraph 60 to the extent that they are intended to relate to this defendant.

61. This defendant admits the allegations contained in paragraph 61 of plaintiffs' Complaint.

62. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of plaintiffs' Complaint and, on that basis, hereby denies the same.

63. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of plaintiffs' Complaint and, on that basis, hereby denies the same.

64. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of plaintiffs' Complaint and, on that basis, hereby denies the same.

65. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of plaintiffs' Complaint and, on that basis, hereby denies the same.

66. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of plaintiffs' Complaint and, on that basis, hereby denies the same.

67. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of plaintiffs' Complaint and, on that basis, hereby denies the same.

68. This defendant admits that the vehicle caught fire after the collision. This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the remaining allegations in paragraph 68 to the extent that they are intended to relate to this defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining

1 allegations contained in paragraph 68 of plaintiffs' Complaint and, on that basis, hereby denies the
2 same.

3 69. This defendant denies that it is in any way responsible for causing or contributing to the
4 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
5 denies all of the remaining allegations in paragraph 69 to the extent that they are intended to relate to
6 this defendant. This defendant is without knowledge or information sufficient to form a belief as to the
7 truth of the remaining allegations contained in paragraph 69 of plaintiffs' Complaint and, on that basis,
8 hereby denies the same.

9 70. This defendant admits that the vehicle caught fire after the collision. This defendant
10 denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs'
11 Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the remaining
12 allegations in paragraph 70 to the extent that they are intended to relate to this defendant. This
13 defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations contained in paragraph 70 of plaintiffs' Complaint and, on that basis, hereby denies the
15 same.

16 71. This defendant admits that the vehicle caught fire after the collision. This defendant
17 denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs'
18 Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the remaining
19 allegations in paragraph 71 to the extent that they are intended to relate to this defendant. This
20 defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining
21 allegations contained in paragraph 71 of plaintiffs' Complaint and, on that basis, hereby denies the
22 same.

23 72. This defendant admits that the occurrence of a fire while participating in motorsports
24 activities at its facility is an inherent risk in such activities. This defendant denies that it is in any way
25 responsible for causing or contributing to the injuries alleged in plaintiffs' Complaint, denies that it is
26 liable to plaintiffs in any way, and further denies all of the remaining allegations in paragraph 72 to the
27 extent that they are intended to relate to this defendant. This defendant is without knowledge or
28 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph

1 72 of plaintiffs' Complaint and, on that basis, hereby denies the same.

2 73. This defendant denies that it is in any way responsible for causing or contributing to the
3 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
4 denies all of the allegations in paragraph 73 to the extent that they are intended to relate to this
5 defendant.

6 74. This defendant denies that it is in any way responsible for causing or contributing to the
7 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
8 denies all of the allegations in paragraph 74 to the extent that they are intended to relate to this
9 defendant.

10 75. This defendant denies that it is in any way responsible for causing or contributing to the
11 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
12 denies all of the allegations in paragraph 75 to the extent that they are intended to relate to this
13 defendant.

14 76. This defendant admits that it called the Clark County Fire Department to respond to the
15 subject incident. This defendant denies that it is in any way responsible for causing or contributing to
16 the injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
17 denies all of the remaining allegations in paragraph 76 to the extent that they are intended to relate to
18 this defendant.

19 77. This defendant denies that it is in any way responsible for causing or contributing to the
20 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
21 denies all of the allegations in paragraph 77 to the extent that they are intended to relate to this
22 defendant.

23 78. This defendant admits that it called the Clark County Fire Department to respond to the
24 subject incident. This defendant denies that it is in any way responsible for causing or contributing to
25 the injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
26 denies all of the remaining allegations in paragraph 78 to the extent that they are intended to relate to
27 this defendant. This defendant is without knowledge or information sufficient to form a belief as to the
28 truth of the remaining allegations contained in paragraph 78 of plaintiffs' Complaint and, on that basis,

1 hereby denies the same.

2 79. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 79 of plaintiffs' Complaint and, on that basis, hereby
4 denies the same.

5 80. This defendant denies that it is in any way responsible for causing or contributing to the
6 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
7 denies all of the allegations in paragraph 80 to the extent that they are intended to relate to this
8 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
9 of the remaining allegations contained in paragraph 80 of plaintiffs' Complaint and, on that basis,
10 hereby denies the same.

11 81. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 81 of plaintiffs' Complaint and, on that basis, hereby
13 denies the same.

14 **ANSWERING THE SECTION ENTITLED**

15 **"FIRST CAUSE OF ACTION, WRONGFUL DEATH - ALL DEFENDANTS"**

16 82. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
17 and defenses to paragraph 1-81 of plaintiffs' Complaint, set forth above.

18 83. 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' Complaint in any way; or that it
20 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
21 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
22 paragraph 83 to the extent they relate to this defendant. This defendant is without knowledge or
23 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
24 83 of plaintiffs' Complaint and, on that basis, hereby denies the same.

25 84. 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' Complaint in any way; or that it
27 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
28 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in

1 paragraph 84 to the extent they relate to this defendant. 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 84 of plaintiffs' Complaint and, on that basis, hereby denies the same.

4 85. 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' Complaint in any way; or that it
6 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
7 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
8 paragraph 85 to the extent they relate to this defendant. This defendant is without knowledge or
9 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
10 85 of plaintiffs' Complaint and, on that basis, hereby denies the same.

11 **ANSWERING THE SECTION ENTITLED**

12 **"SECOND CAUSE OF ACTION, NEGLIGENCE - ALL DEFENDANTS"**

13 86. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
14 and defenses to paragraph 1-85 of plaintiffs' Complaint, set forth above.

15 87. 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' Complaint in any way; or that it
17 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
18 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
19 paragraph 87 to the extent they relate to this defendant. This defendant is without knowledge or
20 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
21 87 of plaintiffs' Complaint and, on that basis, hereby denies the same.

22 88. 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' Complaint in any way; or that it
24 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
25 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
26 paragraph 88 to the extent they relate to this defendant. This defendant is without knowledge or
27 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
28 88 of plaintiffs' Complaint and, on that basis, hereby denies the same.

1 89. 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' Complaint in any way; or that it
3 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
4 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
5 paragraph 89 to the extent they relate to this defendant. This defendant is without knowledge or
6 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
7 89 of plaintiffs' Complaint and, on that basis, hereby denies the same.

8 90. 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' Complaint in any way; or that it
10 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
11 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
12 paragraph 90 to the extent they relate to this defendant. This defendant is without knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
14 90 of plaintiffs' Complaint and, on that basis, hereby denies the same.

15 91. 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' Complaint in any way; or that it
17 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
18 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
19 paragraph 91 to the extent they relate to this defendant. This defendant is without knowledge or
20 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
21 91 of plaintiffs' Complaint and, on that basis, hereby denies the same.

22 92. 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' Complaint in any way; or that it
24 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
25 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
26 paragraph 92 to the extent they relate to this defendant. This defendant is without knowledge or
27 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
28 92 of plaintiffs' Complaint and, on that basis, hereby denies the same.

ANSWERING THE SECTION ENTITLED
“THIRD CAUSE OF ACTION, NEGLIGENT HIRING, RETENTION, TRAINING, AND
SUPERVISION - SPEEDVEGAS”

93. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers and defenses to paragraph 1-92 of plaintiffs’ Complaint, set forth above.

94. This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs’ Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the allegations in paragraph 94 to the extent that they are intended to relate to this defendant.

95. This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs’ Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the allegations in paragraph 95 to the extent that they are intended to relate to this defendant.

96. This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs’ Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the allegations in paragraph 96 to the extent that they are intended to relate to this defendant.

97. This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs’ Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the allegations in paragraph 97 to the extent that they are intended to relate to this defendant.

98. This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs’ Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the allegations in paragraph 98 to the extent that they are intended to relate to this defendant.

99. This defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs’ Complaint, denies that it is liable to plaintiffs in any way, and further denies all of the allegations in paragraph 99 to the extent that they are intended to relate to this

1 defendant.

2 100. This defendant denies that it is in any way responsible for causing or contributing to the
3 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
4 denies all of the allegations in paragraph 100 to the extent that they are intended to relate to this
5 defendant.

6 101. This defendant denies that it is in any way responsible for causing or contributing to the
7 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
8 denies all of the allegations in paragraph 101 to the extent that they are intended to relate to this
9 defendant.

10 102. This defendant denies that it is in any way responsible for causing or contributing to the
11 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
12 denies all of the allegations in paragraph 102 to the extent that they are intended to relate to this
13 defendant.

14 103. 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' Complaint in any way; or that it
16 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
17 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
18 paragraph 103 to the extent they relate to this defendant. This defendant is without knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
20 103 of plaintiffs' Complaint and, on that basis, hereby denies the same.

21 104. This defendant denies that it is in any way responsible for causing or contributing to the
22 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
23 denies all of the allegations in paragraph 104 to the extent that they are intended to relate to this
24 defendant.

25 105. 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' Complaint in any way; or that it
27 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
28 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in

1 paragraph 105 to the extent they relate to this defendant. This defendant is without knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
3 105 of plaintiffs' Complaint and, on that basis, hereby denies the same.

4 **ANSWERING THE SECTION ENTITLED**

5 **"FOURTH CAUSE OF ACTION, RESPONDEAT SUPERIOR - SPEEDVEGAS"**

6 106. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
7 and defenses to paragraph 1-105 of plaintiffs' Complaint, set forth above.

8 107. This defendant admits the allegations contained in paragraph 107 of the plaintiffs
9 Complaint.

10 108. This defendant denies that it is in any way responsible for causing or contributing to the
11 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
12 denies all of the allegations in paragraph 108 to the extent that they are intended to relate to this
13 defendant.

14 109. 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' Complaint in any way; or that it
16 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
17 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
18 paragraph 109 to the extent they relate to this defendant. This defendant is without knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
20 109 of plaintiffs' Complaint and, on that basis, hereby denies the same.

21 **ANSWERING THE SECTION ENTITLED**

22 **"FIFTH CAUSE OF ACTION, NEGLIGENT ENTRUSTMENT - FIORE"**

23 110. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
24 and defenses to paragraph 1-109 of plaintiffs' Complaint, set forth above.

25 111. This defendant admits that Phil Fiore was a creditor of SpeedVegas and that Fiore was
26 the owner of the subject vehicle. This defendant denies Phil Fiore possesses and ownership interest in
27 SpeedVegas.

28 112. This defendant denies that it is in any way responsible for causing or contributing to the

1 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
2 denies all of the allegations in paragraph 112 to the extent that they are intended to relate to this
3 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
4 of the remaining allegations contained in paragraph 112 of plaintiffs' Complaint and, on that basis,
5 hereby denies the same.

6 113. This defendant denies that it is in any way responsible for causing or contributing to the
7 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
8 denies all of the allegations in paragraph 113 to the extent that they are intended to relate to this
9 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
10 of the remaining allegations contained in paragraph 113 of plaintiffs' Complaint and, on that basis,
11 hereby denies the same.

12 114. This defendant denies that it is in any way responsible for causing or contributing to the
13 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
14 denies all of the allegations in paragraph 114 to the extent that they are intended to relate to this
15 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
16 of the remaining allegations contained in paragraph 114 of plaintiffs' Complaint and, on that basis,
17 hereby denies the same.

18 115. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 115 of plaintiffs' Complaint and, on that basis, hereby
20 denies the same.

21 116. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 116 of plaintiffs' Complaint and, on that basis, hereby
23 denies the same.

24 117. This defendant denies that it is in any way responsible for causing or contributing to the
25 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
26 denies all of the allegations in paragraph 117 to the extent that they are intended to relate to this
27 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
28 of the remaining allegations contained in paragraph 117 of plaintiffs' Complaint and, on that basis,

1 hereby denies the same.

2 118. This defendant denies that it is in any way responsible for causing or contributing to the
3 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
4 denies all of the allegations in paragraph 118 to the extent that they are intended to relate to this
5 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
6 of the remaining allegations contained in paragraph 118 of plaintiffs' Complaint and, on that basis,
7 hereby denies the same.

8 119. 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' Complaint in any way; or that it
10 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
11 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
12 paragraph 119 to the extent they relate to this defendant. This defendant is without knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
14 119 of plaintiffs' Complaint and, on that basis, hereby denies the same.

15 **ANSWERING THE SECTION ENTITLED**

16 **"SIXTH CAUSE OF ACTION, NEGLIGENT PRODUCTS LIABILITY - SPEEDVEGAS,**
17 **FIGORE, AND LAMBORGHINI"**

18 120. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
19 and defenses to paragraph 1-119 of plaintiffs' Complaint, set forth above.

20 121. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 121 of plaintiffs' Complaint and, on that basis, hereby
22 denies the same.

23 122. This defendant admits that it leased the subject vehicle and that it provided the vehicle to
24 its customers at its facility. This defendant admits that it advertised and promoted the subject vehicle.

25 123. This defendant denies that it designed, tested, manufactured, assembled, sold, or
26 distributed the subject vehicle. This defendant admits that it did provide maintenance and repair to the
27 subject vehicle prior to the incident. This defendant denies that it owed a duty of care relative to the
28 inherent risks that Craig Sherwood assumed as a result of participating in motosports activities at this

1 defendant's facilities.

2 124. This defendant denies that it is in any way responsible for causing or contributing to the
3 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
4 denies all of the allegations in paragraph 124 to the extent that they are intended to relate to this
5 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
6 of the remaining allegations contained in paragraph 124 of plaintiffs' Complaint and, on that basis,
7 hereby denies the same.

8 125. This defendant denies that it is in any way responsible for causing or contributing to the
9 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
10 denies all of the allegations in paragraph 125 to the extent that they are intended to relate to this
11 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
12 of the remaining allegations contained in paragraph 125 of plaintiffs' Complaint and, on that basis,
13 hereby denies the same.

14 126. This defendant denies that it is in any way responsible for causing or contributing to the
15 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
16 denies all of the allegations in paragraph 126 to the extent that they are intended to relate to this
17 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
18 of the remaining allegations contained in paragraph 126 of plaintiffs' Complaint and, on that basis,
19 hereby denies the same.

20 127. This defendant denies that it is in any way responsible for causing or contributing to the
21 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
22 denies all of the allegations in paragraph 127 to the extent that they are intended to relate to this
23 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
24 of the remaining allegations contained in paragraph 127 of plaintiffs' Complaint and, on that basis,
25 hereby denies the same.

26 128. This defendant denies that it is in any way responsible for causing or contributing to the
27 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
28 denies all of the allegations in paragraph 128 to the extent that they are intended to relate to this

1 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
2 of the remaining allegations contained in paragraph 128 of plaintiffs' Complaint and, on that basis,
3 hereby denies the same.

4 129. This defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 129 of plaintiffs' Complaint and, on that basis, hereby
6 denies the same.

7 130. This defendant denies that it is in any way responsible for causing or contributing to the
8 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
9 denies all of the allegations in paragraph 130 to the extent that they are intended to relate to this
10 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
11 of the remaining allegations contained in paragraph 130 of plaintiffs' Complaint and, on that basis,
12 hereby denies the same.

13 131. This defendant denies that it is in any way responsible for causing or contributing to the
14 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
15 denies all of the allegations in paragraph 131 to the extent that they are intended to relate to this
16 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
17 of the remaining allegations contained in paragraph 131 of plaintiffs' Complaint and, on that basis,
18 hereby denies the same.

19 132. This defendant denies that it is in any way responsible for causing or contributing to the
20 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
21 denies all of the allegations in paragraph 132 to the extent that they are intended to relate to this
22 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
23 of the remaining allegations contained in paragraph 132 of plaintiffs' Complaint and, on that basis,
24 hereby denies the same.

25 133. This defendant denies that it is in any way responsible for causing or contributing to the
26 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
27 denies all of the allegations in paragraph 133 to the extent that they are intended to relate to this
28 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth

1 of the remaining allegations contained in paragraph 133 of plaintiffs' Complaint and, on that basis,
2 hereby denies the same.

3 134. This defendant denies that it is in any way responsible for causing or contributing to the
4 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
5 denies all of the allegations in paragraph 134 to the extent that they are intended to relate to this
6 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
7 of the remaining allegations contained in paragraph 134 of plaintiffs' Complaint and, on that basis,
8 hereby denies the same.

9 135. 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' Complaint in any way; or that it
11 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
12 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
13 paragraph 135 to the extent they relate to this defendant. This defendant is without knowledge or
14 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
15 135 of plaintiffs' Complaint and, on that basis, hereby denies the same.

16 **ANSWERING THE SECTION ENTITLED**
17 **"SEVENTH CAUSE OF ACTION, STRICT PRODUCTS LIABILITY - SPEEDVEGAS, FIORE,**
18 **AND LAMBORGHINI"**

19 136. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
20 and defenses to paragraph 1-135 of plaintiffs' Complaint, set forth above.

21 137. This defendant admits that it leased the subject vehicle and that it provided the vehicle to
22 its customers at its facility. This defendant admits that it advertised and promoted the vehicle. This
23 defendant admits that it modified and serviced the subject vehicle. This defendant denies that it
24 manufactured, assembled, distributed, or sold the vehicle to distributors or retailers for sale. This
25 defendant denies that it is in any way responsible for causing or contributing to the injuries alleged in
26 plaintiffs' Complaint and denies that it is liable to plaintiffs in any way.

27 138. This defendant admits that it promoted the vehicle to its customer. This defendant denies
28 that it manufactured, designed, or sold the vehicle and its component parts to the public. This defendant

1 denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs'
2 Complaint and denies that it is liable to plaintiffs in any way.

3 139. This defendant is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in paragraph 139 of plaintiffs' Complaint and, on that basis, hereby
5 denies the same.

6 140. This defendant denies that it is in any way responsible for causing or contributing to the
7 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
8 denies all of the allegations in paragraph 140 to the extent that they are intended to relate to this
9 defendant.

10 141. This defendant denies that it is in any way responsible for causing or contributing to the
11 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
12 denies all of the allegations in paragraph 141 to the extent that they are intended to relate to this
13 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
14 of the remaining allegations contained in paragraph 142 of plaintiffs' Complaint and, on that basis,
15 hereby denies the same.

16 142. This defendant denies that it is in any way responsible for causing or contributing to the
17 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
18 denies all of the allegations in paragraph 142 to the extent that they are intended to relate to this
19 defendant.

20 143. This defendant denies that it is in any way responsible for causing or contributing to the
21 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
22 denies all of the allegations in paragraph 143 to the extent that they are intended to relate to this
23 defendant.

24 144. This defendant denies that it is in any way responsible for causing or contributing to the
25 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
26 denies all of the allegations in paragraph 144 to the extent that they are intended to relate to this
27 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
28 of the remaining allegations contained in paragraph 139 of plaintiffs' Complaint and, on that basis,

1 hereby denies the same.

2 145. This defendant denies that it is in any way responsible for causing or contributing to the
3 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
4 denies all of the allegations in paragraph 145 to the extent that they are intended to relate to this
5 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
6 of the remaining allegations contained in paragraph 145 of plaintiffs' Complaint and, on that basis,
7 hereby denies the same.

8 146. This defendant denies that it is in any way responsible for causing or contributing to the
9 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
10 denies all of the allegations in paragraph 146 to the extent that they are intended to relate to this
11 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
12 of the remaining allegations contained in paragraph 146 of plaintiffs' Complaint and, on that basis,
13 hereby denies the same.

14 147. This defendant denies that it is in any way responsible for causing or contributing to the
15 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
16 denies all of the allegations in paragraph 147 to the extent that they are intended to relate to this
17 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
18 of the remaining allegations contained in paragraph 147 of plaintiffs' Complaint and, on that basis,
19 hereby denies the same.

20 148. 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' Complaint in any way; or that it
22 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
23 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
24 paragraph 148 to the extent they relate to this defendant. This defendant is without knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
26 148 of plaintiffs' Complaint and, on that basis, hereby denies the same.

27 149. This defendant denies all of the allegations in plaintiffs' Complaint not herein admitted,
28 denied or neither admitted nor denied for lack of knowledge or information sufficient to form a belief as

1 to the truth of the allegations.

2 **ANSWERING PLAINTIFFS' PRAYER FOR RELIEF**

3 This defendant denies that it is liable to plaintiffs in any way; that it is responsible for causing or
4 contributing to the injuries and damages alleged in plaintiffs' Complaint in any way or that it is indebted
5 to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to any of the
6 relief requested, including punitive damages, attorney's fees and costs, and interest at the statutory rate,
7 from this defendant.

8 **AFFIRMATIVE DEFENSES**

9 1. That plaintiffs' Complaint on file herein, and each of the purported causes of action
10 contained therein, fail to state a cause of action against this defendant.

11 2. This defendant alleges that any injury, damage or loss, if any, sustained by plaintiffs
12 herein were proximately caused and contributed to by the negligence on the part of the plaintiffs,
13 plaintiffs' decedent or others in that said individuals failed to exercise ordinary care on their own behalf
14 or for that of others at the times and places set forth in the Complaint on file herein.

15 3. This defendant alleges that its purported acts or failure to act to protect against the risk of
16 injury created by the alleged danger were reasonable, taking into consideration the time and opportunity
17 to take action and weighing the probability and gravity of potential injuries to persons and property
18 foreseeably exposed to the risk of injury against the practicability and cost of protecting against the risk
19 of said injury.

20 4. This defendant alleges that at all times relevant on or before the date of the accident
21 alleged herein, plaintiffs and plaintiffs' decedent knew the hazards and risks involved and had full
22 knowledge of the conditions existing and appreciated the risks involved and had full knowledge of the
23 conditions existing and appreciated the risk of receiving injuries. Plaintiffs and plaintiffs' decedent
24 voluntarily assumed the risks, and their assumption of those risks with a knowledge of the magnitude of
25 them was the sole and proximate cause of the accident and of the injuries and damages sustained, if any.
26 This defendant therefore alleges that the plaintiffs and plaintiffs' decedent consented to a reduction in
27 this defendant's duty of care towards them and consequently the plaintiffs are barred from any recovery
28 on their own behalf or on behalf of plaintiffs' decedent.

1 5. While denying any and all liability, this defendant alleges that other persons or entities,
2 whether or not parties to this action, including plaintiffs and plaintiffs' decedent, were negligent in and
3 about the matters alleged in said Complaint and thereby proximately caused the alleged incident,
4 injuries and damages, if any, sustained by the plaintiffs and plaintiffs' decedent, and therefore, should
5 any damages be awarded, they must be apportioned among all such persons or entities, with any amount
6 attributable to other persons or entities being offset against any damages, if any, awarded against this
7 defendant.

8 6. The negligence and/or the act or omission, if any, of this defendant was not a substantial
9 factor in bringing about the plaintiffs' or plaintiffs' decedent's alleged injuries, and therefore, was not a
10 contributing cause thereof, but was superseded by the acts or omissions of others, which were
11 independent, intervening and proximate causes of any injury or damage suffered by the plaintiffs or
12 plaintiffs' decedent.

13 7. In the event this defendants is found liable (which supposition is denied and merely
14 stated for the purpose of this affirmative defense), the damages in this case shall be apportioned and/or
15 reduced as the case may be.

16 8. That plaintiffs' Complaint on file herein and each of the purported causes of action
17 contained therein fail to state a cause of action against this defendant, in that each and every cause of
18 action and the whole thereof, is barred by the applicable statute of limitations.

19 9. This defendant is informed and believes, and based upon such information and belief
20 alleges that at all times relevant hereto, the plaintiffs and plaintiffs' decedent could have, by the exercise
21 of reasonable diligence, limited or prevented their damages, if any, as a result of the incident alleged in
22 the Complaint, and each and every cause of action contained therein, and that the plaintiffs have failed
23 or refused to do so. Such failure or refusal on the part of the plaintiffs and plaintiffs' decedent
24 constitutes a failure to mitigate their damages.

25 10. This defendant alleges that the plaintiffs and plaintiffs' decedent expressly in writing
26 waived and released all liability against this Ddefendants, including alleged liability based on the
27 negligence of this defendant. The plaintiffs and plaintiffs' decedent also expressly in writing agreed to
28 indemnify and hold this defendant harmless from all liability, including for alleged liability based on the

1 negligence of this defendant. The plaintiffs and plaintiffs' decedent furthermore expressly in writing
2 agreed to assume all risks and dangers broadly associated with the activities and events at issue,
3 including the risks and dangers posed by the alleged negligence of this defendant. As a result of the
4 foregoing, the plaintiffs relieved this defendant of a duty of care, and the claims of the plaintiffs and
5 plaintiffs' decedent herein are barred as a matter of law.

6 11. This defendant alleges that if it should be established that this defendant is in any manner
7 legally responsible for plaintiffs' alleged damages, which this defendant denies, this defendant would be
8 entitled to indemnity and/or contribution from plaintiffs in direct proportion to the negligence or other
9 actionable conduct which proximately caused or contributed to their alleged damages, if any there were.

10 12. All claims against this defendant are barred, in whole or in part, by laches and delay on
11 the part of the Plaintiffs, to the prejudice of this defendant.

12 13. Plaintiffs had full knowledge of all of this defendant's alleged actions, and each of them,
13 concerning the allegations contained in the Complaint and did not object to any of those actions at the
14 time they were undertaken or within a reasonable time thereafter. As such, Plaintiffs have waived any
15 causes of action which may have arisen out of those alleged acts by this defendant.

16 14. Plaintiffs had full knowledge of all this defendant's alleged actions, and each of them,
17 concerning the allegations contained in the Complaint and did not object to any of those actions at the
18 time they were undertaken or within a reasonable time thereafter. As such, Plaintiffs are now estopped
19 from asserting any causes of action which may have arisen out of those alleged acts by this defendant.

20 15. Plaintiffs are not entitled to any recovery from this defendant because the alleged
21 damages, if any, are speculative.

22 16. This defendant alleges that the Complaint fails to state facts sufficient to state any claim
23 upon which punitive damages can be awarded.

24 17. This defendant alleges that the Complaint fails to state a cause of action upon which
25 attorneys' fees can be awarded.

26 18. The imposition of any punitive damages in this matter would deprive this defendant of its
27 property without due process of law under the Nevada State Constitution and the United States
28 Constitution. Further, the imposition of punitive damages in this matter would violate this defendant's

1 right to protection from “excessive fines” as provided in the Eighth Amendment of the United States
2 Constitution and Article I, section 17 of the Nevada State Constitution.

3 19. At all times relevant hereto, this defendant had neither actual nor constructive knowledge
4 of any alleged dangerous condition(s) on the premises. Further, the alleged dangerous condition(s) on
5 the premises had not existed for a length of time so that in the exercise of reasonable care this defendant
6 would have or should have discovered the condition in time to remedy it or to give warning before the
7 alleged incident occurred.

8 20. The product which allegedly caused injuries or damages to plaintiffs and plaintiffs’
9 decedent was reasonably fit for the uses for which it was intended.

10 21. Plaintiffs’ claims may be barred due to a lack in privity between the parties.

11 22. The product at issue was in compliance with all federal, state and local codes, standards,
12 regulations, specifications and statutes regarding the manufacture, sale and use of the product at all
13 times pertinent to this action.

14 23. Plaintiffs are not entitled to recover to the extent any alleged damages or injuries were
15 caused by the misuse, abuse, or failure to properly maintain or care for the product.

16 24. Plaintiffs’ claims are barred because the physical harm alleged by plaintiffs in this action
17 resulted from the misuse of the product at issue by some person not reasonably expected by this
18 defendant at the time the product at issue in this action was sold or otherwise conveyed to another party.

19 25. Plaintiffs’ claims are barred because plaintiffs and plaintiffs’ decedent knew of the
20 defects alleged in the Complaint and were aware of the dangers and nevertheless proceeded
21 unreasonably to make use of such product.

22 26. Plaintiffs’ claims may be barred because the physical harm complained of was caused by
23 a modification or alteration of the product at issue made by a person after the delivery to the initial user
24 or consumer which modification or alteration was the proximate cause of the physical harm complained
25 of by plaintiffs and such modification or alteration was not reasonably expected by this answering
26 defendant.

27 27. This defendant alleges that on balance, in light of the relevant factors, the benefits of the
28 design of the subject product outweigh the risks of danger, if any, inherent in the design and/or that the

1 subject product performed as safely as the ordinary consumer would expect when used in an intended or
2 reasonably foreseeable manner.

3 28. If plaintiffs' damages were caused by any product alleged to have been manufactured,
4 designed, assembled, produced, inspected, tested, sold, supplied, leased, rented, delivered or otherwise
5 distributed by this defendant, such product was intended for and sold to a knowledgeable and
6 sophisticated user over whom this defendant had no control and who was fully informed as to the risks
7 and dangers, if any, associated with that product and the precautions, if any, required to avoid those
8 risks and dangers. By reason thereof, this defendant had no duty to warn plaintiffs or plaintiffs'
9 decedent or to further warn the knowledgeable user of the risks and dangers, if any, associated with the
10 product. Whatever injury, if any, plaintiffs, plaintiffs' decedent or any other individual sustained was
11 proximately caused by the failure of the knowledgeable user of the product to use it for the purpose for
12 which, and the manner for which, it was intended to be used.

13 29. Plaintiffs' claims against this defendant are barred by the doctrine of preemption.

14 30. The vehicle described in plaintiffs' Complaint, which is alleged to be defective, and all
15 relevant components thereof, complied with the state of the art and/or the industry for passenger
16 vehicles existing at the time that it was manufactured and distributed.

17 31. Any defect of the product and/or its component parts, if any, was open and obvious to the
18 plaintiffs and plaintiffs' decedent.

19 32. If this defendant had any involvement in this matter at all it was nothing more than the
20 provider of a service and cannot be held strictly liable for the plaintiffs' injuries or damages.

21 33. The product in question was sold on an "as-is" basis with all faults and thus the entire
22 risk as to the quality and performance of the product is with the plaintiffs and plaintiffs' decedent, as
23 buyer.

24 34. While denying any liability or wrongdoing, this defendant states that any recovery by
25 plaintiffs from this defendant must be reduced or offset by amounts plaintiffs have received or will
26 receive from others for the same injuries claimed in this lawsuit.

27 35. This defendant cannot be held jointly and severally liable for injuries or damages caused
28 by the tortious conduct of other defendants under the terms and provisions of NRS 41.1411.

1 36. While denying any and all allegations of negligence, wrongdoing, fault, or liability, this
2 defendant states that any recovery by plaintiffs for personal injuries and/or damages must be diminished
3 by the percentage of the total tortious conduct attributable to plaintiffs or decedent under the terms and
4 provisions of NRS 41.141.

5 37. An award of punitive damages against this defendant in this case would violate the
6 United States and Nevada Constitutions to the extent it may award damages to plaintiffs for actions
7 allegedly performed outside of the State of Nevada.

8 38. This defendant is informed and believes, and on that basis alleges that the Commerce
9 Clause of the United States Constitution (U.S. Const. Art. 1, section 9, clause 3) precludes the
10 application of a State statute to commerce that takes place wholly outside of a State's borders, whether
11 or not the commerce has effects within the State, and protects against inconsistent verdicts and
12 legislation arising from the projection of one State regulatory scheme into the jurisdiction of another
13 State.

14 39. This defendant hereby incorporates by reference those affirmative defenses enumerated
15 in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
16 investigation or discovery reveals the applicability of said defenses, or any other appropriate affirmative
17 defense, this defendant reserves the right to seek leave of Court to amend its Answer to specifically
18 assert any such defense or defenses. Such defenses are incorporated herein by reference for the specific
19 purpose of not waiving any such defense or defenses.

20 40. This defendant adopts and incorporates by reference any affirmative defense asserted by
21 any other defendant to this action, to the extent such affirmative defenses apply to this defendant.

22 This defendant reserves the right to amend and/or assert any additional defenses as may be
23 disclosed during the course of additional investigation and discovery.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, this defendant prays that Plaintiffs take nothing by reason of their Complaint on
26 file herein, and that this defendant be dismissed hence with their costs of suit and attorneys' fees
27 incurred herein, and for such other and further relief as the Court may deem just and proper.
28

COUNTER-CLAIM

**COUNTER-CLAIMANT SPEEDVEGAS, LLC'S COUNTER-CLAIM AGAINST ROBERT
BARNARD AND MOTORSPORT SERVICES INTERATIONAL, LLC**

Counter-Claimant repeats, re-alleges and incorporates each and every allegation in the preceding paragraphs set forth herein above in the Answer section of this document.

PARTIES

1. SPEEDVEGAS, LLC is, and, at all times, was, a Delaware limited liability company with its principal place of business in Clark County, Nevada, registered to do business in the State of Nevada.

2. Upon information and belief, ROBERT BARNARD is a United States citizen who, following the subject vehicle incident and prior to being served, moved to Spain.

3. Upon information and belief, Mr. Barnard has publicly admitted prior to the filing of the Counter-Claim that he was responsible for the design and construction management of the SpeedVegas track as well as its safety features and operational procedures.

4. Following the subject incident, Mr. Barnard made the following statement in a March 15, 2017 letter wherein he represented that: "I undertook the design and supervised the construction, provided input into the overall site layout and operations."

5. Upon information and belief, MOTORSPORTS SERVICES INTERNATIONAL, LLC is Robert Barnard's company, a limited liability company formed in North Carolina.

6. Upon further information and belief, Motorsports Services International, LLC was responsible for the design and construction management of the SpeedVegas track as well as its safety features and operational procedures.

7. Motorsports Services International, LLC has since filed for bankruptcy.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of ROES I through XX, inclusive, are unknown to this Counter-Claimant who, therefore, sue said Counter-Defendants by such fictitious names. Counter-Claimant will ask leave of Court to amend this Counter-Claim to reflect the true names and capacities of the fictitiously named Counter-Defendants when they have been ascertained. Counter-Claimant is informed and believes, and based upon such information

1 and belief, allege that such Counter-Defendants designated as ROES are legally responsible in some
2 manner, negligently, contractually or otherwise, for the events herein alleged and, therefore, are liable to
3 this Counter-Claimant for indemnity and/or equitable contribution.

4 9. Counter-Claimant is informed and believes and therefore alleges that at all times herein
5 mentioned, each of the Counter-Defendants was the agent, servant and employee of the remaining
6 Counter-Defendants, acting within the course and scope of that agency and employment, and that the
7 acts and omissions of each of the Counter-Defendants were ratified by the remaining Counter-
8 Defendants.

9 10. Counter-Claimant is informed and believes and thereupon alleges that at all times
10 mentioned herein, Counter-Defendants, and each of them, were, and are now, individuals, sole
11 partnerships, partnerships, registered professionals, corporations, or other legal entities and/or business
12 organizations of unknown form, which were licensed or otherwise authorized to do business in the State
13 of California.

14 GENERAL ALLEGATIONS

15 Claimant repeats, re-alleges and incorporates each and every allegation in the preceding
16 paragraphs as if set forth fully herein.

17 11. Plaintiffs herein have filed the subject Complaint for damages for personal injuries
18 against several defendants, including Counter-Claimant herein. The main Complaint alleges, among
19 other things, that Counter-Claimant negligently operated its private motorsports facility and negligently
20 designed the track at the facility, which led to the subject accident on February 12, 2017, wherein
21 plaintiffs' decedent CRAIG SHERWOOD and Counter-Claimant/Counter-Defendant's decedent GIL
22 BEN-KELY, an employee of Counter-Claimant, were killed.

23 12. Counter-Claimant is informed and believes, and based upon such information and belief,
24 allege that Counter-Defendants herein, designated as ROES or otherwise, are legally responsible in
25 some manner, negligently, contractually or otherwise, for the events herein alleged and, therefore, are
26 liable to Counter-Claimant for indemnity and/or equitable contribution.

27 FIRST CAUSE OF ACTION

28 (For Implied Indemnity against all Counter-Defendants)

1 Counter-Claimant repeats, re-alleges and incorporates each and every allegation in the preceding
2 paragraphs as if set forth fully herein.

3 13. An actual controversy has arisen, and now exists, between Counter-Claimant and
4 Counter-Defendants herein concerning each party's respective rights and duties in connection with the
5 action brought by Plaintiffs, who claim to have been damaged by Counter-Claimant and others.

6 14. Counter-Claimant is informed and believes, and based upon such information and belief,
7 allege that Counter-Defendants herein acted negligently or otherwise tortiously in and about the matters
8 set forth in Plaintiffs' Complaint and that the damages alleged in Plaintiffs' Complaint were solely the
9 proximate result of said Counter-Defendants' negligence and/or otherwise tortious misconduct.

10 15. If, upon the trial of Plaintiffs' Complaint, Counter-Claimant is found liable to Plaintiffs,
11 then Counter-Claimant is entitled to a judgment of indemnification against Counter-Defendants herein
12 for the total amount of any judgment awarded against Counter-Claimant.

13 16. Counter-Claimant hereby demands that Counter-Defendants herein indemnify and hold
14 Counter-Claimant harmless; assume the defense of this action on behalf of Counter-Claimant; take such
15 necessary and required steps to protect Counter-Claimant; and pay all claims, settlements, judgments,
16 attorneys' fees and other costs incurred by and/or awarded against Counter-Claimant.

17 **SECOND CAUSE OF ACTION**

18 (For Declaratory Relief against all Counter-Defendants)

19 Counter-Claimant repeats, re-alleges and incorporates each and every allegation in the preceding
20 paragraphs as if set forth fully herein.

21 17. Counter-Claimant is informed and believes, and based upon such information and belief
22 allege, that any and all events and happenings, injuries and damages, if any, referred to in Plaintiffs'
23 Complaint were proximately caused by the negligence and/or otherwise tortious misconduct of Counter-
24 Defendants herein.

25 18. Counter-Claimant is entitled, at a minimum, to a declaration of this Court as to the
26 respective degrees of negligence, or the percentages of fault of whatever nature, if any, of Counter-
27 Claimant and Counter-Defendants herein, which proximately caused or contributed to Plaintiffs'
28 damages, and Counter-Claimant is entitled to be indemnified, at a minimum, on the basis of

1 comparative/partial indemnity principles applied by, between and among Counter-Claimant and said
2 Counter-Defendants.

3 **WHEREFORE**, Counter-Claimant prays for judgment against Counter-Defendants ROBERT
4 BARNARD and MOTORSPORTS SERVICES INTERNATIONAL, LLC as follows:

5 1. For a declaration that any responsibility and/or liability that is determined to exist for the
6 damages claimed by Plaintiffs are the responsibility of the primary and/or acts of negligence and/or
7 otherwise tortious conduct of said Counter-Defendants herein and only the secondary and/or passive
8 negligence and/or vicarious negligence and/or derivative negligence of Counter-Claimant.

9 2. For a declaration that Counter-Defendants herein are obligated to defend Counter-
10 Claimant against the claims of Plaintiffs pending against Counter-Claimant, to reimburse Counter-
11 Claimant for necessary and reasonable attorneys' fees pursuant to the applicable statutory provisions, as
12 well as applicable case law, and costs incurred by Counter-Claimant in defending against the claims of
13 Plaintiffs pending against it, and to indemnify Counter-Claimant for all sums which Counter-Claimant
14 may be compelled to pay as a result of the damages, judgment, settlement and/or recovery by Plaintiffs
15 against Counter-Claimant;

16 3. That in the event judgment is rendered in favor of Plaintiffs in this action and against
17 Counter-Claimant herein, the Court adjudge and decree that the negligence and/or wrongful conduct of
18 Counter-Claimant and said Counter-Defendants shall be apportioned;

19 4. That the Court make the resulting judgment against the parties according to the
20 apportioned negligence and/or other tortious conduct;

21 5. That Counter-Claimant be awarded partial and comparative indemnification against
22 Counter-Defendants herein;

23 6. For judgment declaring the respective responsibility and liability of the parties herein for
24 Plaintiffs' damages, if any;

25 7. For compensatory damages in an amount to be determined at trial;

26 8. For costs of suit incurred herein, including attorneys' fees; and

27 9. For such other and further relief as this Court may deem just and proper.

28 **JURY DEMAND**

1 SPEEDVEGAS, LLC hereby demands a trial by jury as to any and all issues so triable.

2 **Affirmation**

3 **(Pursuant to NRS 239B.030)**

4 The undersigned does hereby affirm that the preceding document filed in this court does not
5 contain the social security number of any person.

6 DATED this 20th day of December, 2018.

7
8 PERRY & WESTBROOK
A Professional Corporation

9 */s/ Alan W. Westbrook*

10 ALAN W. WESTBROOK, ESQ.
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12 Las Vegas, Nevada 89102
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E-Mail: awestbrook@perrywestbrook.com
14 Attorneys for Defendant
SPEEDVEGAS, LLC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of December, 2018, a true and correct copy of the foregoing ANSWER and COUNTERCLAIM was served upon the following counsel via the Eighth Judicial District Court's Electronic Filing and Service System pursuant to Administrative Order 14-2.

/s/ Nancy E. Kuhns

An Employee of PERRY & WESTBROOK
A Professional Corporation

25

25

AACC
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Attorneys for Defendant, FELICE J. FIORE, JR.

DISTRICT COURT
CLARK COUNTY, NEVADA

GWENDOLYN WARD, as Personal
Representative of the ESTATE OF CRAIG
SHERWOOD, deceased, et al.,

Plaintiffs,

vs.

SPEEDVEGAS, LLC, a Delaware limited
liability company, d/b/a SPEEDVEGAS, et al.

Defendants.

FELICE J. FIORE, JR., an individual,

Counter-claimant,

vs.

ROBERT BARNARD, an individual;
MOTORSPORT SERVICES
INTERNATIONAL, LLC; and ROE ENTITIES
I-XX, inclusive,

Counter-defendants.

CASE NO.: CASE NO: A-18-779648-C
DEPT. NO.: I

**DEFENDANT FELICE J. FIORE, JR.'S
ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' COMPLAINT**

**DEFENDANT FELICE J. FIORE, JR'S ANSWER TO PLAINTIFFS' COMPLAINT AND JURY
DEMAND**

Defendant FELICE J. FIORE, JR. ("this defendant") by and through his counsel of record, Alan

1 W. Westbrook, Esq. of the law firm of Perry & Westbrook and for his Answer to Plaintiffs' Complaint
2 respectfully answers as follows:

3 **General Denial**

4 This defendant denies that he is liable to plaintiffs in any way; that he is responsible for causing
5 or contributing to the injuries and damages alleged in plaintiffs' Complaint in any way; or that he is
6 indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
7 any of the relief requested from this defendant.

8
9 **ANSWERING THE SECTION ENTITLED**
10 **"THE PARTIES AND JURISDICTION"**

11 1. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 1 of plaintiffs' Complaint and, on that basis, hereby
13 denies the same.

14 2. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 2 of plaintiffs' Complaint and, on that basis, hereby
16 denies the same.

17 3. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 3 of plaintiffs' Complaint and, on that basis, hereby
19 denies the same.

20 4. This defendant admits the allegations contained within paragraph 4 of plaintiffs
21 Complaint.

22 5. This defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 5 of plaintiffs' Complaint and, on that basis, hereby
24 denies the same.

25 6. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 6 of plaintiffs' Complaint and, on that basis, hereby
27 denies the same.

28 7. This defendant is without knowledge or information sufficient to form a belief as to the

1 truth of the allegations contained in paragraph 7 of plaintiffs' Complaint and, on that basis, hereby
2 denies the same.

3 8. This defendant admits the allegations contained within paragraph 8 of plaintiffs
4 Complaint.

5 9. This defendant denies the allegations in paragraph 9 to the extent that they are intended
6 to relate to this defendant. This defendant is without knowledge or information sufficient to form a
7 belief as to the truth of the remaining allegations contained in paragraph 9 of plaintiffs' Complaint and,
8 on that basis, hereby denies the same.

9 10. This defendant denies the allegations in paragraph 10 to the extent that they are intended
10 to relate to this defendant. This defendant is without knowledge or information sufficient to form a
11 belief as to the truth of the remaining allegations contained in paragraph 10 of plaintiffs' Complaint and,
12 on that basis, hereby denies the same.

13 11. This defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 11 of plaintiffs' Complaint and, on that basis, hereby
15 denies the same.

16 **ANSWERING THE SECTION ENTITLED**

17 **"GENERAL ALLEGATIONS"**

18 12. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 12 of plaintiffs' Complaint and, on that basis, hereby
20 denies the same.

21 13. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 13 of plaintiffs' Complaint and, on that basis, hereby
23 denies the same.

24 14. This defendant is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 14 of plaintiffs' Complaint and, on that basis, hereby
26 denies the same.

27 15. This defendant is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in paragraph 15 of plaintiffs' Complaint and, on that basis, hereby

1 denies the same.

2 16. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 16 of plaintiffs' Complaint and, on that basis, hereby
4 denies the same.

5 17. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 17 of plaintiffs' Complaint and, on that basis, hereby
7 denies the same.

8 18. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 18 of plaintiffs' Complaint and, on that basis, hereby
10 denies the same.

11 19. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 19 of plaintiffs' Complaint and, on that basis, hereby
13 denies the same.

14 20. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 20 of plaintiffs' Complaint and, on that basis, hereby
16 denies the same.

17 21. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 21 of plaintiffs' Complaint and, on that basis, hereby
19 denies the same.

20 22. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 22 of plaintiffs' Complaint and, on that basis, hereby
22 denies the same.

23 23. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 23 of plaintiffs' Complaint and, on that basis, hereby
25 denies the same.

26 24. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 24 of plaintiffs' Complaint and, on that basis, hereby
28 denies the same.

1 25. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 25 of plaintiffs' Complaint and, on that basis, hereby
3 denies the same.

4 26. This defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 26 of plaintiffs' Complaint and, on that basis, hereby
6 denies the same.

7 27. This defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 27 of plaintiffs' Complaint and, on that basis, hereby
9 denies the same.

10 28. This defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 28 of plaintiffs' Complaint and, on that basis, hereby
12 denies the same.

13 29. This defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 29 of plaintiffs' Complaint and, on that basis, hereby
15 denies the same.

16 30. This defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 30 of plaintiffs' Complaint and, on that basis, hereby
18 denies the same.

19 31. This defendant is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 31 of plaintiffs' Complaint and, on that basis, hereby
21 denies the same.

22 32. This defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 32 of plaintiffs' Complaint and, on that basis, hereby
24 denies the same.

25 33. This defendant admits the allegations contained within paragraph 33 of plaintiffs'
26 Complaint.

27 34. This defendant is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in paragraph 34 of plaintiffs' Complaint and, on that basis, hereby

1 denies the same.

2 35. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 35 of plaintiffs' Complaint and, on that basis, hereby
4 denies the same.

5 36. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 36 of plaintiffs' Complaint and, on that basis, hereby
7 denies the same.

8 37. This defendant admits that it leased the subject vehicle to SpeedVegas. This defendant
9 denies that he is an owner of SpeedVegas, LLC. This defendant admits that Phil Fiore was a creditor of
10 SpeedVegas, LLC during its bankruptcy proceeding. This defendant denies the remaining allegations in
11 paragraph 37 to the extent that they are intended to relate to this defendant. This defendant is without
12 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
13 contained in paragraph 37 of plaintiffs' Complaint and, on that basis, hereby denies the same.

14 38. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 38 of plaintiffs' Complaint and, on that basis, hereby
16 denies the same.

17 39. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 39 of plaintiffs' Complaint and, on that basis, hereby
19 denies the same.

20 40. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 40 of plaintiffs' Complaint and, on that basis, hereby
22 denies the same.

23 41. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 41 of plaintiffs' Complaint and, on that basis, hereby
25 denies the same.

26 42. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 42 of plaintiffs' Complaint and, on that basis, hereby
28 denies the same.

1 43. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 43 of plaintiffs' Complaint and, on that basis, hereby
3 denies the same.

4 44. This defendant denies that it received any recalls relative to the subject vehicle's EVAP
5 system prior to the incident. This defendant is without knowledge or information sufficient to form a
6 belief as to the truth of the remaining allegations contained in paragraph 44 of plaintiffs' Complaint and,
7 on that basis, hereby denies the same.

8 45. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 45 of plaintiffs' Complaint and, on that basis, hereby
10 denies the same.

11 46. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 46 of plaintiffs' Complaint and, on that basis, hereby
13 denies the same.

14 47. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 47 of plaintiffs' Complaint and, on that basis, hereby
16 denies the same.

17 48. Upon information and belief, this defendant admits that it received a recall regarding the
18 vehicle's EVAP system, albeit after the occurrence of the subject incident. This defendant denies the
19 remaining allegations contained in paragraph 48 of plaintiffs' Complaint.

20 49. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 49 of plaintiffs' Complaint and, on that basis, hereby
22 denies the same.

23 50. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 50 of plaintiffs' Complaint and, on that basis, hereby
25 denies the same.

26 51. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 51 of plaintiffs' Complaint and, on that basis, hereby
28 denies the same.

1 52. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 52 of plaintiffs' Complaint and, on that basis, hereby
3 denies the same.

4 53. This defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 53 of plaintiffs' Complaint and, on that basis, hereby
6 denies the same.

7 54. This defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 54 of plaintiffs' Complaint and, on that basis, hereby
9 denies the same.

10 55. This defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 55 of plaintiffs' Complaint and, on that basis, hereby
12 denies the same.

13 56. This defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 56 of plaintiffs' Complaint and, on that basis, hereby
15 denies the same.

16 57. This defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 57 of plaintiffs' Complaint and, on that basis, hereby
18 denies the same.

19 58. This defendant is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 58 of plaintiffs' Complaint and, on that basis, hereby
21 denies the same.

22 59. This defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 59 of plaintiffs' Complaint and, on that basis, hereby
24 denies the same.

25 60. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 60 of plaintiffs' Complaint and, on that basis, hereby
27 denies the same.

28 61. This defendant is without knowledge or information sufficient to form a belief as to the

1 truth of the allegations contained in paragraph 61 of plaintiffs' Complaint and, on that basis, hereby
2 denies the same.

3 62. This defendant is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in paragraph 62 of plaintiffs' Complaint and, on that basis, hereby
5 denies the same.

6 63. This defendant is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 63 of plaintiffs' Complaint and, on that basis, hereby
8 denies the same.

9 64. This defendant is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in paragraph 64 of plaintiffs' Complaint and, on that basis, hereby
11 denies the same.

12 65. This defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 65 of plaintiffs' Complaint and, on that basis, hereby
14 denies the same.

15 66. This defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 66 of plaintiffs' Complaint and, on that basis, hereby
17 denies the same.

18 67. This defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 67 of plaintiffs' Complaint and, on that basis, hereby
20 denies the same.

21 68. This defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 68 of plaintiffs' Complaint and, on that basis, hereby
23 denies the same.

24 69. This defendant is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 69 of plaintiffs' Complaint and, on that basis, hereby
26 denies the same.

27 70. This defendant is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in paragraph 70 of plaintiffs' Complaint and, on that basis, hereby

1 denies the same.

2 71. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 71 of plaintiffs' Complaint and, on that basis, hereby
4 denies the same.

5 72. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 72 of plaintiffs' Complaint and, on that basis, hereby
7 denies the same.

8 73. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 73 of plaintiffs' Complaint and, on that basis, hereby
10 denies the same.

11 74. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 74 of plaintiffs' Complaint and, on that basis, hereby
13 denies the same.

14 75. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 75 of plaintiffs' Complaint and, on that basis, hereby
16 denies the same.

17 76. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 76 of plaintiffs' Complaint and, on that basis, hereby
19 denies the same.

20 77. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 77 of plaintiffs' Complaint and, on that basis, hereby
22 denies the same.

23 78. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 78 of plaintiffs' Complaint and, on that basis, hereby
25 denies the same.

26 79. This defendant is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained in paragraph 79 of plaintiffs' Complaint and, on that basis, hereby
28 denies the same.

1 80. This defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 80 of plaintiffs' Complaint and, on that basis, hereby
3 denies the same.

4 81. This defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 81 of plaintiffs' Complaint and, on that basis, hereby
6 denies the same.

7 **ANSWERING THE SECTION ENTITLED**

8 **"FIRST CAUSE OF ACTION, WRONGFUL DEATH - ALL DEFENDANTS"**

9 82. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
10 and defenses to paragraph 1-81 of plaintiffs' Complaint, set forth above.

11 83. 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' Complaint in any way; or that it
13 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
14 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
15 paragraph 83 to the extent they relate to this defendant. This defendant is without knowledge or
16 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
17 83 of plaintiffs' Complaint and, on that basis, hereby denies the same.

18 84. 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' Complaint in any way; or that it
20 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
21 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
22 paragraph 84 to the extent they relate to this defendant. This defendant is without knowledge or
23 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
24 84 of plaintiffs' Complaint and, on that basis, hereby denies the same.

25 85. 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' Complaint in any way; or that it
27 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
28 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in

1 paragraph 85 to the extent they relate to this defendant. 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 85 of plaintiffs' Complaint and, on that basis, hereby denies the same.

4 **ANSWERING THE SECTION ENTITLED**

5 **"SECOND CAUSE OF ACTION, NEGLIGENCE - ALL DEFENDANTS"**

6 86. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
7 and defenses to paragraph 1-85 of plaintiffs' Complaint, set forth above.

8 87. 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' Complaint in any way; or that it
10 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
11 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
12 paragraph 87 to the extent they relate to this defendant. This defendant is without knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
14 87 of plaintiffs' Complaint and, on that basis, hereby denies the same.

15 88. 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' Complaint in any way; or that it
17 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
18 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
19 paragraph 88 to the extent they relate to this defendant. This defendant is without knowledge or
20 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
21 88 of plaintiffs' Complaint and, on that basis, hereby denies the same.

22 89. 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' Complaint in any way; or that it
24 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
25 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
26 paragraph 89 to the extent they relate to this defendant. This defendant is without knowledge or
27 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
28 89 of plaintiffs' Complaint and, on that basis, hereby denies the same.

1 90. 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' Complaint in any way; or that it
3 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
4 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
5 paragraph 90 to the extent they relate to this defendant. This defendant is without knowledge or
6 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
7 90 of plaintiffs' Complaint and, on that basis, hereby denies the same.

8 91. 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' Complaint in any way; or that it
10 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
11 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
12 paragraph 91 to the extent they relate to this defendant. This defendant is without knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
14 91 of plaintiffs' Complaint and, on that basis, hereby denies the same.

15 92. 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' Complaint in any way; or that it
17 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
18 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
19 paragraph 92 to the extent they relate to this defendant. This defendant is without knowledge or
20 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
21 92 of plaintiffs' Complaint and, on that basis, hereby denies the same.

22 **ANSWERING THE SECTION ENTITLED**

23 **"THIRD CAUSE OF ACTION, NEGLIGENT HIRING, RETENTION, TRAINING, AND**
24 **SUPERVISION - SPEEDVEGAS"**

25 93. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
26 and defenses to paragraph 1-92 of plaintiffs' Complaint, set forth above.

27 94. This defendant is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in paragraph 94 of plaintiffs' Complaint and, on that basis, hereby

1 denies the same.

2 95. This defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 95 of plaintiffs' Complaint and, on that basis, hereby
4 denies the same.

5 96. This defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 96 of plaintiffs' Complaint and, on that basis, hereby
7 denies the same.

8 97. This defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 97 of plaintiffs' Complaint and, on that basis, hereby
10 denies the same.

11 98. This defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 98 of plaintiffs' Complaint and, on that basis, hereby
13 denies the same.

14 99. This defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 99 of plaintiffs' Complaint and, on that basis, hereby
16 denies the same.

17 100. This defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 100 of plaintiffs' Complaint and, on that basis, hereby
19 denies the same.

20 101. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 101 of plaintiffs' Complaint and, on that basis, hereby
22 denies the same.

23 102. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 102 of plaintiffs' Complaint and, on that basis, hereby
25 denies the same.

26 103. 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' Complaint in any way; or that it
28 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to

1 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
2 paragraph 103 to the extent they relate to this defendant. This defendant is without knowledge or
3 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
4 103 of plaintiffs' Complaint and, on that basis, hereby denies the same.

5 104. This defendant denies that it is in any way responsible for causing or contributing to the
6 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
7 denies all of the allegations in paragraph 104 to the extent that they are intended to relate to this
8 defendant.

9 105. 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' Complaint in any way; or that it
11 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
12 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
13 paragraph 105 to the extent they relate to this defendant. This defendant is without knowledge or
14 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
15 105 of plaintiffs' Complaint and, on that basis, hereby denies the same.

16 **ANSWERING THE SECTION ENTITLED**

17 **"FOURTH CAUSE OF ACTION, RESPONDEAT SUPERIOR - SPEEDVEGAS"**

18 106. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
19 and defenses to paragraph 1-105 of plaintiffs' Complaint, set forth above.

20 107. This defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 107 of plaintiffs' Complaint and, on that basis, hereby
22 denies the same.

23 108. This defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 108 of plaintiffs' Complaint and, on that basis, hereby
25 denies the same.

26 109. 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' Complaint in any way; or that it
28 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to

any of the relief requested in this paragraph from this defendant, and denies the allegations contained in paragraph 109 to the extent they relate to this defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 109 of plaintiffs' Complaint and, on that basis, hereby denies the same.

ANSWERING THE SECTION ENTITLED

"FIFTH CAUSE OF ACTION, NEGLIGENT ENTRUSTMENT - FIORE"

110. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers and defenses to paragraph 1-109 of plaintiffs' Complaint, set forth above.

111. This defendant denies the allegations contained in paragraph 111 of plaintiffs' Complaint.

112. This defendant denies the allegations contained in paragraph 112 of plaintiffs' Complaint.

113. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113 of plaintiffs' Complaint and, on that basis, hereby denies the same.

114. This defendant denies the allegations contained in paragraph 114 of plaintiffs' Complaint.

115. This defendant denies that he received a recall notice related to the subject vehicle prior to the occurrence of the subject incident.

116. This defendant denies the allegations contained in paragraph 116 of plaintiffs' Complaint.

117. This defendant denies the allegations contained in paragraph 117 of plaintiffs' Complaint.

118. This defendant denies the allegations contained in paragraph 118 of plaintiffs' Complaint.

119. 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' Complaint in any way; or that it is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to

1 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
2 paragraph 119 to the extent they relate to this defendant. This defendant is without knowledge or
3 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
4 119 of plaintiffs' Complaint and, on that basis, hereby denies the same.

5 **ANSWERING THE SECTION ENTITLED**

6 **"SIXTH CAUSE OF ACTION, NEGLIGENT PRODUCTS LIABILITY - SPEEDVEGAS,**
7 **FIGLIORE, AND LAMBORGHINI"**

8 120. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers
9 and defenses to paragraph 1-119 of plaintiffs' Complaint, set forth above.

10 121. This defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 121 of plaintiffs' Complaint and, on that basis, hereby
12 denies the same.

13 122. This defendant admits that it leased the subject vehicle to SpeedVegas. This defendant
14 denies that it is in any way responsible for causing or contributing to the injuries alleged in plaintiffs'
15 Complaint, denies that it is liable to plaintiffs in any way, and further denies the remaining allegations in
16 paragraph 122 to the extent that they are intended to relate to this defendant. This defendant is without
17 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
18 contained in paragraph 122 of plaintiffs' Complaint and, on that basis, hereby denies the same.

19 123. This defendant denies that it is in any way responsible for causing or contributing to the
20 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
21 denies all of the allegations in paragraph 123 to the extent that they are intended to relate to this
22 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
23 of the remaining allegations contained in paragraph 123 of plaintiffs' Complaint and, on that basis,
24 hereby denies the same.

25 124. This defendant is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 124 of plaintiffs' Complaint and, on that basis, hereby
27 denies the same.

28 125. This defendant is without knowledge or information sufficient to form a belief as to the

1 truth of the allegations contained in paragraph 125 of plaintiffs' Complaint and, on that basis, hereby
2 denies the same.

3 126. This defendant denies that it is in any way responsible for causing or contributing to the
4 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
5 denies all of the allegations in paragraph 126 to the extent that they are intended to relate to this
6 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
7 of the remaining allegations contained in paragraph 126 of plaintiffs' Complaint and, on that basis,
8 hereby denies the same.

9 127. This defendant denies that it is in any way responsible for causing or contributing to the
10 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
11 denies all of the allegations in paragraph 127 to the extent that they are intended to relate to this
12 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
13 of the remaining allegations contained in paragraph 127 of plaintiffs' Complaint and, on that basis,
14 hereby denies the same.

15 128. This defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 128 of plaintiffs' Complaint and, on that basis, hereby
17 denies the same.

18 129. This defendant denies that he received a recall notice related to the subject vehicle prior
19 to the occurrence of the subject incident.

20 130. This defendant denies that it is in any way responsible for causing or contributing to the
21 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
22 denies all of the allegations in paragraph 130 to the extent that they are intended to relate to this
23 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
24 of the remaining allegations contained in paragraph 130 of plaintiffs' Complaint and, on that basis,
25 hereby denies the same.

26 131. This defendant denies that it is in any way responsible for causing or contributing to the
27 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
28 denies all of the allegations in paragraph 131 to the extent that they are intended to relate to this

1 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
2 of the remaining allegations contained in paragraph 131 of plaintiffs' Complaint and, on that basis,
3 hereby denies the same.

4 132. This defendant denies that it is in any way responsible for causing or contributing to the
5 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
6 denies all of the allegations in paragraph 132 to the extent that they are intended to relate to this
7 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
8 of the remaining allegations contained in paragraph 132 of plaintiffs' Complaint and, on that basis,
9 hereby denies the same.

10 133. This defendant denies that it is in any way responsible for causing or contributing to the
11 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
12 denies all of the allegations in paragraph 133 to the extent that they are intended to relate to this
13 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
14 of the remaining allegations contained in paragraph 133 of plaintiffs' Complaint and, on that basis,
15 hereby denies the same.

16 134. This defendant denies that it is in any way responsible for causing or contributing to the
17 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
18 denies all of the allegations in paragraph 134 to the extent that they are intended to relate to this
19 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
20 of the remaining allegations contained in paragraph 134 of plaintiffs' Complaint and, on that basis,
21 hereby denies the same.

22 135. 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' Complaint in any way; or that it
24 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
25 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
26 paragraph 135 to the extent they relate to this defendant. This defendant is without knowledge or
27 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
28 135 of plaintiffs' Complaint and, on that basis, hereby denies the same.

ANSWERING THE SECTION ENTITLED
“SEVENTH CAUSE OF ACTION, STRICT PRODUCTS LIABILITY - SPEEDVEGAS, FIORE,
AND LAMBORGHINI”

136. This defendant incorporates by reference, as if fully set forth verbatim herein, its answers and defenses to paragraph 1-135 of plaintiffs’ Complaint, set forth above.

137. This defendant admits that it leased the subject vehicle to SpeedVegas. This denies the remaining allegations contained in paragraph 137 to the extent they relate to this defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 137 of plaintiffs’ Complaint and, on that basis, hereby denies the same.

138. This defendant denies the allegations contained in paragraph 138 to the extent they relate to this defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 138 of plaintiffs’ Complaint and, on that basis, hereby denies the same.

139. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 139 of plaintiffs’ Complaint and, on that basis, hereby denies the same.

140. This defendant denies the allegations contained in paragraph 140 to the extent they relate to this defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 140 of plaintiffs’ Complaint and, on that basis, hereby denies the same.

141. This defendant denies the allegations in paragraph 141 to the extent that they are intended to relate to this defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 141 of plaintiffs’ Complaint and, on that basis, hereby denies the same.

142. This defendant denies the allegations in paragraph 142 to the extent that they are intended to relate to this defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 142 of plaintiffs’ Complaint

1 and, on that basis, hereby denies the same.

2 143. This defendant denies the allegations in paragraph 143 to the extent that they are intended
3 to relate to this defendant. This defendant is without knowledge or information sufficient to form a
4 belief as to the truth of the remaining allegations contained in paragraph 143 of plaintiffs' Complaint
5 and, on that basis, hereby denies the same.

6 144. This defendant denies the allegations in paragraph 144 to the extent that they are intended
7 to relate to this defendant. This defendant is without knowledge or information sufficient to form a
8 belief as to the truth of the remaining allegations contained in paragraph 144 of plaintiffs' Complaint
9 and, on that basis, hereby denies the same.

10 145. This defendant denies the allegations in paragraph 145 to the extent that they are intended
11 to relate to this defendant. This defendant is without knowledge or information sufficient to form a
12 belief as to the truth of the remaining allegations contained in paragraph 145 of plaintiffs' Complaint
13 and, on that basis, hereby denies the same.

14 146. This defendant denies the allegations in paragraph 146 to the extent that they are intended
15 to relate to this defendant. This defendant is without knowledge or information sufficient to form a
16 belief as to the truth of the remaining allegations contained in paragraph 146 of plaintiffs' Complaint
17 and, on that basis, hereby denies the same.

18 147. This defendant denies that it is in any way responsible for causing or contributing to the
19 injuries alleged in plaintiffs' Complaint, denies that it is liable to plaintiffs in any way, and further
20 denies all of the allegations in paragraph 147 to the extent that they are intended to relate to this
21 defendant. This defendant is without knowledge or information sufficient to form a belief as to the truth
22 of the remaining allegations contained in paragraph 147 of plaintiffs' Complaint and, on that basis,
23 hereby denies the same.

24 148. 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' Complaint in any way; or that it
26 is indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
27 any of the relief requested in this paragraph from this defendant, and denies the allegations contained in
28 paragraph 148 to the extent they relate to this defendant. This defendant is without knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
2 148 of plaintiffs' Complaint and, on that basis, hereby denies the same.

3 149. This defendant denies all of the allegations in plaintiffs' Complaint not herein admitted,
4 denied or neither admitted nor denied for lack of knowledge or information sufficient to form a belief as
5 to the truth of the allegations.

6 **ANSWERING PLAINTIFFS' PRAYER FOR RELIEF**

7 This defendant denies that it he liable to plaintiffs in any way; that he is responsible for causing
8 or contributing to the injuries and damages alleged in plaintiffs' Complaint in any way or that he is
9 indebted to plaintiffs in any manner or amount whatsoever, and further denies plaintiffs are entitled to
10 any of the relief requested, including punitive damages, attorney's fees and costs, and interest at the
11 statutory rate, from this defendant.

12 **AFFIRMATIVE DEFENSES**

13 1. That plaintiffs' Complaint on file herein, and each of the purported causes of action
14 contained therein, fail to state a cause of action against this defendant.

15 2. This defendant alleges that any injury, damage or loss, if any, sustained by plaintiffs
16 herein were proximately caused and contributed to by the negligence on the part of the plaintiffs,
17 plaintiffs' decedent or others in that said individuals failed to exercise ordinary care on their own behalf
18 or for that of others at the times and places set forth in the Complaint on file herein.

19 3. This defendant alleges that its purported acts or failure to act to protect against the risk of
20 injury created by the alleged danger were reasonable, taking into consideration the time and opportunity
21 to take action and weighing the probability and gravity of potential injuries to persons and property
22 foreseeably exposed to the risk of injury against the practicability and cost of protecting against the risk
23 of said injury.

24 4. This defendant alleges that the plaintiffs and plaintiffs' decedent expressly in writing
25 waived and released all liability against this Ddefendants, including alleged liability based on the
26 negligence of this defendant. The plaintiffs and plaintiffs' decedent also expressly in writing agreed to
27 indemnify and hold this defendant harmless from all liability, including for alleged liability based on the
28 negligence of this defendant. The plaintiffs and plaintiffs' decedent furthermore expressly in writing

1 agreed to assume all risks and dangers broadly associated with the activities and events at issue,
2 including the risks and dangers posed by the alleged negligence of this defendant. As a result of the
3 foregoing, the plaintiffs relieved this defendant of a duty of care, and the claims of the plaintiffs and
4 plaintiffs' decedent herein are barred as a matter of law.

5 5. This defendant alleges that at all times relevant on or before the date of the accident
6 alleged herein, plaintiffs and plaintiffs' decedent knew the hazards and risks involved and had full
7 knowledge of the conditions existing and appreciated the risks involved and had full knowledge of the
8 conditions existing and appreciated the risk of receiving injuries. Plaintiffs and plaintiffs' decedent
9 voluntarily assumed the risks, and their assumption of those risks with a knowledge of the magnitude of
10 them was the sole and proximate cause of the accident and of the injuries and damages sustained, if any.
11 This defendant therefore alleges that the plaintiffs and plaintiffs' decedent consented to a reduction in
12 this defendant's duty of care towards them and consequently the plaintiffs are barred from any recovery
13 on their own behalf or on behalf of plaintiffs' decedent.

14 6. While denying any and all liability, this defendant alleges that other persons or entities,
15 whether or not parties to this action, including plaintiffs and plaintiffs' decedent, were negligent in and
16 about the matters alleged in said Complaint and thereby proximately caused the alleged incident,
17 injuries and damages, if any, sustained by the plaintiffs and plaintiffs' decedent, and therefore, should
18 any damages be awarded, they must be apportioned among all such persons or entities, with any amount
19 attributable to other persons or entities being offset against any damages, if any, awarded against this
20 defendant.

21 7. The negligence and/or the act or omission, if any, of this defendant was not a substantial
22 factor in bringing about the plaintiffs' or plaintiffs' decedent's alleged injuries, and therefore, was not a
23 contributing cause thereof, but was superseded by the acts or omissions of others, which were
24 independent, intervening and proximate causes of any injury or damage suffered by the plaintiffs or
25 plaintiffs' decedent.

26 8. In the event this defendant is found liable (which supposition is denied and merely
27 stated for the purpose of this affirmative defense), the damages in this case shall be apportioned and/or
28 reduced as the case may be.

1 9. That plaintiffs' Complaint on file herein and each of the purported causes of action
2 contained therein fail to state a cause of action against this defendant, in that each and every cause of
3 action and the whole thereof, is barred by the applicable statute of limitations.

4 10. This defendant is informed and believes, and based upon such information and belief
5 alleges that at all times relevant hereto, the plaintiffs and plaintiffs' decedent could have, by the exercise
6 of reasonable diligence, limited or prevented their damages, if any, as a result of the incident alleged in
7 the Complaint, and each and every cause of action contained therein, and that the plaintiffs have failed
8 or refused to do so. Such failure or refusal on the part of the plaintiffs and plaintiffs' decedent
9 constitutes a failure to mitigate their damages.

10 11. This defendant alleges that if it should be established that this defendant is in any manner
11 legally responsible for plaintiffs' alleged damages, which this defendant denies, this defendant would be
12 entitled to indemnity and/or contribution from plaintiffs in direct proportion to the negligence or other
13 actionable conduct which proximately caused or contributed to their alleged damages, if any there were.

14 12. All claims against this defendant are barred, in whole or in part, by laches and delay on
15 the part of the Plaintiffs, to the prejudice of this defendant.

16 13. Plaintiffs had full knowledge of all of this defendant's alleged actions, and each of them,
17 concerning the allegations contained in the Complaint and did not object to any of those actions at the
18 time they were undertaken or within a reasonable time thereafter. As such, Plaintiffs have waived any
19 causes of action which may have arisen out of those alleged acts by this defendant.

20 14. Plaintiffs had full knowledge of all this defendant's alleged actions, and each of them,
21 concerning the allegations contained in the Complaint and did not object to any of those actions at the
22 time they were undertaken or within a reasonable time thereafter. As such, Plaintiffs are now estopped
23 from asserting any causes of action which may have arisen out of those alleged acts by this defendant.

24 15. Plaintiffs are not entitled to any recovery from this defendant because the alleged
25 damages, if any, are speculative.

26 16. This defendant alleges that the Complaint fails to state facts sufficient to state any claim
27 upon which punitive damages can be awarded.

28 17. This defendant alleges that the Complaint fails to state a cause of action upon which

1 attorneys' fees can be awarded.

2 18. The imposition of any punitive damages in this matter would deprive this defendant of its
3 property without due process of law under the Nevada State Constitution and the United States
4 Constitution. Further, the imposition of punitive damages in this matter would violate this defendant's
5 right to protection from "excessive fines" as provided in the Eighth Amendment of the United States
6 Constitution and Article I, section 17 of the Nevada State Constitution.

7 19. At all times relevant hereto, this defendant had neither actual nor constructive knowledge
8 of any alleged dangerous condition(s) on the premises. Further, the alleged dangerous condition(s) on
9 the premises had not existed for a length of time so that in the exercise of reasonable care this defendant
10 would have or should have discovered the condition in time to remedy it or to give warning before the
11 alleged incident occurred.

12 20. The product which allegedly caused injuries or damages to plaintiffs and plaintiffs'
13 decedent was reasonably fit for the uses for which it was intended.

14 21. Plaintiffs' claims may be barred due to a lack in privity between the parties.

15 22. The product at issue was in compliance with all federal, state and local codes, standards,
16 regulations, specifications and statutes regarding the manufacture, sale and use of the product at all
17 times pertinent to this action.

18 23. Plaintiffs are not entitled to recover to the extent any alleged damages or injuries were
19 caused by the misuse, abuse, or failure to properly maintain or care for the product.

20 24. Plaintiffs' claims are barred because the physical harm alleged by plaintiffs in this action
21 resulted from the misuse of the product at issue by some person not reasonably expected by this
22 defendant at the time the product at issue in this action was sold or otherwise conveyed to another party.

23 25. Plaintiffs' claims are barred because plaintiffs and plaintiffs' decedent knew of the
24 defects alleged in the Complaint and were aware of the dangers and nevertheless proceeded
25 unreasonably to make use of such product.

26 26. Plaintiffs' claims may be barred because the physical harm complained of was caused by
27 a modification or alteration of the product at issue made by a person after the delivery to the initial user
28 or consumer which modification or alteration was the proximate cause of the physical harm complained

1 of by plaintiffs and such modification or alteration was not reasonably expected by this answering
2 defendant.

3 27. This defendant alleges that on balance, in light of the relevant factors, the benefits of the
4 design of the subject product outweigh the risks of danger, if any, inherent in the design and/or that the
5 subject product performed as safely as the ordinary consumer would expect when used in an intended or
6 reasonably foreseeable manner.

7 28. If plaintiffs' damages were caused by any product alleged to have been manufactured,
8 designed, assembled, produced, inspected, tested, sold, supplied, leased, rented, delivered or otherwise
9 distributed by this defendant, such product was intended for and sold to a knowledgeable and
10 sophisticated user over whom this defendant had no control and who was fully informed as to the risks
11 and dangers, if any, associated with that product and the precautions, if any, required to avoid those
12 risks and dangers. By reason thereof, this defendant had no duty to warn plaintiffs or plaintiffs'
13 decedent or to further warn the knowledgeable user of the risks and dangers, if any, associated with the
14 product. Whatever injury, if any, plaintiffs, plaintiffs' decedent or any other individual sustained was
15 proximately caused by the failure of the knowledgeable user of the product to use it for the purpose for
16 which, and the manner for which, it was intended to be used.

17 29. Plaintiffs' claims against this defendant are barred by the doctrine of preemption.

18 30. The vehicle described in plaintiffs' Complaint, which is alleged to be defective, and all
19 relevant components thereof, complied with the state of the art and/or the industry for passenger
20 vehicles existing at the time that it was manufactured and distributed.

21 31. Any defect of the product and/or its component parts, if any, was open and obvious to the
22 plaintiffs and plaintiffs' decedent.

23 32. If this defendant had any involvement in this matter at all it was nothing more than the
24 provider of a service and cannot be held strictly liable for the plaintiffs' injuries or damages.

25 33. The product in question was leased on an "as-is" basis with all faults and thus the entire
26 risk as to the quality and performance of the product is with the plaintiffs and plaintiffs' decedent, as
27 buyer.

28 34. While denying any liability or wrongdoing, this defendant states that any recovery by

1 plaintiffs from this defendant must be reduced or offset by amounts plaintiffs have received or will
2 receive from others for the same injuries claimed in this lawsuit.

3 35. This defendant cannot be held jointly and severally liable for injuries or damages caused
4 by the tortious conduct of other defendants under the terms and provisions of NRS 41.1411.

5 36. While denying any and all allegations of negligence, wrongdoing, fault, or liability, this
6 defendant states that any recovery by plaintiffs for personal injuries and/or damages must be diminished
7 by the percentage of the total tortious conduct attributable to plaintiffs or decedent under the terms and
8 provisions of NRS 41.141.

9 37. An award of punitive damages against this defendant in this case would violate the
10 United States and Nevada Constitutions to the extent it may award damages to plaintiffs for actions
11 allegedly performed outside of the State of Nevada.

12 38. This defendant is informed and believes, and on that basis alleges that the Commerce
13 Clause of the United States Constitution (U.S. Const. Art. 1, section 9, clause 3) precludes the
14 application of a State statute to commerce that takes place wholly outside of a State's borders, whether
15 or not the commerce has effects within the State, and protects against inconsistent verdicts and
16 legislation arising from the projection of one State regulatory scheme into the jurisdiction of another
17 State.

18 39. This defendant hereby incorporates by reference those affirmative defenses enumerated
19 in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
20 investigation or discovery reveals the applicability of said defenses, or any other appropriate affirmative
21 defense, this defendant reserves the right to seek leave of Court to amend its Answer to specifically
22 assert any such defense or defenses. Such defenses are incorporated herein by reference for the specific
23 purpose of not waiving any such defense or defenses.

24 40. This defendant adopts and incorporates by reference any affirmative defense asserted by
25 any other defendant to this action, to the extent such affirmative defenses apply to this defendant.

26 This defendant reserves the right to amend and/or assert any additional defenses as may be
27 disclosed during the course of additional investigation and discovery.

28 **PRAYER FOR RELIEF**

1 WHEREFORE, this defendant prays that Plaintiffs take nothing by reason of their Complaint on
2 file herein, and that this defendant be dismissed hence with his costs of suit and attorneys' fees incurred
3 herein, and for such other and further relief as the Court may deem just and proper.

4 Dated this 21st day of February, 2019.

5 PERRY & WESTBROOK
6 a Professional Corporation

7 */s/ Alan W. Westbrook*

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/s/ Nancy E. Kuhns

An Employee of PERRY & WESTBROOK,
A Professional Corporation