

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEON KHIABANI, an individual; ARIA KHIABANI, an individual; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent);

Appellants

vs.

MOTOR COACH INDUSTRIES, INC.,

Respondent.

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Clerk of Supreme Court

APPEAL

**From the Eighth Judicial District Court, Clark County
The Honorable Adriana Escobar, District Judge
District Court Case No. A-17-755977-C**

APPELLANTS' APPENDIX

VOLUME 1

PAGES 1-202

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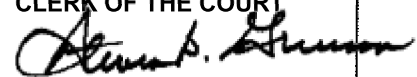
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

23 Plaintiffs,

24 vs.

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

Defendants.

Case No.: A-17-755977-C

Dept. No.: Department 31

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

ARBITRATION EXEMPTION CLAIMED
Damages Exceed \$50,000.00

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

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

3 **THE PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

6 **JURISDICTION AND VENUE**

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

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

11 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

7 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5
6 **SECOND CLAIM FOR RELIEF**
7 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**
8 **AND EDWARD HUBBARD)**

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

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

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

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

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

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

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

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

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

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

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THIRD CLAIM FOR RELIEF

(NEGLIGENCE PER SE AGAINST DEFENDANTS

RYAN'S EXPRESS AND EDWARD HUBBARD)

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

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

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

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

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

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

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FOURTH CLAIM FOR RELIEF

(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)

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

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

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

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

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

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

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

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FIFTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIXTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

SEVENTH CLAIM FOR RELIEF

(WRONGFUL DEATH AGAINST ALL DEFENDANTS)

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

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

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

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

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

14 ///

15 ///


PRAYER FOR RELIEF

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

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

DATED this 25 day of May, 2017.

KEMP, JONES & COULTHARD, LLP



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

-and-

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KENDELEE L. WORKS, ESQ. (#9611)
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kic@kempjones.com

DEMAND FOR JURY TRIAL

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

DATED this 25 day of May, 2017.

KEMP, JONES & COULTHARD, LLP



WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
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18 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

26 Plaintiffs,

27 vs.

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

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

ARBITRATION EXEMPTION CLAIMED
Damages Exceed \$50,000.00

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

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

4 10. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is
5 meant that such Defendant's officers, agents, servants, employees, or representatives did such
6 act or thing and at the time such act or thing was done, it was done with full authorization or
7 ratification of such Defendant or was done in the normal and routine course and scope of
8 business, or with the actual, apparent and/or implied authority of such Defendant's officers,
9 agents, servants, employees, or representatives. Specifically, Defendants are liable for the
10 actions of its officers, agents, servants, employees, and representatives.
11

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

14 12. Plaintiffs are informed and believe, and thereupon allege, that Defendants, and each of
15 them, jointly and in concert undertook to perform the acts as alleged herein, that Defendants and
16 each of them had full knowledge of the acts of each co-Defendant as alleged herein, and that
17 each Defendant authorized or subsequently ratified the acts of each co-Defendant as alleged
18 herein, making each co-Defendant an agent of the other Defendants and making each Defendant
19 jointly responsible and liable for the acts and omissions of each co-Defendant as alleged herein.
20

21 **JURISDICTION AND VENUE**

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

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

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GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 34. In carrying out its responsibilities for the design, manufacture, construction, assembly,
23 testing, labeling, distribution, marketing, and sale of the subject bus, Defendant MCI acted with
24 fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others.
25 As a direct and proximate result of the conduct of Defendant MCI, Plaintiffs are entitled to
26 punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(NEGLIGENCE PER SE AGAINST DEFENDANTS

RYAN'S EXPRESS AND EDWARD HUBBARD)

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

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

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

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

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

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

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FOURTH CLAIM FOR RELIEF

(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)

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

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

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

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

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

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

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

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FIFTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIXTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

9 **SEVENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

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


3 **PRAYER FOR RELIEF**

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

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

16 DATED this 6th day of June, 2017.

17 KEMP, JONES & COULTHARD, LLP

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

24 -and-

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

Attorneys for Plaintiffs

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
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(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

DEMAND FOR JURY TRIAL

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

DATED this 6th day of June, 2017.

KEMP, JONES & COULTHARD, LLP



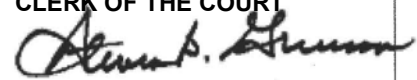
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-and-

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

Attorneys for Plaintiffs

TAB 3



1 ANAC
2 ERIC O. FREEMAN
3 NEVADA BAR NO. 6648
4 SELMAN BREITMAN LLP
5 3993 Howard Hughes Parkway, Suite 200
6 Las Vegas, NV 89169-0961
7 Telephone: 702.228.7717
8 Facsimile: 702.228.8824
9 Email: efreeman@selmanlaw.com

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

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

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

22 Plaintiffs,

23 v.

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

Defendants.

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

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

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

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **JURISDICTION AND VENUE**

24 13. Answering paragraph 13 of Plaintiffs' Amended Complaint, these answering
25 defendants are without sufficient information or knowledge to form a belief as to the truth or
26 falsity of the allegations contained in paragraph 13, and on that basis, deny the allegations
27 contained therein.
28

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

1 defendants deny the allegations contained therein.

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

4 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

20 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

1 defendants deny the allegations contained therein.

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

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

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

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

10 **FIFTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

1 contained therein.

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

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

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

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

18 **SIXTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

21 **SEVENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

9 **PLAINTIFFS' PRAYERS FOR RELIEF**

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

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

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

16 **SECOND AFFIRMATIVE DEFENSE**

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

22 **THIRD AFFIRMATIVE DEFENSE**

23 The plaintiffs have failed to mitigate their damages.

24 **FOURTH AFFIRMATIVE DEFENSE**

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

There has been an insufficiency of process.

TWELFTH AFFIRMATIVE DEFENSE

There has been an insufficiency of service of process.

THIRTEENTH AFFIRMATIVE DEFENSE

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

1 vague and ambiguous.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

22 **PRAYER FOR RELIEF**

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

- 25 1. That plaintiffs take nothing by way of their amended complaint;
26 2. For an award of attorneys' fees and costs of suit; and
27
28

1 3. For such other relief as this court deems just and proper.

2
3
4 DATED: June 28, 2017

SELMAN BREITMAN LLP

5
6 By: /s/ Eric O. Freeman

ERIC O. FREEMAN

NEVADA BAR NO. 6648

3993 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169-0961

Telephone: 702.228.7717

Facsimile: 702.228.8824

Attorneys for Defendants MICHELANGELO

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

EDWARD HUBBARD

Selman Breitman LLP
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

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

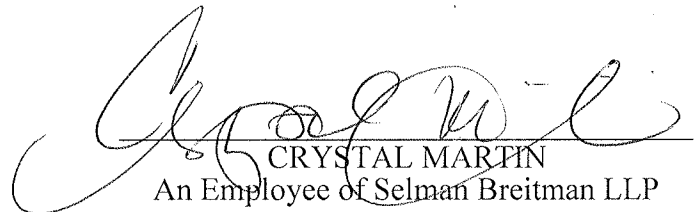
a true and correct copy of the above and foregoing **DEFENDANTS MICHELANGELO LEASING INC. DBA RYAN'S EXPRESS AND EDWARD HUBBARD'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT**, this 28 day of June 2017, addressed as follows:

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

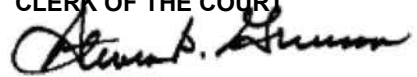
Attorneys for Plaintiffs

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

Attorneys for Plaintiffs


CRYSTAL MARTIN
An Employee of Selman Breitman LLP

TAB 4



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14 Las Vegas, Nevada 89118
15 Telephone: (702) 938-3838
16 Facsimile: (702) 938-3864

17 *Attorneys for Defendant*
18 *Motor Coach Industries, Inc.*

19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

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

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

ANSWER

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

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

22 JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

///

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

FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

///

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

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

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

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

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

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

13 **SECOND CLAIM FOR RELIEF**

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

15 **AND EDWARD HUBBARD)**

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

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

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

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

28 ///

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

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

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

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

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

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

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

22 **THIRD CLAIM FOR RELIEF**

23 **(NEGLIGENCE PER SE AGAINST DEFENDANTS**

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

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

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28 ///

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

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

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

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

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

17 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

27 ///

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

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

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

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

13 **FIFTH CLAIM FOR RELIEF**

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

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

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

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

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

27 ///

28 ///

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

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

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

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

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

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

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

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

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

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

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

SIXTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

4 **SEVENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

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

10 **SECOND AFFIRMATIVE DEFENSE**

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

13 **THIRD AFFIRMATIVE DEFENSE**

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

15 **FOURTH AFFIRMATIVE DEFENSE**

16 Plaintiffs have failed to mitigate their damages.

17 **FIFTH AFFIRMATIVE DEFENSE**

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

19 **SIXTH AFFIRMATIVE DEFENSE**

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

22 **SEVENTH AFFIRMATIVE DEFENSE**

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

26 **EIGHTH AFFIRMATIVE DEFENSE**

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

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


EIGHTEENTH AFFIRMATIVE DEFENSE

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

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

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

DATED this 30th day of June, 2017.


D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
Michael S. Valiente, Esq.
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*Attorneys for Defendant
Motor Coach Industries, Inc.*

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

CERTIFICATE OF SERVICE

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

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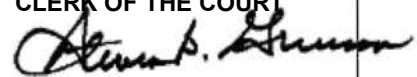
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Attorneys for Plaintiffs


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TAB 5



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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

Plaintiffs,

v.

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

Defendants.

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

13 **JURISDICTION AND VENUE**

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

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

24 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

3 **FIRST CLAIM FOR RELIEF**

4 **(STRICT LIABILITY: DEFECTIVE CONDITION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

13 **THIRD CLAIM FOR RELIEF**

14 **(NEGLIGENCE PER SE AGAINST DEFENDANTS**
15 **RYAN'S EXPRESS AND EDWARD HUBBARD)**

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

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

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

1 50. Answering Paragraph 50 of Plaintiffs' Amended Complaint makes no allegations
2 against SevenPlus and, as a result, no response to the allegations of Paragraph 50 of Plaintiffs'
3 Amended Complaint is required. To the extent that a response is required, SevenPlus is
4 without sufficient knowledge or information upon which to base a belief as to the truth or falsity
5 of the allegations contained therein, and therefore, denies the same.

6 51. Answering Paragraph 51 of Plaintiffs' Amended Complaint makes no allegations
7 against SevenPlus and, as a result, no response to the allegations of Paragraph 51 of Plaintiffs'
8 Amended Complaint is required. To the extent that a response is required, SevenPlus is
9 without sufficient knowledge or information upon which to base a belief as to the truth or falsity
10 of the allegations contained therein, and therefore, denies the same.

11 52. Answering Paragraph 52 of Plaintiffs' Amended Complaint, SevenPlus denies the
12 allegations contained therein.

13 **FOURTH CLAIM FOR RELIEF**

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

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

18 54. Answering Paragraph 54 of Plaintiffs' Amended Complaint makes no allegations
19 against SevenPlus and, as a result, no response to the allegations of Paragraph 54 of Plaintiffs'
20 Amended Complaint is required. To the extent that a response is required, SevenPlus is
21 without sufficient knowledge or information upon which to base a belief as to the truth or falsity
22 of the allegations contained therein, and therefore, denies the same.

23 55. Answering Paragraph 55 of Plaintiffs' Amended Complaint makes no allegations
24 against SevenPlus and, as a result, no response to the allegations of Paragraph 55 of Plaintiffs'
25 Amended Complaint is required. To the extent that a response is required, SevenPlus is
26 without sufficient knowledge or information upon which to base a belief as to the truth or falsity
27 of the allegations contained therein, and therefore, denies the same.

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

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

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

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

18 **FIFTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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THIRD AFFIRMATIVE DEFENSE

The loss, injuries and damages, if any, which Plaintiffs allege, were directly and proximately caused and/or contributed to by the negligence, carelessness or fault of Plaintiffs and therefore, SevenPlus is entitled to contribution in proportion to the percentage of negligence attributed to Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

At the time and place, and under the circumstances alleged, the injuries of Plaintiffs, if any, and the damages of Plaintiffs, if any, were caused solely by the acts or omissions of some parties over whom SevenPlus had no control, and for whose acts SevenPlus is not responsible.

FIFTH AFFIRMATIVE DEFENSE

SevenPlus alleges that Plaintiffs are barred by the contribution laws of the State of Nevada.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff action against SevenPlus is moot because Plaintiffs' actions are barred by the applicable Statute of Limitations.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are estopped by virtue of their own acts and omissions from asserting the claims for relief set forth in the Amended Complaint against SevenPlus.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is barred by the Doctrine of Laches.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' have failed to mitigate their alleged damages, if any, as required by law.

TENTH AFFIRMATIVE DEFENSE

SevenPlus's liability, the existence of which is expressly denied, must be reduced by the percentage of fault of others, including Plaintiffs.

ELEVENTH AFFIRMATIVE DEFENSE

SevenPlus alleges that Plaintiffs failed to name each party necessary for full and adequate relief essential in this action.

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TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims have been waived as a result of Plaintiffs act and conduct and, therefore, Plaintiffs are estopped from asserting their claims for damages against SevenPlus.

THIRTEENTH AFFIRMATIVE DEFENSE

SevenPlus alleges that the damages, if any, suffered by the Plaintiffs were caused, in whole or in part, by an independent intervening cause, and were not the result of negligence on the part of SevenPlus.

FOURTEENTH AFFIRMATIVE DEFENSE

The products and materials provided by SevenPlus were fit and proper for their intended use.

FIFTEENTH AFFIRMATIVE DEFENSE

SevenPlus's product and materials were misused.

SIXTEENTH AFFIRMATIVE DEFENSE

The products and materials were altered or modified in some unforeseeable manner, which subsequently caused the damages, if any.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are estopped from asserting any claim against SevenPlus in that Plaintiffs or other parties modified, altered, redesigned, or in some fashion, materially altered SevenPlus's product. Said changes, alterations, redesign or modifications were accomplished in the absence of SevenPlus's knowledge, approval or consent; said changes, alterations, redesign or modifications proximately causing or contributing to the damages claimed by Plaintiffs.

EIGHTEENTH AFFIRMATIVE DEFENSE

It has been necessary for SevenPlus to retain counsel to defend this action, and it is, therefore, entitled to an award of reasonable attorney's fees.

NINETEENTH AFFIRMATIVE DEFENSE

SevenPlus is not the real party in interest.

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TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' punitive damages claims are barred due to the lack of clear and convincing evidence that this Defendant has been guilty of oppression, fraud or malice, express or implied, as required pursuant to NRC § 42.005.

TWENTY-FIRST AFFIRMATIVE DEFENSE

SevenPlus is informed and believes and thereon alleges that the events referred to in Plaintiffs' Amended Complaint resulted from the abnormal or improper use of the helmet referred to in Plaintiffs' Amended Complaint.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The utility and benefit of the helmet referred to in Plaintiffs' Amended Complaint outweighed any risk or harm posed by its design, and/or the helmet met the expectations or the reasonable consumer and/or performed in the manner reasonable to be expected in light of its nature and intended functions.

TWENTY-THIRD AFFIRMATIVE DEFENSE

In the event that Plaintiffs recover damages against one or more Defendants, the liability for Defendants on one or more claims may be several and not joint and subject to apportionment.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

SevenPlus alleges that the damages sustained by Plaintiffs, if any, were the result of an unavoidable accident, insofar as SevenPlus is concerned, and occurred without any negligence, want of care, default, or other breach of duty to Plaintiffs on the part of the SevenPlus.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

SevenPlus adopts and incorporates by reference any affirmative defenses of the Co-Defendant as may be applicable to SevenPlus.

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 SevenPlus alleges that Plaintiffs' claims are barred by any and all releases and waivers
3 of liability agreements signed by Plaintiffs.

4 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

5 SevenPlus hereby incorporates by reference those affirmative defenses enumerated in
6 Rule 8 of the Nevada Rules of Civil Procedure, as if fully set forth herein.

7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 SevenPlus alleges that Plaintiffs knowingly, intelligently and voluntarily assumed the risk
9 of loss, damage and/or injury of which Plaintiffs complain, and Plaintiffs are therefore barred
10 from recovery for such loss, damage and/or injury.

11 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

12 SevenPlus alleges it was not the designer, manufacturer, or distributor of the helmet, so
13 as to this no negligence can be assigned on the part of SevenPlus.

14 **THIRTIETH AFFIRMATIVE DEFENSE**

15 All possible affirmative defenses may not have been alleged herein, so far as sufficient
16 facts were not available after a reasonable inquiry upon the filing of SevenPlus's Answer.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 Plaintiffs' punitive damages claims are barred based upon the provisions of NRS §
19 42.007, because Plaintiffs' cannot prove any of the elements necessary to impose such liability
20 upon this Defendant.

21 WHEREFORE, Defendant SevenPlus prays for judgment as follows:

- 22
- 23 1. Plaintiffs take nothing against SevenPlus by way of their Amended Complaint;
 - 24 2. Plaintiffs' Amended Complaint be dismissed with prejudice and that it take
25 nothing thereby;
 - 26 3. Defendant SevenPlus be awarded its attorney's fees and costs incurred; and
- 27
28

4. For such other and further relief as the Court deems just and proper in the premises.

DATED: June 30, 2017

MURCHISON & CUMMING, LLP

By

Michael J. Nuñez, Esq.
Nevada Bar No. 10703
6900 Westcliff Drive, Suite 605
Las Vegas, Nevada 89145
Attorneys for Defendant SEVENPLUS
BICYCLES, INC d/b/a PRO CYCLERY

1 PROOF OF SERVICE

2 **STATE OF NEVADA, COUNTY OF CLARK**

3 At the time of service, I was over 18 years of age and not a party to this action. I am
4 employed in the County of Clark, State of Nevada. My business address is 6900 Westcliff
Drive, Suite 605, Las Vegas, Nevada 89145.

5 On June 30, 2017, I served true copies of the following document(s) described as
6 **DEFENDANT SEVENPLUS BICYCLES, INC. D/B/A PRO CYCLERY'S ANSWER TO**
7 **PLAINTIFFS' AMENDED COMPLAINT AND CROSSCLAIM** on the interested parties in
this action as follows:

8 **SEE ATTACHED LIST**

9 **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing and electronic
service the document(s) listed above to the Counsel set forth on the service list on this date
pursuant to Administrative order 14-2 NEFCR 9 (a), and EDCR Rule 7.26.

10 I declare under penalty of perjury under the laws of the United States of America that
11 the foregoing is true and correct and that I am employed in the office of a member of the bar
of this Court at whose direction the service was made.

12 Executed on June 30, 2017, at Las Vegas, Nevada.

13 
14
15 Conrad Voigt

16 **SERVICE LIST**

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

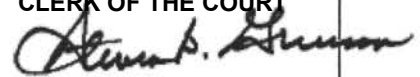
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TAB 6



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Attorneys for Defendant
BELL SPORTS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**DEFENDANT BELL SPORTS, INC'S ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT**

///

///

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

THE PARTIES²

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

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

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

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

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

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

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

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

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

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

² BSI is including the headings used in Plaintiffs' Amended Complaint for ease of reference. BSI expressly denies the truth of any allegations contained in such headings.

1 of the allegations in Paragraph 9 of Plaintiffs' Amended Complaint, and BSI refers all
2 conclusions of law to this Honorable Court.

3 10. BSI denies the allegations in Paragraph 10 of Plaintiffs' Amended Complaint,
4 and BSI refers all conclusions of law to this Honorable Court.

5 11. BSI denies the allegations in Paragraph 11 of Plaintiffs' Amended Complaint,
6 and BSI refers all conclusions of law to this Honorable Court.

7 12. BSI denies the allegations in Paragraph 12 of Plaintiffs' Amended Complaint,
8 and BSI refers all conclusions of law to this Honorable Court.

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

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

13 **GENERAL ALLEGATIONS**

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

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

18 17. BSI denies knowledge and information sufficient to form a belief as to the truth
19 of the allegations in Paragraph 17 of Plaintiffs' Amended Complaint.

20 18. BSI denies knowledge and information sufficient to form a belief as to the truth
21 of the allegations in Paragraph 18 of Plaintiffs' Amended Complaint.

22 19. BSI denies knowledge and information sufficient to form a belief as to the truth
23 of the allegations in Paragraph 19 of Plaintiffs' Amended Complaint.

24 20. BSI denies knowledge and information sufficient to form a belief as to the truth
25 of the allegations in Paragraph 20 of Plaintiffs' Amended Complaint.

26 21. BSI denies knowledge and information sufficient to form a belief as to the truth
27 of the allegations in Paragraph 21 of Plaintiffs' Amended Complaint.
28

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

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

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

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

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

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

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

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

27 48. – 52. Paragraphs 48 – 52 of Plaintiffs' Amended Complaint are not directed to BSI
28 and, therefore, no response by BSI is required. To the extent any of the allegations are found to
29 be directed against BSI, such allegations are denied, and BSI specifically denies any liability
30 related to such paragraphs.

**AS AND FOR AN ANSWER TO PLAINTIFFS' FOURTH CLAIM FOR RELIEF
(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

53. In response to Paragraph 53 of Plaintiffs' Amended Complaint, BSI repeats, reiterates and realleges each and every response to Paragraph 1 through Paragraph 52 of Plaintiffs' Amended Complaint as though fully set forth at length herein.

54. – 59. Paragraphs 54 – 59 of Plaintiffs' Amended Complaint are not directed to BSI and, therefore, no response by BSI is required. To the extent any of the allegations are found to be directed against BSI, such allegations are denied, and BSI specifically denies any liability related to such paragraphs.

**AS AND FOR AN ANSWER TO PLAINTIFFS' FIFTH CLAIM FOR RELIEF
(STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE
TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

60. In response to Paragraph 60 of Plaintiffs' Amended Complaint, BSI repeats, reiterates and realleges each and every response to Paragraph 1 through Paragraph 59 of Plaintiffs' Amended Complaint as though fully set forth at length herein.

61. BSI admits that it is engaged in the business of designing, testing, distributing, marketing and selling certain helmets under the "Giro" brand, but BSI denies knowledge or information sufficient to form a belief as to the truth of the allegation regarding Dr. Khiabani's helmet. BSI denies the remaining allegations contained in Paragraph 61 of Plaintiffs' Amended Complaint.

62. BSI denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of Plaintiffs' Amended Complaint.

63. BSI denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of Plaintiffs' Amended Complaint.

64. BSI denies the allegations contained in Paragraph 64 of Plaintiffs' Amended Complaint.

65. BSI denies the allegations contained in Paragraph 65 of Plaintiffs' Amended Complaint.

66. BSI denies the allegations contained in Paragraph 66 of Plaintiffs' Amended

1 Complaint.

2 67. BSI denies the allegations contained in Paragraph 67 of Plaintiffs' Amended
3 Complaint.

4 68. BSI denies the allegations contained in Paragraph 68 of Plaintiffs' Amended
5 Complaint.

6 69. BSI denies the allegations contained in Paragraph 69 of Plaintiffs' Amended
7 Complaint.

8 70. BSI denies the allegations contained in Paragraph 70 of Plaintiffs' Amended
9 Complaint.

10 71. BSI denies the allegations contained in Paragraph 71 of Plaintiffs' Amended
11 Complaint.

12 72. BSI denies the allegations contained in Paragraph 72 of Plaintiffs' Amended
13 Complaint.

14 73. BSI denies the allegations contained in Paragraph 73 of Plaintiffs' Amended
15 Complaint, and BSI refers all questions of law to this Honorable Court.

16 74. BSI denies the allegations contained in Paragraph 74 of Plaintiffs' Amended
17 Complaint, and BSI refers all questions of law to this Honorable Court.

18 **AS AND FOR AN ANSWER TO PLAINTIFFS' SIXTH CLAIM FOR RELIEF**
19 **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR**
20 **PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

21 75. In response to Paragraph 75 of Plaintiffs' Amended Complaint, BSI repeats,
22 reiterates and realleges each and every response to Paragraph 1 through Paragraph 74 of
23 Plaintiffs' Amended Complaint as though fully set forth at length herein.

24 76. BSI denies the allegations contained in Paragraph 76 of Plaintiffs' Amended
25 Complaint.

26 77. BSI denies the allegations contained in Paragraph 77 of Plaintiffs' Amended
27 Complaint.

28 78. BSI denies the allegations contained in Paragraph 78 of Plaintiffs' Amended
Complaint.

1 79. BSI denies the allegations contained in Paragraph 79 of Plaintiffs' Amended
2 Complaint.

3 80. BSI denies the allegations contained in Paragraph 80 of Plaintiffs' Amended
4 Complaint, and BSI refers all questions of law to this Honorable Court.

5 81. BSI denies the allegations contained in Paragraph 81 of Plaintiffs' Amended
6 Complaint, and BSI refers all questions of law to this Honorable Court.

7 **AS AND FOR AN ANSWER TO PLAINTIFFS' SEVENTH CLAIM**
8 **(WRONGFUL DEATH AGAINST ALL DEFENDANTS)**

9 82. In response to Paragraph 82 of Plaintiffs' Amended Complaint, BSI repeats,
10 reiterates and realleges each and every response to Paragraph 1 through Paragraph 81 of
11 Plaintiffs' Amended Complaint as though fully set forth at length herein.

12 83. BSI denies knowledge or information sufficient to form a belief as to the truth of
13 the allegations contained in Paragraph 83 of Plaintiffs' Amended Complaint, and BSI refers all
14 questions of law to this Honorable Court.

15 84. BSI denies the allegations contained in Paragraph 84 of Plaintiffs' Amended
16 Complaint, and BSI refers all questions of law to this Honorable Court.

17 85. BSI denies the allegations contained in Paragraph 85 of Plaintiffs' Amended
18 Complaint.

19 86. BSI denies the allegations contained in Paragraph 86 of Plaintiffs' Amended
20 Complaint.

21 87. BSI denies the allegations contained in Paragraph 87 of Plaintiffs' Amended
22 Complaint, and BSI refers all questions of law to this Honorable Court.

23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 Plaintiffs' Amended Complaint fails to state a claim against BSI upon which relief can
26 be granted.

27 **SECOND AFFIRMATIVE DEFENSE**

28 The damages complained of in Plaintiffs' Amended Complaint may have been the result

1 of the intervening actions of others and were not proximately caused by the actions or omissions
2 of BSI

3 **THIRD AFFIRMATIVE DEFENSE**

4 Plaintiffs' claims are barred to the extent that Plaintiffs' Decedent incurred or assumed
5 the risks of which Plaintiffs complain in this action.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 The incident alleged in Plaintiffs' Amended Complaint and the resulting damages, if any,
8 to Plaintiffs was proximately caused or contributed to by Plaintiffs' Decedent and/or Plaintiffs'
9 own negligence, and such negligence was greater than the negligence, if any, of BSI, which BSI
10 denies.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 BSI's product, if any, was in compliance with all federal, state and local codes,
13 standards, regulations, specifications and statutes regarding the manufacture, sale and use of the
14 product at all times pertinent to this action.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitation.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 Plaintiffs cannot recover herein against BSI because the manufacture, inspection,
19 packaging, warning and labeling of the product described in Plaintiffs' Amended Complaint was
20 in conformity with the generally recognized state of the art at the time such product was
21 manufactured, inspected, packaged and labeled.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims may be barred because the physical harm complained of was caused by
24 a modification or alteration of the product at issue made by a person after the delivery to the
25 initial user or consumer which modification or alteration was the proximate cause of the
26 physical harm complained of by Plaintiffs, and such modification or alteration was not
27 reasonably expectable by BSI.

28 ///

NINTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs have been compensated for the alleged damages by receiving payment from other persons or entities, the amount of any such compensation should be set off against any recovery Plaintiffs may receive in this action.

TENTH AFFIRMATIVE DEFENSE

The injuries or damages of which Plaintiffs complains were caused in whole or in part by the named parties in this action other than BSI and/or non-parties whom Plaintiffs have failed to join in this action. Any allocation of liability to any named party or any non-party should be set off against any recovery Plaintiffs may receive for any fault which may be attributed to BSI.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent that Plaintiffs' Decedent failed and neglected to exercise ordinary care for his safety and welfare, which directly and proximately caused or contributed to Plaintiffs' Decedent's alleged injuries and Plaintiffs' alleged damages.

TWELFTY AFFIRMATIVE DEFENSE

Plaintiffs and/or Plaintiffs' Decedent failed to mitigate their damages, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

All risks and dangers involved in the factual situation described in the Complaint were open, obvious and known to Plaintiffs and/or Plaintiffs' Decedent, who voluntarily assumed said risks and dangers.

FOURTEENTH AFFIRMATIVE DEFENSE

Any physical harm alleged can be attributed to several causes and the damages for this harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.

FIFTEENTH AFFIRMATIVE DEFENSE

BSI is informed and believes and on that basis alleges that Plaintiffs' warranty claims are barred due to lack of privity of contract between Plaintiffs and/or Plaintiffs' decedent and BSI, and on the basis that there are no express or implied warranties running from BSI to Plaintiffs and/or to Plaintiffs' Decedent.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

///

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claim for punitive damages is unconstitutional to the extent that Plaintiffs seek to punish BSI without the protection of constitutional safeguards, including, but not limited to, the right to proof beyond a reasonable doubt, the prohibition against excessive fines as guaranteed by the Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States and similar protections afforded by the State of Nevada.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claim for punitive damages is unconstitutional in that the standards for granting and assessing punitive damages do not prohibit other Plaintiffs from seeking such damages against BSI for the same allegations of defect in the same product and, as such, constitute multiple punishments for the same alleged offense, resulting in the deprivation of BSI's property without due process of law and will, at the same time, resulting in unjustified windfalls for Plaintiffs and Plaintiffs' counsel, all in violation of the Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States and similar protections afforded by the Constitution of the State of Nevada.

WHEREFORE, this answering Defendant prays as follows:

1. That Plaintiffs take nothing by reason of their Amended Complaint on file herein

and that the same be dismissed with prejudice;

2. For reasonable attorneys' fees and costs incurred to defend this suit; and

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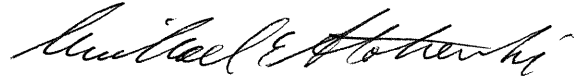
///

///

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

3 DATED this 3rd day of July, 2017.

4 OLSON, CANNON, GORMLEY,
5 ANGULO & STOBERSKI

6
7 

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10 JOSLYN SHAPIRO, ESQ.

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15 Facsimile: 702-383-0701

16 Email: mstoberski@ocgas.com

17 Email: jshapiro@ocgas.com

18 Attorneys for Defendant

19 BELL SPORTS, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI, and that on the 3rd day of July 2017, I served a true and correct copy of **DEFENDANT BELL SPORTS, INC'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** via the court's Electronic Filing and Service System to the following person (s):

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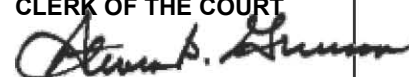
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19 Db a Pro Cyclery
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An Employee of OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent), the Estate of
Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and the
Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**SECOND AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

COME NOW Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent); by and through their attorneys, Will Kemp, Esq. and Eric Pepperman, Esq. of the law firm KEMP, JONES & COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendele L. Works, Esq. of CHRISTIANSEN LAW OFFICES, and for their claims against the Defendants, and each of them, complain and allege as follows:

THE PARTIES

1. Plaintiff minors, KEON KHIABANI and ARIA KHIABANI, are the natural children of Dr. Kayvan Khiabani (Decedent) and Katayoun "Katy" Barin (Decedent).
2. Plaintiff minor KEON KHIABANI is a citizen of the United States. Keon lives and attends school in Montreal, Canada with his duly appointed Guardians.
3. Plaintiff minor ARIA KHIABANI is a citizen of the United States. Aria lives and attends school in Montreal, Canada with his duly appointed Guardians.
4. Plaintiff MARIE-CLAUDE RIGAUD is the duly authorized Guardian of Keon Khiabani and Aria Khiabani. She is a citizen and resident of Montreal, Canada. As Guardian, MARIE-CLAUDE RIGAUD is authorized to bring this action on behalf of the Plaintiff Minors.
5. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Kayvan Khiabani, M.D. (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf of Plaintiff the Estate of Kayvan Khiabani, M.D. (Decedent).
6. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Katayoun Barin, DDS (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf of Plaintiff the Estate of Katayoun Barin, DDS (Decedent).
7. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MOTOR COACH INDUSTRIES, INC. ("MCI") was and is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Nevada, including Clark County. MCI designs, manufacturers, markets, and sells

1 commercial tour buses (aka Motor Coaches). Defendant MCI designed, manufactured, and sold
2 the 2008, full-size Motor Coach involved in the incident described herein.

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

24. As a direct and proximate result of this collision, Dr. Khiabani suffered catastrophic internal and external injuries, including to his head, severe shock to his nervous system, and

1 great pain and suffering. Dr. Khiabani was transported from the scene of the accident and
2 ultimately died from his injuries.

3 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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1 33. As a direct and proximate result of the acts and omissions of Defendant MCI, the
2 Plaintiff minors each have been deprived of their father's comfort, support, companionship,
3 society, and consortium, and further, each has suffered great grief, sorrow, and extreme
4 emotional distress as a result of the death of their father, to each for general damages far in
5 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen
6 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,
7 and disfigurement of their father.
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9 34. As a direct and proximate result of the acts and omissions of Defendant MCI, prior to
10 her death, Katy Barin was deprived of her husband's comfort, support, companionship, society,
11 and consortium, and further, had suffered great grief, sorrow, and extreme emotional distress as
12 a result of the death of her husband, for general damages far in excess of Fifteen Thousand
13 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars
14 (\$15,000.00).
15

16 35. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
17 Kayvan Khiabani, MD's Estate and/or Executor Siamak Barin has incurred medical, funeral and
18 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars
19 (\$15,000.00).
20

21 36. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
22 Katy Barin, DDS's Estate and/or Executor Siamak Barin has incurred medical, funeral and
23 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars
24 (\$15,000.00).
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26 37. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiffs
27 have suffered general and special damages in an amount far in excess of Fifteen Thousand
28 Dollars (\$15,000.00).

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

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

9 **SECOND CLAIM FOR RELIEF**
10 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**
11 **AND EDWARD HUBBARD)**

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

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

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

21 43. Defendants were negligent and breached this duty of care, *inter alia*: (i) by overtaking
22 Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted
23 speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr.
24 Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to
25 ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing
26 to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the
27 time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr.
28

1 Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane
2 while Dr. Khiabani was traveling therein.

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

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

9 46. As a direct and proximate result of the negligent acts and omissions of Defendants
10 Ryan's Express and Edward Hubbard, the Plaintiff minors each have been deprived of their
11 father's comfort, support, companionship, society, and consortium, and further, each has
12 suffered great grief, sorrow, and extreme emotional distress as a result of the death of their
13 father, to each for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and
14 economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00). The minor children
15 also seek to recover for the pain, suffering, and disfigurement of their father.
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17 47. As a direct and proximate result of the negligent acts and omissions of Defendants
18 Ryan's Express and Edward Hubbard, prior to her death, Katy Barin was deprived of her
19 husband's comfort, support, companionship, society, and consortium, and further, had suffered
20 great grief, sorrow, and extreme emotional distress as a result of the death of her husband, for
21 general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages
22 far in excess of Fifteen Thousand Dollars (\$15,000.00).
23

24 48. As a direct and proximate result of the negligent acts and omissions of Defendants
25 Ryan's Express and Edward Hubbard, Decedent's Estate and/or Executor Siamak Barin has
26 incurred medical, funeral and burial expenses, and other expenses relating thereto, far in excess
27 of Fifteen Thousand Dollars (\$15,000.00).
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1 49. As a direct and proximate result of the negligent acts and omissions of Defendants
2 Ryan's Express and Edward Hubbard, Plaintiffs have suffered general and special damages in
3 an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

4 50. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
5 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.
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7 **THIRD CLAIM FOR RELIEF**

8 **(NEGLIGENCE PER SE AGAINST DEFENDANTS**

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

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

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

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

24 54. Plaintiffs belong to the class of persons that the safety requirements in NRS 484B.270
25 are intended to protect.
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1 55. As a direct and proximate cause of Defendants violations of NRS 484B.270, and each of
2 them, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand
3 Dollars (\$15,000.00), as outlined above.

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

6 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

FIFTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

9 72. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
10 Cyclery, Decedent sustained past, present, and future lost wages, which would otherwise have
11 been gained in his employment if not for his death, far in excess of Fifteen Thousand Dollars
12 (\$15,000.00).

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

20 74. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
21 Cyclery, prior to her death, Katy Barin was deprived of her husband's comfort, support,
22 companionship, society, and consortium, and further, had suffered great grief, sorrow, and
23 extreme emotional distress as a result of the death of her husband, for general damages far in
24 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen
25 Thousand Dollars (\$15,000.00).
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1 75. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
2 Cyclery, Decedent's Estate and/or Executor Siamak Barin has incurred medical, funeral, and
3 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars
4 (\$15,000.00).

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

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

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

15 **SIXTH CLAIM FOR RELIEF**

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

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

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

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

24 82. Dr. Khiabani relied on the skill or judgment of Defendants Giro/Pro Cyclery to furnish
25 suitable goods for this purpose.
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1 83. The helmet sold by Defendants Giro/Pro Cyclery to Dr. Khiabani was not fit for said
2 purpose and, as a direct and proximate result, Plaintiffs have suffered general and special
3 damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

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

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

12 **SEVENTH CLAIM FOR RELIEF**

13 **(WRONGFUL DEATH OF KAYVAN KHIABANI, MD**

14 **AGAINST ALL DEFENDANTS)**

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

17
18 87. Plaintiff minors are the heirs of Decedent and are entitled to maintain an action for
19 damages against the Defendants for the wrongful death of Dr. Kayvan Khiabani.

20 88. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of the Decedent and
21 may also maintain an action for damages against the Defendants for special damages and
22 penalties, including but not limited to exemplary or punitive damages as set forth in NRS
23 41.085(5).

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

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

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

8 **EIGHTH CLAIM FOR RELIEF**

9 **(WRONGFUL DEATH OF KATY BARIN, DDS**

10 **AGAINST ALL DEFENDANTS)**

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

13 93. As a direct and proximate result of the stress caused by the wrongful death of her
14 husband, Dr. Kayvan Khiabani, Katy Barin lost her battle against cancer.

15 94. Plaintiff minors are the heirs of Decedent Katy Barin and are entitled to maintain an
16 action for damages against the Defendants for the wrongful death of their mother, Dr. Katy
17 Barin.
18

19 95. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of Katy Barin
20 (Decedent) and may also maintain an action for damages against the Defendants for special
21 damages and penalties, including but not limited to exemplary or punitive damages as set forth
22 in NRS 41.085(5).
23

24 96. As a result of the death of Dr. Barin, Plaintiffs are entitled to damages, including, but not
25 limited to: pecuniary damages for their grief and sorrow, loss of probable support,
26 companionship, society, comfort and consortium, and damages for pain, suffering and
27 disfigurement of the Decedent.
28

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


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

5 **PRAYER FOR RELIEF**

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

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

21 DATED this 17th day of November, 2017.

22 
23 WILL KEMP, ESQ. (#1205)
24 ERIC PEPPERMAN, ESQ. (#11679)
25 KEMP, JONES & COULTHARD, LLP
26 3800 Howard Hughes Parkway, 17th Floor
27 Las Vegas, Nevada 89169
28 -and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
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Attorneys for Plaintiffs

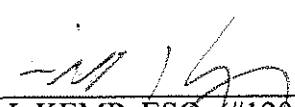
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kic@kempjones.com

DEMAND FOR JURY TRIAL

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

DATED this 17th day of November, 2017.

KEMP, JONES & COULTHARD, LLP



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

-and-

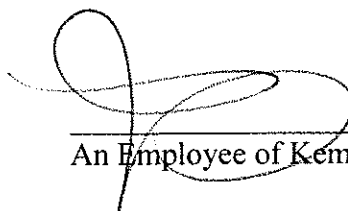
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2017, the foregoing **SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.



An Employee of Kemp, Jones & Coulthard

TAB 8



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DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent); the Estate of
Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and the
Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS.

Case No.: A-17-755977-C

Dept. No.: XIV

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

1 an Arizona corporation; EDWARD
2 HUBBARD, a Nevada resident; BELL
3 SPORTS, INC. d/b/a GIRO SPORT
4 DESIGN, a Delaware corporation;
5 SEVENPLUS BICYCLES, INC. d/v/a PRO
6 CYCLERY, a Nevada corporation, DOES 1
7 through 20; and ROE CORPORATIONS 1
8 through 20,

9 Defendants.

10 Defendant **MOTOR COACH INDUSTRIES, INC.** (hereinafter “Defendant” or “MCI”),
11 by and through its attorneys, hereby files its Answer to Plaintiffs’ Second Amended Complaint.

12 **ANSWER**

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

16 **THE PARTIES**

17 Responding to the individual allegations of Plaintiffs’ Second Amended Complaint,
18 Defendant answers:

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

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

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

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

///

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

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

7 7. Answering paragraph 7 of Plaintiffs' Second Amended Complaint, Defendant
8 admits that it was and is a Delaware corporation, and that it sells new motor coaches in the United
9 States. Defendant did not design or manufacture the motor coach referenced in the Second
10 Amended Complaint, and denies such allegations. It is admitted that Defendant sold a 2008 motor
11 coach bearing Vehicle Identification No. 2M93JMHA28W064555, which based on the report of
12 the Las Vegas Metropolitan Police Department was involved in the accident at issue.

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

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

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

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

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

28 ///

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

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

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

13 **JURISDICTION AND VENUE**

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

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

20 **GENERAL ALLEGATIONS**

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

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

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20. Answering the first sentence of paragraph 20 of Plaintiffs' Second Amended Complaint, Defendant admits that it sold a 2008 motor coach bearing Vehicle Identification No. 2M93JMHA28W064555, which based on the report of the Las Vegas Metropolitan Police Department was involved in the accident at issue. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the license plate number of the motor coach in question. As to the remainder of the allegations contained in the first sentence of paragraph 20 of Plaintiffs' Second Amended Complaint, Defendant, except as expressly admitted herein, denies the remainder of such allegations. Answering the second sentence of paragraph 20 of Plaintiffs' Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of such allegations, because of the lack of clarity with regard to the "proximity sensors" referenced therein, and, therefore, cannot admit or deny these allegations.

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

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

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

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

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

25. Defendant incorporates by reference its responses and defenses to paragraphs 1 through 24 of Plaintiffs' Second Amended Complaint as if fully set forth herein.

1 26. Answering paragraph 26 of Plaintiffs' Second Amended Complaint, Defendant
2 admits that it sells new motor coaches in the United States and was responsible for the sale of a
3 2008 motor coach bearing Vehicle Identification No. 2M93JMHA28W064555. The motor coach
4 bearing that Vehicle Identification No. was designed and manufactured by Motor Coach Industries
5 Limited, a Canadian company. Except as expressly admitted herein, Defendant denies the
6 remaining allegations of paragraph 26.

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

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

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

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

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

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

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

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

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

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36. Answering paragraph 36 of Plaintiffs' Second Amended Complaint, the Court has dismissed any claims for relief related to alleged physical injuries, illness or death of Katayoun Barin, and as such this paragraph should be stricken and no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph.

37. Answering paragraph 37 of Plaintiffs' Second Amended Complaint, Defendant denies the allegations contained in this paragraph.

38. Answering paragraph 38 of Plaintiffs' Second Amended Complaint, Defendant denies the allegations contained in this paragraph.

39. Answering paragraph 39 of Plaintiffs' Second Amended Complaint, Defendant denies the allegations contained in this paragraph.

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

40. Defendant incorporates by reference its responses and defenses to paragraphs 1 through 39 of Plaintiffs' Second Amended Complaint as if fully set forth herein.

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

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

43. Answering paragraph 43 of Plaintiffs' Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, cannot admit or deny these allegations. To the extent "Defendants" is meant to apply to MCI, MCI denies any such allegations.

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

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

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

7 47. Answering paragraph 47 of Plaintiffs' Second Amended Complaint, Defendant is
8 without knowledge or information sufficient to form a belief as to the truth of the allegations
9 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

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

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

19 **THIRD CLAIM FOR RELIEF**
20 **(NEGLIGENCE PER SE AGAINST DEFENDANTS**
 RYAN'S EXPRESS AND EDWARD HUBBARD)

21 51. Defendant incorporates by reference its responses and defenses to paragraphs 1
22 through 50 of Plaintiffs' Second Amended Complaint as if fully set forth herein.

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

26 53. Answering paragraph 53 of Plaintiffs' Second Amended Complaint, Defendant is
27 without knowledge or information sufficient to form a belief as to the truth of the allegations
28 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

4 55. Answering paragraph 55 of Plaintiffs' Second Amended Complaint, Defendant is
5 without knowledge or information sufficient to form a belief as to the truth of the allegations
6 contained in this paragraph and, therefore, cannot admit or deny these allegations. To the extent
7 "Defendants" is meant to apply to MCI, MCI denies any such allegations.

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

11 **FOURTH CLAIM FOR RELIEF**
12 **(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

13 57. Defendant incorporates by reference its responses and defenses to paragraphs 1
14 through 57 of Plaintiffs' Second Amended Complaint as if fully set forth herein.

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

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

21 60. Answering paragraph 60 of Plaintiffs' Second Amended Complaint, Defendant is
22 without knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

27 62. Answering paragraph 62 of Plaintiffs' Second Amended Complaint, Defendant is
28 without knowledge or information sufficient to form a belief as to the truth of the allegations

1 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

5 **FIFTH CLAIM FOR RELIEF**
6 **(STRICT LIABILITY: DEFECTIVE CONDITION OR**
7 **FAILURE TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

8 64. Defendant incorporates by reference its responses and defenses to paragraphs 1
9 through 63 of Plaintiffs' Second Amended Complaint as if fully set forth herein.

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

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

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

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

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

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

28 71. Answering paragraph 71 of Plaintiffs' Second Amended Complaint, Defendant is
without knowledge or information sufficient to form a belief as to the truth of the allegations

1 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

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

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

11 75. Answering paragraph 75 of Plaintiffs' Second Amended Complaint, Defendant is
12 without knowledge or information sufficient to form a belief as to the truth of the allegations
13 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

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

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

23 **SIXTH CLAIM FOR RELIEF**
24 **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A**
PARTICULAR PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)

25 79. Defendant incorporates by reference its responses and defenses to paragraphs 1
26 through 78 of Plaintiffs' Second Amended Complaint as if fully set forth herein.

27 80. Answering paragraph 80 of Plaintiffs' Second Amended Complaint, Defendant is
28 without knowledge or information sufficient to form a belief as to the truth of the allegations

1 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

5 82. Answering paragraph 82 of Plaintiffs' Second Amended Complaint, Defendant is
6 without knowledge or information sufficient to form a belief as to the truth of the allegations
7 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

11 84. Answering paragraph 84 of Plaintiffs' Second Amended Complaint, Defendant is
12 without knowledge or information sufficient to form a belief as to the truth of the allegations
13 contained in this paragraph and, therefore, cannot admit or deny these allegations.

14 85. Answering paragraph 85 of Plaintiffs' Second Amended Complaint, Defendant is
15 without knowledge or information sufficient to form a belief as to the truth of the allegations
16 contained in this paragraph and, therefore, cannot admit or deny these allegations.

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

19 86. Defendant incorporates by reference its responses and defenses to paragraphs 1
20 through 85 of Plaintiffs' Second Amended Complaint as if fully set forth herein.

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

25 88. Answering paragraph 88 of Plaintiffs' Second Amended Complaint, Defendant
26 denies the allegations contained in this paragraph as they pertain to MCI. MCI is without
27 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
28 this paragraph regarding other parties and, therefore, cannot admit or deny these allegations.

1 89. Answering paragraph 89 of Plaintiffs' Second Amended Complaint, Defendant
2 denies the allegations contained in this paragraph as they pertain to MCI. MCI is without
3 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
4 this paragraph regarding other parties and, therefore, cannot admit or deny these allegations.

5 90. Answering paragraph 90 of Plaintiffs' Second Amended Complaint, Defendant
6 denies the allegations contained in this paragraph as they pertain to MCI. MCI is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
8 this paragraph regarding other parties and, therefore, cannot admit or deny these allegations.

9 91. Answering paragraph 91 of Plaintiffs' Second Amended Complaint, Defendant
10 denies the allegations contained in this paragraph as they pertain to MCI. MCI is without
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
12 this paragraph regarding other parties and, therefore, cannot admit or deny these allegations.

13 **EIGHTH CLAIM FOR RELIEF**

14 **DISMISSED BY COURT**

15 92. Answering paragraphs 92 through 98 of Plaintiffs' Second Amended Complaint, the
16 Court has dismissed the Eighth Claim for Relief, and as such no response is required to the
17 paragraphs. To the extent a response is required, Defendant denies the allegations contained in
18 these paragraphs as they pertain to MCI.

19 93. Responding to Plaintiffs' Prayer for Relief, including the "WHEREFORE"
20 statement and all subparts thereto, Defendant denies that it is liable to Plaintiffs in any fashion or in
21 any amount.

22 94. Any and all allegations set forth in Plaintiffs' Second Amended Complaint which
23 have not heretofore been either expressly admitted or denied, are hereby denied.

24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which
27 relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

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TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive damages that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount of punitive damages that may be imposed, would: (1) violate Defendant's Due Process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution; (2) violate Defendant's right not to be subjected to an excessive award; and (3) be improper under the Constitution, common law and public policies of Nevada.

EIGHTEENTH AFFIRMATIVE DEFENSE

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

1 warrants.

2 WHEREFORE, having fully responded to the allegations of Plaintiffs' Second Amended
3 Complaint, Defendant respectfully prays:

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

11
12 DATED this 6th day of February, 2018.



D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
David A. Dial, Esq.
Marisa Rodriguez, Esq.
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*Attorneys for Defendant
Motor Coach Industries, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2018, a true and correct copy of the foregoing **ANSWER TO SECOND AMENDED COMPLAINT** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

| | |
|---|--|
| <p>Will Kemp, Esq. Eric Pepperman, Esq. KEMP, JONES & COULTHARD, LLP 3800 Howard Hughes Pkwy., 17th Floor Las Vegas, NV 89169 e.pepperman@kempjones.com</p> <p><i>Attorneys for Plaintiffs</i></p> | <p>Peter S. Christiansen, Esq. Kendele L. Works, Esq. CHRISTIANSEN LAW OFFICES 810 S. Casino Center Blvd. Las Vegas, NV 89101 pete@christiansenlaw.com kworks@christiansenlaw.com</p> <p><i>Attorneys for Plaintiffs</i></p> |
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| <p>Michael E. Stoberski, Esq. Joslyn Shapiro, Esq. OLSON CANNON GORMLEY ANGULO & STOBERSKI 9950 W. Cheyenne Ave. Las Vegas, NV 89129 mstoberski@ocgas.com jshapiro@ocgas.com</p> <p><i>Attorneys for Defendant Bell Sports, Inc. d/b/a Giro Sport Design</i></p> | <p>Eric O. Freeman, Esq. SELMAN BREITMAN LLP 3993 Howard Hughes Pkwy., Suite 200 Las Vegas, NV 89169 efreeman@selmanlaw.com</p> <p><i>Attorney for Defendants Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard</i></p> |

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7 *Bicycles, Inc. d/b/a Pro Cyclery*

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



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

TAB 9

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 23 2018

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: 
DAVID STRBY, DEPUTY

21360

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as executor of the ESTATE OF
KAYVAN KHIABANI, M.D., (Decedent);
the ESTATE OF KAYVAN KHIABANI, M.D.
(Decedent); SIAMAK BARIN, as executor
of the ESTATE OF KATAYOUN BARIN, DDS
(Decedent); and the Estate of KATAYOUN
BARIN, DDS (Decedent),

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., et. al.

Defendant.

Case No. A755977

Dept. No. 14

SPECIAL VERDICT

A-17-755977-C
SJV
Special Jury Verdict
4731891



1 We the jury return the following verdict:

2 LIABILITY

3 1) Is MCI liable for defective design (Was there a right-side blind spot that made
4 the coach unreasonably dangerous and a legal cause of Dr. Khiabani's death)?

5 Yes _____

6 No ☒ _____

7
8
9 2) Is MCI liable for defective design (Did the lack of proximity sensor(s) make
10 the coach unreasonably dangerous and a legal cause of Dr. Khiabani's death)?

11 Yes _____

12 No ☒ _____

13
14 3) Is MCI liable for defective design (Did the lack of a rear-wheel protective bar-
15 rier make the coach unreasonably dangerous and a legal cause of Dr. Khiabani's
16 death)?

17 Yes _____

18 No ☒ _____

19
20 4) Is MCI liable for defective design (Did the aerodynamic design of the coach
21 make it unreasonably dangerous and a legal cause of Dr. Khiabani's death)?

22 Yes _____

23 No ☒ _____

24
25 5) Did MCI fail to provide an adequate warning that would have been acted
26 upon?

27 Yes ☒ _____

28 No _____

1 If you answered "Yes" to any of the above liability questions, fill in the amount
2 of compensation that you deem appropriate for each Plaintiff's compensatory
3 damages arising from the death of Dr. Kayvan Khiabani:
4

5
6 COMPENSATORY DAMAGES

7 KEON KHIABANI DAMAGES

8 Past Grief and Sorrow, Loss of Companionship,
9 Society, and Comfort \$ 1,000,000.00

10 Future Grief and Sorrow, Loss of Companionship,
11 Society, and Comfort \$ 7,000,000.00

12 Loss of Probable Support \$ 1,200,000.00

13
14 TOTAL \$ 9,200,000.00

15
16 ARIA KHIABANI DAMAGES

17 Past Grief and Sorrow, Loss of Companionship,
18 Society, and Comfort \$ 1,000,000.00

19 Future Grief and Sorrow, Loss of Companionship,
20 Society, and Comfort \$ 5,000,000.00

21 Loss of Probable Support \$ 1,000,000.00

22 TOTAL \$ 7,000,000.00

23
24 THE ESTATE OF KATY BARIN DAMAGES

25 Grief and Sorrow, Loss of Companionship,
26 Society, Comfort, and Consortium suffered by
27 Katy Barin before her October 12, 2017 death \$ 1,000,000.00

1 Loss of Probable Support before her
2 October 12, 2017 death \$ 500,000.00

3 TOTAL \$ 1,500,000.00

4
5 DAMAGES TO BE DIVIDED AMONG THE HEIRS

6 Pain and Suffering of Kayvan Khiabani \$ 1,000,000.00

7 Disfigurement of Kayvan Khiabani \$ 0

8
9 TOTAL \$ 1,000,000.00

10

11 THE ESTATE OF KAYVAN KHIABANI COMPENSATORY DAMAGES

12 Medical and Funeral Expenses \$ 46,003.62

13 If you answered "Yes" on any of the above liability questions, you must also deter-
14 mine Plaintiffs' claim for punitive damages against MCI:
15

16 **PUNITIVE DAMAGES**

17 Is MCI liable for punitive damages?

18 Yes _____ No ☒ _____

19
20 If so, for which of the following defect(s) do you find MCI liable for punitive dam-
21 ages?

22
23 1) Right-side blind spot?

24 Yes _____ No _____

25 2) Proximity sensor(s)?

26 Yes _____ No _____

27
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3) Rear-wheel protective barrier?

Yes _____ No _____


4) Aerodynamic design?

Yes _____ No _____

5) Failure to warn?

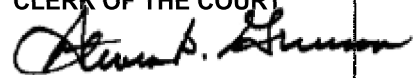
Yes _____ No _____

Dated this 23 day of March, 2018.


Foreperson

TAB 10

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9 -and-
10 PETER S. CHRISTIANSEN, ESQ. (#5254)
11 KENDELEE L. WORKS, ESQ. (#9611)
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13 CHRISTIANSEN LAW OFFICES
14 810 South Casino Center Blvd.
15 Las Vegas, Nevada 89101
16 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

17 KEON KHIABANI and ARIA KHIABANI,
18 minors, by and through their Guardian,
19 MARIE-CLAUDE RIGAUD; SIAMAK
20 BARIN, as Executor of the Estate of Kayvan
21 Khiabani, M.D. (Decedent), the Estate of
22 Kayvan Khiabani, M.D. (Decedent);
23 SIAMAK BARIN, as Executor of the Estate
24 of Katayoun Barin, DDS (Decedent); and the
25 Estate of Katayoun Barin, DDS (Decedent);

26 Plaintiffs,

27 vs.

28 MOTOR COACH INDUSTRIES, INC.,
a Delaware corporation; et al.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

JUDGMENT

29 The above-captioned action having come before the Court for a jury trial
30 commencing on February 12, 2018, the Honorable Adriana Escobar, District
31 Judge, presiding, and the issues having been duly tried, and the jury having duly
32 rendered its special verdict,

1 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, pursuant
2 to the jury's verdict, judgment is entered in favor of Plaintiffs, KEON KHIABANI
3 and ARIA KHIABANI, minors, by and through their Guardian MARIE-CLAUDE
4 RIGAUD, and SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani,
5 M.D. (Decedent) and as Executor of the Estate of Katayoun ("Katy") Barin, DDS
6 (Decedent), and against Defendant MOTOR COACH INDUSTRIES, INC.
7 ("MCI"), as follows:

8 **KEON KHIABANI DAMAGES**

| | |
|--|----------------|
| 9 Past Grief and Sorrow, Loss of Companionship, 10 Society, and Comfort: | \$1,000,000.00 |
| 11 Future Grief and Sorrow, Loss of Companionship, 12 Society, and Comfort: | \$7,000,000.00 |
| 13 Loss of Probable Support: | \$1,200,000.00 |
| 14 Pain and Suffering of Decedent, 15 Dr. Kayvan Khiabani: | \$333,333.34 |
| 16 | |
| 17 TOTAL | \$9,533,333.34 |

18
19 **ARIA KHIABANI DAMAGES**

| | |
|--|----------------|
| 20 Past Grief and Sorrow, Loss of Companionship, 21 Society, and Comfort: | \$1,000,000.00 |
| 22 Future Grief and Sorrow, Loss of Companionship, 23 Society, and Comfort: | \$5,000,000.00 |
| 24 Loss of Probable Support: | \$1,000,000.00 |
| 25 Pain and Suffering of Decedent, 26 Dr. Kayvan Khiabani: | \$333,333.33 |
| 27 | |
| 28 TOTAL | \$7,333,333.33 |

THE ESTATE OF KATY BARIN DAMAGES

| | |
|---|----------------|
| Greif and Sorrow, Loss of Companionship, Society, Comfort, and Consortium suffered by Katy Barin before her October 12, 2017 death: | \$1,000,000.00 |
| Loss of Probable Support before her October 12, 2017 death ³³ | \$500,000.00 |
| Pain and Suffering of Decedent, Dr. Kayvan Khiabani: | \$333,333.33 |
| TOTAL | \$1,833,333.33 |

THE ESTATE OF KAYVAN KHIABANI COMPENSATORY DAMAGES

| | |
|------------------------------|-------------|
| Medical and Funeral Expenses | \$46,003.62 |
|------------------------------|-------------|

| | |
|--|------------------------|
| PLAINTIFFS' COMBINED TOTAL DAMAGES AWARD: | \$18,746,003.62 |
|--|------------------------|

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, under Nev. Rev. Stat. § 18.020, Plaintiffs shall also recover all costs reasonably and necessarily incurred in this action in an amount to be determined.

///

///

1 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, pursuant
2 to Nev. Rev. Stat. § 17.130, Plaintiffs shall receive prejudgment interest, accruing
3 from June 1, 2017, at the rate provided by law, on \$4,546,003.62 of the combined
4 total damages award, as this amount represents past damages for: (i) the grief and
5 sorrow and loss of companionship, society, and comfort suffered by Keon
6 Khiabani (\$1,000,000.00); (ii) the grief and sorrow and loss of companionship,
7 society, and comfort suffered by Aria Khiabani (\$1,000,000.00); (iii) the grief and
8 sorrow and loss of companionship, society, comfort, consortium, and probable
9 support suffered by Katy Barin before her October 12, 2017 death
10 (\$1,500,000.00); (iv) the pain and suffering of Decedent Dr. Kayvan Khiabani
11 (\$1,000,000.00); and (v) the medical and funeral expenses incurred by Decedent
12 Dr. Kayvan Khiabani (\$46,003.62). As of April 11, 2018, the total amount of
13 accrued prejudgment interest is \$246,480.55.¹

14 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs'
15 total judgment shall bear post-judgment interest at the rate provided by law, which
16 is currently 6.5%/year, until satisfied.

17 IN SUM, judgment upon the verdict in favor of Plaintiffs is hereby given
18 for Eighteen Million Seven Hundred Forty-Six Thousand Three and 62/100
19 Dollars (\$18,746,003.62) against Defendant MCI, with prejudgment interest, as
20 described above, and with post-judgment interest continuing to accrue on the total
21 judgment amount from the date this Judgment is entered until it is fully satisfied.


22 Dated this 17th day of April, 2018.

23
24 
25 _____
DISTRICT COURT JUDGE

26
27 ¹ 06/01/2017 - 06/30/2017 \$21,484.53(30 days @ \$716.15/daily @ 5.750%/year);
28 07/01/2017 - 12/31/2017 \$143,230.23(184 days @ \$778.43/daily @ 6.250%/year);
1/01/2018 - 04/11/2018 \$81,765.78(101 days @ \$809.56/daily @ 6.500%/year)

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1 Respectfully Submitted by:
2 KEMP, JONES & COULTHARD, LLP

3 
4
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6 ERIC PEPPERMAN, ESQ. (#11679)
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9 -and-
10 PETER S. CHRISTIANSEN, ESQ. (#5254)

11 KENDELEE L. WORKS, ESQ. (#9611)

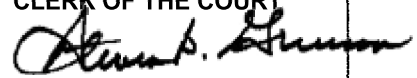
12 CHRISTIANSEN LAW OFFICES

13 810 South Casino Center Blvd.

14 Las Vegas, Nevada 89101

15 *Attorneys for Plaintiffs*
16
17
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TAB 11



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9 *Attorneys for Plaintiffs*

10
11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

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

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,
20 a Delaware corporation; et al.

21 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

NOTICE OF ENTRY OF JUDGMENT

22
23 TO: All parties herein; and

24 TO: Their respective counsel;

25 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Judgment was entered
26 in the above entitled matter on April 17, 2018.

27 //

28 //

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1 A copy of said Judgment is attached hereto.

2 DATED this 18th day of April, 2018.

3 KEMP, JONES & COULTHARD, LLP

4 

5 WILL KEMP, ESQ. (#1205)

6 ERIC PEPPERMAN, ESQ. (#11679)

7 KEMP, JONES & COULTHARD, LLP

8 3800 Howard Hughes Parkway, 17th Floor

9 Las Vegas, NV 89169

10 -and-

11 PETER S. CHRISTIANSEN, ESQ. (#5254)

12 KENDELEE L. WORKS, ESQ. (#9611)

13 CHRISTIANSEN LAW OFFICES

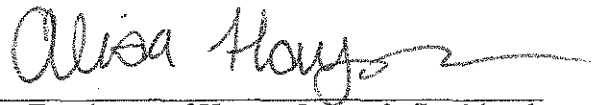
14 810 Casino Center Blvd.

15 Las Vegas, Nevada 89101

16 *Attorneys for Plaintiffs*

17 **CERTIFICATE OF SERVICE**

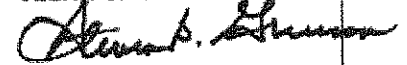
18 I hereby certify that on the 18th day of April, 2018, the foregoing NOTICE OF ENTRY OF
19 JUDGMENT was served on all parties currently on the electronic service list via the Court's
20 electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules,
21 Administrative Order 14-2.
22

23 

24 An Employee of Kemp, Jones & Coulthard.
25
26
27
28

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12 kworks@christiansenlaw.com
13 CHRISTIANSEN LAW OFFICES
14 810 South Casino Center Blvd.
15 Las Vegas, Nevada 89101
16 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

17 KEON KHIABANI and ARIA KHIABANI,
18 minors, by and through their Guardian,
19 MARIE-CLAUDE RIGAUD; SIAMAK
20 BARIN, as Executor of the Estate of Kayvan
21 Khiabani, M.D. (Decedent), the Estate of
22 Kayvan Khiabani, M.D. (Decedent);
23 SIAMAK BARIN, as Executor of the Estate
24 of Katayoun Barin, DDS (Decedent); and the
25 Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

20 MOTOR COACH INDUSTRIES, INC.,
21 a Delaware corporation; et al.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

JUDGMENT

24 The above-captioned action having come before the Court for a jury trial
25 commencing on February 12, 2018, the Honorable Adriana Escobar, District
26 Judge, presiding, and the issues having been duly tried, and the jury having duly
27 rendered its special verdict,
28

1 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, pursuant
2 to the jury's verdict, judgment is entered in favor of Plaintiffs, KEON KHIABANI
3 and ARIA KHIABANI, minors, by and through their Guardian MARIE-CLAUDE
4 RIGAUD, and SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani,
5 M.D. (Decedent) and as Executor of the Estate of Katayoun ("Katy") Barin, DDS
6 (Decedent), and against Defendant MOTOR COACH INDUSTRIES, INC.
7 ("MCI"), as follows:

8 **KEON KHIABANI DAMAGES**

| | |
|--|----------------|
| 9 Past Grief and Sorrow, Loss of Companionship, 10 Society, and Comfort: | \$1,000,000.00 |
| 11 Future Grief and Sorrow, Loss of Companionship, 12 Society, and Comfort: | \$7,000,000.00 |
| 13 Loss of Probable Support: | \$1,200,000.00 |
| 14 Pain and Suffering of Decedent, 15 Dr. Kayvan Khiabani: | \$333,333.34 |
| 16 | |
| 17 TOTAL | \$9,533,333.34 |

18
19 **ARIA KHIABANI DAMAGES**

| | |
|--|----------------|
| 20 Past Grief and Sorrow, Loss of Companionship, 21 Society, and Comfort: | \$1,000,000.00 |
| 22 Future Grief and Sorrow, Loss of Companionship, 23 Society, and Comfort: | \$5,000,000.00 |
| 24 Loss of Probable Support: | \$1,000,000.00 |
| 25 Pain and Suffering of Decedent, 26 Dr. Kayvan Khiabani: | \$333,333.33 |
| 27 | |
| 28 TOTAL | \$7,333,333.33 |

THE ESTATE OF KATY BARIN DAMAGES

| | |
|---|----------------|
| Greif and Sorrow, Loss of Companionship, Society, Comfort, and Consortium suffered by Katy Barin before her October 12, 2017 death: | \$1,000,000.00 |
| Loss of Probable Support before her October 12, 2017 death ³³ | \$500,000.00 |
| Pain and Suffering of Decedent, Dr. Kayvan Khiabani: | \$333,333.33 |
| TOTAL | \$1,833,333.33 |

THE ESTATE OF KAYVAN KHIABANI COMPENSATORY DAMAGES

| | |
|------------------------------|-------------|
| Medical and Funeral Expenses | \$46,003.62 |
|------------------------------|-------------|

| | |
|--|------------------------|
| PLAINTIFFS' COMBINED TOTAL DAMAGES AWARD: | \$18,746,003.62 |
|--|------------------------|

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, under
Nev. Rev. Stat. § 18.020, Plaintiffs shall also recover all costs reasonably and
necessarily incurred in this action in an amount to be determined.

///

///

1 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, pursuant
2 to Nev. Rev. Stat. § 17.130, Plaintiffs shall receive prejudgment interest, accruing
3 from June 1, 2017, at the rate provided by law, on \$4,546,003.62 of the combined
4 total damages award, as this amount represents past damages for: (i) the grief and
5 sorrow and loss of companionship, society, and comfort suffered by Keon
6 Khiabani (\$1,000,000.00); (ii) the grief and sorrow and loss of companionship,
7 society, and comfort suffered by Aria Khiabani (\$1,000,000.00); (iii) the grief and
8 sorrow and loss of companionship, society, comfort, consortium, and probable
9 support suffered by Katy Barin before her October 12, 2017 death
10 (\$1,500,000.00); (iv) the pain and suffering of Decedent Dr. Kayvan Khiabani
11 (\$1,000,000.00); and (v) the medical and funeral expenses incurred by Decedent
12 Dr. Kayvan Khiabani (\$46,003.62). As of April 11, 2018, the total amount of
13 accrued prejudgment interest is \$246,480.55.¹

14 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs'
15 total judgment shall bear post-judgment interest at the rate provided by law, which
16 is currently 6.5%/year, until satisfied.

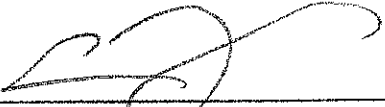
17 IN SUM, judgment upon the verdict in favor of Plaintiffs is hereby given
18 for Eighteen Million Seven Hundred Forty-Six Thousand Three and 62/100
19 Dollars (\$18,746,003.62) against Defendant MCI, with prejudgment interest, as
20 described above, and with post-judgment interest continuing to accrue on the total
21 judgment amount from the date this Judgment is entered until it is fully satisfied.

22 Dated this 17th day of April, 2018.

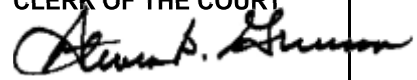
23
24 
25 DISTRICT COURT JUDGE

26
27 ¹ 06/01/2017 - 06/30/2017 \$21,484.53(30 days @ \$716.15/daily @ 5.750%/year);
28 07/01/2017 - 12/31/2017 \$143,230.23(184 days @ \$778.43/daily @ 6.250%/year);
1/01/2018 - 04/11/2018 \$81,765.78(101 days @ \$809.56/daily @ 6.500%/year)

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TAB 12



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DISTRICT COURT
CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent), the Estate of
Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and the
Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

BRIEF REGARDING OFFSET

///

1 NOW APPEAR Plaintiffs, by and through counsel of record, and hereby submit this brief
2 regarding the amount of the offset that should be applied to the judgment entered against
3 Defendant Motor Coach Industries, Inc. ("MCI").

4 I. ARGUMENT

5 A. J.E. Johns & Assoc. v. Lindberg Controls the Offset Determination

6 J.E. Johns & Assoc. v. Lindberg, 136 Nev.Adv.Op. 55, 470 P.3d 204 (2020) [Lindberg]
7 was decided on August 20th, 2020, long after this Court initially determined the offset. After
8 rejecting all of MCI's arguments to overturn the judgment and affirming basically all of this
9 Court's rulings on the posttrial motions, our High Court remanded the offset determination to this
10 Court citing Lindberg. See Motor Coach Industries, Inc. v. Khiabani, 137 Nev. Adv.Op 42
11 (2021).

12 Lindberg has greatly simplified the offset analysis to a two part test. First, Lindberg asks
13 if both Defendants were sued for the "same injury." During oral argument before our High Court,
14 Plaintiffs conceded that the same injury underlies both claims and continue to maintain such
15 position. Hence, only the second Lindberg factor needs to be analyzed herein.

16 The second Lindberg inquiry is to identify unique damages to which the settling defendant
17 (Michaelangelo) was exposed and compare the damages to the damages awarded against the non-
18 settling defendant (MCI):

19 Thus, ensuring that a plaintiff does not recover twice for the same injury does not
20 mean that a plaintiff should otherwise be precluded from receiving the portion of a
21 settlement award that resolves a settling defendant's **exposure** beyond actual
damages -- such as treble or **punitive damages** -- if such exposure is unique to the
settling defendant.

22 Lindberg, 470 P.3d at 211. (Bold added). Lindberg highlighted punitive damages as a potential
23 unique exposure that must be analyzed in determining the offset.

24 In Lindberg, an aggrieved home buyer sued both the home sellers and the real estate agents
25 of both parties. "The Lindbergs specifically alleged that the sellers violated their statutory
26 disclosure obligation under NRS 113.130, for which NRS 113.150(4) permits the recovery of
27 treble damages, and that the sellers' agents and the Lindbergs' agents violated their statutory duties
28 of disclosure pursuant to NRS 645.252, which gave rise to a cause of action under NRS 645.257

1 to recover their actual damages". Lindberg, 470 P.3d at 205. Before trial, the buyers settled with
2 the sellers for \$50,000 and with the buyer's agent for \$7,500.

3 The District Court awarded \$75,780.79 against the agent's seller. "Then, the district court
4 offset the \$27,552.95 award [to fix the septic tank] by the entire settlement amount paid by the
5 Lindbergs' agents (\$7,500), and by one-third of the settlement amount paid by the sellers (\$50,000
6 $\times 1/3 = \$16,650$) in recognition that the Lindbergs would be entitled to treble damages against the
7 sellers associated with any claim established under NRS 113.250." Lindberg, 470 P.3d at 210.
8 On appeal, the Lindberg sellers made the same argument that MCI now makes: they should get
9 a credit for the entire settlement amount as opposed to a portion of it. The Lindberg Court
10 described the issue before it as: "[w]hether NRS 17.245(1)(a) requires district courts to
11 automatically deduct the entirety of a settlement award without considering the makeup of the
12 award in relation to the judgment against the nonsettling defendants" Lindberg, 470 P.3d at
13 210.

14 Based upon the principle that equitable settlement offsets are to avoid windfalls, the Court
15 held that offsets must be applied only after "scrutinizing the allocation of damages awarded
16 therein" and differentiated between exposure to actual damages and exposure to treble damages
17 or punitive damages. The Court then made the critical holding that where treble or punitive
18 damages are a "unique exposure to the settling defendant", then "ensuring that a plaintiff does not
19 recover twice for the same injury does not mean that a plaintiff should otherwise be precluded
20 from receiving the portion of a settlement award that resolves a settling defendant's **exposure**
21 beyond actual damages -- such as treble or punitive damages -- if such **exposure** is unique to the
22 settling defendant." Lindberg, 470 P.3d at 211. (Bold added). Plaintiffs emphasize that the
23 Lindberg Court explicitly stated multiple times that the settling defendant's "exposure" to punitive
24 damages is the definitive factor that must be considered.

25 **B. The Offset to MCI Should Be \$1,277,500.00 Under Lindberg**

26 In this case, the principal settling defendant (Michaelangelo) paid \$5 Million to settle the
27 compensatory and punitive damages claims asserted against it. (Ex. 1, paragraph 58). The 2
28 other settling defendants paid \$110,000.00. The "exposure" to Michaelangelo (using the term
that Lindberg used 3 times) was to both compensatory and punitive damages. It should be

emphasized that Lindberg focused on "exposure" even though the plain language of NRS 17.245(1)(a) "could be interpreted as permitting the reduction of the entire settlement amount obtained . . ."; reasoning:

NRS 17.245(1)(a) "reduces the claim against the [nonsettling defendants] to the extent of any amount stipulated by the release or the covenant, of in the amount of the consideration paid for it, whichever is the greater." While the plain language of the statute could be interpreted as permitting the reduction of the entire **settlement amount** obtained – without regard to the type of exposure resolved by the settling defendants -- we reason that such an interpretation violates the spirit of NRS 17.245(a)(a).

Lindberg, 470 P.3d at 210. (Bold added). For these reasons, the touchstone for an offset determination is "exposure" -- a simple brightline test that can be applied by examining the claims made in the complaint against the settling defendants. Cf. Black's Law Dictionary, defining "exposure" as "[a] situation that can create liability or an obligation to pay."

On the punitive damages "exposure" in this case, the Second Amended Complaint, Para. 58, sought punitive damages against Michaelangelo:

58. In carrying out its responsibility to adequately train its drivers, Defendant Ryan's Express acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. **As a direct and proximate result of the conduct of Defendant Ryan's Express, Plaintiffs are entitled to punitive damages** in excess of Fifteen Thousand Dollars (\$15,000).

(Ex. 1) (Bold added). Likewise, the Second Amended Complaint also sought punitive damages against the other 2 settling defendants (*i.e.*, Giro and Pro-Cyclery) in paragraph 77. (Ex. 1).

Focusing on the punitive claim against Michaelangelo, the maximum possible punitive award would be 3 times compensatory under NRS 42.005 because the claim against Michaelangelo sounded in negligence and not in product liability. In other words, there is a three to one cap on punitive damages sought against Michaelangelo because it did not qualify for the unlimited punitive cap applied to bad faith insurers, makers of defective products or DUI drivers. Hence, when you have exposure to 1 part compensatory damages and 3 parts punitive, 1 divided into 4 equals 1/4 of the \$5 Million settlement amount. This is a \$1.25 Million offset for MCI for the \$ 5 Million Michaelangelo payment. Thus, the largest possible offset to MCI under Lindberg would be \$1.25 Million for the Michaelangelo payment.

Applying the same math to the \$110,000 paid by the other two (2) settling defendants, MCI would get an additional \$27,500 offset. Hence, the total offset under the Lindberg exposure

analysis is \$1,277,500.00 because this is 1/4 of the total settlement amount from all three (3) defendants and the ratio of 1 to 4 derived from exposure to compensatory damages (1 part) and to exposure to punitive damages (3 parts) yields such result.

There can be no doubt that the punitive exposure was “unique” to the settling defendants because the jury found for MCI on the punitive claim:

If you answered “Yes” on any of the above liability questions, you must also determine Plaintiffs’ claim for punitive damages against MCI:

PUNITIVE DAMAGES

Is MCI liable for punitive damages?
Yes ___ No ✓

(Ex. 2). Because the MCI defense verdict on the punitive claim eliminated any punitive damages to MCI, the punitive claim was unique to the settling defendants. None of the portion of the Michaelangelo settlement attributed to the punitive damages exposure of Michaelangelo should be an offset to MCI. Likewise, none of the portion of \$110,000 paid by the other two (2) settling defendants attributed to punitive damages exposure should be an offset to MCI. As Lindberg noted, a plaintiff should not be “precluded from receiving the portion of a settlement award that resolves a settling defendant’s exposure beyond actual damages -- such as treble or punitive damages . . .” and it cannot be disputed that Michaelangelo and the other two (2) defendants had a punitive damages “exposure.”

Lindberg elaborated on the inequity of giving a non-settling defendant like MCI credit for settlement amounts for exposure to punitive damages by the following citation and description of case holding:

Cf. Mobil Oil Corp. v. Ellender, 968 S.W.2d 917, 927 (Tex. 1998) (explaining that a nonsettling defendant “cannot receive credit for settlement amounts representing punitive damages” due to their individual nature.)

Lindberg, 470 P.3d at 211. Likewise, in this case, MCI “cannot receive credit for settlement amounts” amount representing punitive exposure to the three (3) settling defendants. For the foregoing reasons, MCI is entitled to an offset of \$1,277,500.00 under Lindberg.

C. Computation of Interest

1. The Parties Disagree Over The Proper Computation Of Interest

1 Once the offset amount is determined, the parties disagree over **when** the offset should be
2 applied for purposes of calculating interest on the judgment under NRS 17.130(2). The
3 computation of interest is significantly different based on the date in which the offset is deducted
4 from the judgment.

5 Plaintiffs believe that the offset should not be deducted until August 13, 2018—the date
6 in which the settlement proceeds were **actually paid**. Although Plaintiffs agreed in principle to
7 settle their claims against the Settling Defendants prior to trial, Plaintiffs did not finalize or receive
8 any proceeds from the settlement until August 2018. For purposes of calculating interest, it is
9 only fair that the judgment is not reduced by the offset until the offset amount was actually paid.

10 MCI disagrees with this common-sense approach. It argues that the offset should be
11 applied on the original judgment date of April 17, 2018, even though no settlement proceeds had
12 been paid at this time. MCI contends that the offset should be deducted pro rata between past and
13 future damages based on the verdict, and that prejudgment interest should be calculated based on
14 the reduced amount of past damages.

15 In Nevada, the computation of judgment interest is governed by NRS 17.130(2), which
16 provides:

17 When no rate of interest is provided by contract or otherwise by law, or specified
18 in the judgment, the judgment draws interest from the time of service of the
19 summons and complaint until satisfied, except for any amount representing future
20 damages, which draws interest only from the time of the entry of the judgment until
21 satisfied, at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions on January 1 or July 1, as the case
may be, immediately preceding the date of judgment, plus 2 percent. The rate must
be adjusted accordingly on each January 1 and July 1 thereafter until the judgment
is satisfied.

22 Thus, prejudgment interest accrues on past damages from the date of service until the date of
23 judgment, and post judgment interest accrues from the time of entry of judgment until the
24 judgment is fully satisfied.

25 In this case, on June 1, 2017, MCI was served with the summons and complaint. On
26 March 23, 2018, the jury rendered its verdict. On April 17, 2018, based on the verdict, the Court
27 entered judgment against MCI in the amount of \$18,746,003.62. Of this total amount,
28 \$4,546,003.62 represented past damages, and \$14,200,000.00 represented future damages.
Pursuant to the verdict and judgment, the pro rata percentage of past damages is **24.25%** (0.2425),

and the pro rata percentage of future damages is **75.75%** (.7575). The Court awarded costs in the amount of \$542,826.84, which also accrues interest from the April 17, 2018 date of judgment.

Based on the forgoing, and assuming an offset amount of \$1,277,500.00, the following example illustrates the significant difference parties' different interest calculations:

| Plaintiffs' Computation | | MCI's Computation | |
|--|------------------------|---|------------------------------------|
| Prejudgment Interest on Past Damages of \$4,546,003.62 from 6/1/17-4/17/18 | \$259,869.48 | Pro Rata (24.25%) Amount of Offset Representing Past Damages/Pro Rata (75.75%) Amount Representing Future Damages | \$309,793.75/ \$967,706.25 |
| Judgment Amount as of 4/17/18, inclusive of principal, prejudgment interest, and costs | \$19,548,699.94 | Amount of Past Damages after Reduction by Offset/Amount of Future Damages after Reduction by Offset on April 17, 2018 | \$4,236,209.87/ \$13,232,293.75 |
| Post-Judgment Interest on Judgment Amount of \$19,548,699.94 from 4/18/18-8/13/18 | \$422,573.27 | Prejudgment Interest on Offset Past Damages of \$4,236,209.87 from 6/1/17-4/17/18 | \$242,160.31 |
| Judgment Amount as of 8/13/18, inclusive of principal, costs, prejudgment interest, post judgment interest to 8/13/18, and reduction by offset amount on August 13, 2018 | \$18,693,773.21 | Judgment Amount as of 4/17/18, inclusive of principal, prejudgment interest, costs, and reduction by offset amount | \$18,253,490.77 |
| Post-Judgment Interest on Judgment Amount of \$18,693,773.21 from 8/14/18-9/1/21 | \$3,680,882.87 | Post-Judgment Interest on Judgment Amount of \$18,253,490.77 from 4/18/18-9/1/21 | \$3,988,764.85 |
| Total Judgment as of 9/1/21 | \$22,374,656.08 | Total Judgment as of 9/1/21 | \$22,242,255.62 |
| Difference in Amounts: \$132,400.46 | | | |

2. Plaintiffs' Method Of Deducting The Offset On The Date That The Settlement Proceeds Were Actually Paid Is Consistent With The Plain Language Of NRS 17.130(2) And Nevada Case Law

It is well-settled that Nevada statutes should be read and applied according to their plain meaning. See, e.g., Pope v. Motel 6, 121 Nev. 307, 314 (2005) (citations omitted). In cases involving the award or calculation of prejudgment interest, the Nevada Supreme Court has

consistently decided these issues based on “the plain language of NRS 17.130....” Albios v. Horizon Communities, Inc., 122 Nev. 409, 428-29 (2006) (citations omitted).

According to the plain language of NRS 17.130(2), judgments draw interest “**until satisfied.**” (Bold added). In normal circumstances, when a partial payment is made toward satisfying the judgment, the judgment is reduced by the amount of the payment—**at the time of the payment**—and interest continues to accrue on the reduced amount thereafter.

In this case, the offset is based on the **payment** of settlement proceeds toward the judgment. There is no reason to treat the offset differently than any other partial payment toward satisfying a judgment (*i.e.*, the judgment is reduced by the amount of the payment at the time of the payment and interest continues to accrue on the remaining unsatisfied amount until the judgment is fully satisfied). Plaintiffs’ method of deducting the offset as of the 8/13/18 date of **payment** is fair and consistent with the plain language of NRS 17.130(2).

Plaintiffs’ method is also supported by the Nevada Supreme Court’s opinion in Ramadanis v. Stupak, 107 Nev. 22 (1991). While not squarely on point, Ramdanis involved the computation of “prejudgment interest in situations where at least one of the defendants has settled before trial.” Id. at 23. In Ramadanis, the Court held that “the trial court properly computed prejudgment interest after deducting the amount of the [pre-trial] settlement,” which had already been paid. Id. at 24. Critically, the Court acknowledged the fairness concerns with potentially depriving plaintiffs of prejudgment interest on settlement payments, but reasoned that “a plaintiff may choose to waive his or her right to prejudgment interest in favor of **the certainty and immediacy of settlement payments.**” Id. (Bold added).

Here, Plaintiffs did not receive the “certainty and immediacy of [any] settlement **payments**” until August 13, 2018. Under Ramadanis, Plaintiffs should not be deprived of any interest on the offset amount until they actually received the **payments**. See Huckaby Properties, Inc. v. NC Auto Parts, LLC, 132 Nev. 981, *1 (Dec. 15, 2016) (Unpublished disposition) (citing State Drywall, Inc. v. Rhodes Design & Dev., 122 Nev. 11, 117 (2006) for the proposition that “the purpose of prejudgment interest is to compensate a party for the loss of use of money to which the party is entitled.”). After the offset amount is confirmed, for the purpose of calculating

1 interest, the offset should not be deducted until the appropriate portion of settlement proceeds
2 were paid on August 13, 2018.

3 4 II. CONCLUSION

5 MCI should get a credit of \$1,277,500.00 under Lindberg. For the purpose of calculating
6 interest, the offset should be applied on the actual date of settlement payment - - not four months
7 earlier.

8 DATED this 13th day of December, 2021

9 KEMP, JONES LLP

10 /s/ Will Kemp

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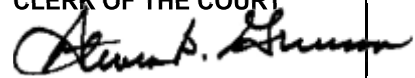
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2021, the foregoing **BRIEF REGARDING OFFSET** was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.

/s/ Jessica P. Lopez
An Employee of Kemp Jones, LLP

TAB 13



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DISTRICT COURT
CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their Guardian
MARIE-CLAUDE RIGAUD; SIAMAK BARIN,
as Executor of the Estate of KAYVAN
KHIABANI, M.D. (Decedent), THE ESTATE
OF KAYVAN KHIABANI, M.D. (Decedent);
SIAMAK BARKIN, AS EXECUTOR OF THE
STATE OF KATAYOUN BARIN, DDS
(Decedent); and the ESTATE OF
KATAYOUN BARIN, DDS (Decedent),

Plaintiffs,

vs.

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

Defendants.

Case No. A-17-755977-C

Dept. No. XIV

(FILED UNDER SEAL)

BRIEF REGARDING OFFSET

Hearing Date: January 13, 2022
Hearing Time: 10:00 a.m.

1 The task is simple. The Supreme Court held and directed:

2 NRS 17.245 is clear on its face and thus applies to MCI, as
3 there is no dispute that MCI and the other defendants were
4 liable for the same injury. Further, the jury calculated the
5 total damages for that single injury and respondents had
already received partial payment from the settling
defendants. MCI was therefore entitled to offset the
judgment under NRS 17.245.

6 * * *

7 Accordingly, the district court should have granted MCI's
8 motion to alter or amend the judgment to offset *the*
settlement proceeds paid by other defendants, and we
remand for calculation of the offset due.

9 *Motor Coach Industries, Inc. v. Khiabani*, 137 Nev. Adv. Op. 42, 493 P.3d 1007,
10 1017 (2021). Not some yet-to-be-determined portion of the settlement proceeds,
11 but rather all “the settlement proceeds.” *Id.* (emphasis added). And that is the
12 requirement of law. See NRS 17.245(1)(a); NRS 41.141(3).

13 Relying on *J.E. Johns & Associates v. Lindberg*, 136 Nev. 477, 470 P.3d
14 204 (2020), plaintiffs may claim the case falls within an exception to the rule
15 that all settlement proceeds from a co-tortfeasor liable for the same injury must
16 be offset—to wit that part of their settlement proceeds released the settling
17 defendant(s) of liability for punitive damages. But that concept is inapplicable
18 and the representation hollow. First, the offset at issue in *J.E. Johns* involved
19 a statutory entitlement to trebled damages (*id.*, 136 Nev. at 485, 470 P.3d at
20 211 (discussing NRS 113.150(4)), but plaintiffs are *never entitled* to punitive
21 damages even if a tortfeasor’s conduct might warrant them. *Evans v. Dean*
22 *Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000). Second, not only is the
23 Supreme Court’s opinion devoid of any notion the offset may be limited, but it is
24 also *law of the case* that the settling defendants’ conduct was of a nature that
25 cannot be deemed malicious. Third, plaintiffs are *judicially estopped* from
26 alleging the settling defendants’ conduct justified punitive damages based on
27 their previous representations to this Court and the orders they procured from
28 this Court. Fourth, plaintiffs bear the burden of proof to justify any diminution

1 in the offset, and they have disclosed *no evidence* that the settling defendants
2 agreed to apportion part of the settlement to punitive damages—*e.g.*, the
3 settlement agreements themselves or documentation that plaintiffs paid taxes
4 on any portion allegedly attributable to punitive damages. Finally, it is
5 extremely dubious that any settlement funded by an *insurance policy* would
6 have included apportionment for punitive liability.

7 The correct calculation of the judgment with the offset is set out below.

8 **FACTUAL BACKGROUND**

9 ***The Accident***

10 The decedent Dr. Khiabani died when his bicycle collided with a motor
11 coach designed by defendant Motor Coach Industries, Inc. (MCI). Defendant
12 Edward Hubbard was driving the vehicle for his employer, Michelangelo
13 Leasing Inc. d/b/a Ryan's Express, taking passengers from the airport to the
14 Red Rock Casino Resort.

15 The plaintiff-heirs sued Hubbard (and his employer Michelangelo Leasing
16 Inc.) for driving negligently, MCI for its design of the motor coach and the
17 warnings it issued with the vehicle, as well as the manufacturers of the helmet
18 Khiabani was wearing, defendant Bell Sports, Inc. d/b/a Giro Sport Design, and
19 the bicycle he was riding, defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery.
20 Plaintiffs' complaints sought punitive damages against MCI, as well as
21 Hubbard and Michelangelo Leasing, but not the manufacturers of the helmet
22 and bicycle.

23 ***The Settlements***

24 A few months after initiating this suit, plaintiffs settled with everyone
25 but MCI. Plaintiffs received \$5 million from Hubbard and his employer
26 Michelangelo Leasing, \$100,000 from Bell Sports, and \$10,000 from SevenPlus
27 Bicycles. The motions for determination good-faith settlements do not mention
28 punitive damages, much less any allocations for them. (See "Plaintiffs' Motion

1 for Determination of Good Faith Settlement with Defendants Michelangelo
2 Leasing, Inc. d/b/a/ Ryan's Express and Edward Hubbard Only" filed on
3 January 18, 2018.)

4 The \$5 million settlement proceeds from Michelangelo and Hubbard,
5 moreover, were "satisfied through insurance." (See "Findings of Fact and
6 Conclusions of Law and Order on Motion for Determination of Good Faith
7 Settlement," filed March 14, 2018, at 3:14.)

8 ***The Trial and Verdict***

9 Plaintiffs alleged four design defects in MCI's motor coach: (1) the coach's
10 corners were not round enough, creating an air disturbance (or an "air blast" as
11 plaintiffs referred to it) which blew the bike away from the coach and then
12 sucked it back into the bus; (2) the coach lacked proximity sensors to alert the
13 driver to the presence of a bicyclist; (3) the coach should have included a cattle-
14 catcher type device in front of the rear tires; and (4) the coach had an unusually
15 large blind spot on the right front side. Plaintiffs even sought punitive damages
16 on the basis that the edges of the motor coach were not as round as they could
17 have been. The jury returned a verdict in MCI's favor on all of those theories.

18 The jury found in favor of plaintiffs, however, on a failure to warn theory.
19 The jury agreed with plaintiffs that MCI should have warned users about the
20 air disturbance that the motor coach caused.

21 Plaintiffs sought all damages related to Dr. Khiabani's death, as the
22 damages were indivisible. The jury awarded \$18,746,003.62, including \$2.7
23 million for loss of probable support.

24 ***The Court Denies MCI's Motion to Offset the Settlement Proceeds***

25 MCI moved to offset the judgment by the \$5,110,000 million in settlement
26 proceeds from MCI's co-defendants pursuant to NRS 17.245(1)(a) and NRS
27 41.141(3). Plaintiffs opposed the motion on the sole basis that product
28 manufacturers are ineligible to offset settlement proceeds from co-defendants.

1 (See Plaintiffs' Opposition to MCI's Motion to Alter or Amend Judgment to
2 Offset Settlement Proceeds Paid by Other Defendants, filed June 6, 2018, at 3 –
3 6.) Plaintiff made no mention of punitive damages. (*Id.*)

4 The Court denied the offset. The Court agreed that product
5 manufacturers have no right to an offset under NRS 17.245. (See Ex. A,
6 "Order" entered March 26, 2019, at 2-4.) Relating to the degree of culpability of
7 Hubbard and Michelangelo, moreover, the Court implied that it had determined
8 their settlement with plaintiffs to be in good-faith before trial based on their
9 blameworthiness being less than MCI's. (See Ex. A, at 4:16.) The Court then
10 added: "Now, considering the jury verdict, it appears that the settling
11 defendants might have paid even more than their fair share of liability." *Id.*

12 ***The Nevada Supreme Court Upholds***
13 ***the Failure-to-Warn Verdict***

14 On appeal, MCI argued that the jury's verdict on plaintiffs' failure-to-
15 warn claim was inconsistent with the jury's verdict in MCI's favor on the design
16 defect claims. *Motor Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137
17 Nev. Adv. Op. 42, 493 P.3d 1007, 1015 (2021). The Supreme Court opined that
18 the motor coach might not be defectively designed and yet still call for a
19 warning regarding the extent of air disturbance the vehicle caused. *Id.*

20 Critical to the Supreme Court's opinion was its acceptance of this Court's
21 post-trial findings that Hubbard was *unaware* of the allegedly dangerous
22 dynamic and would have acted differently to avoid the accident if he had
23 known:

24 But the danger alleged here was not as obvious as MCI
25 suggests. The risk was not simply that the bus, like any bus,
26 could strike a cyclist. Rather, the alleged risk was that air
27 displacement caused by the particular shape of this bus could
28 create a strong suction force while passing a cyclist. Although
Hubbard's testimony regarding his knowledge of this risk was
far from clear, the district court correctly found that "[e]ven if
the evidence enabled this [c]ourt to find as a matter of law
that Hubbard should have known generally of the 'risk of
driving next to a bicyclist,'... no Nevada law holds that this

1 would prevent a reasonable jury from finding that an
2 adequate warning would have avoided the accident.”

3 *Motor Coach Indus., Inc.*, 137 Nev. Adv. Op. 42, 493 P.3d at 1012. In a footnote
4 the Supreme Court also noted that “. . . in this matter, Hubbard testified that
5 he certainly would have followed any safety training warnings he was given.”
6 *Id.* at fn. 4. Put simply, in no way could Hubbard be said to have acted with
7 conscious disregard.

8 ***The Nevada Supreme Court Reverses***
9 ***on this Court’s Denial of an Offset***

10 The Supreme Court reversed the district court’s denial of MCI’s motion to
11 alter or amend the judgment. The Supreme Court reasoned that “NRS 17.245
12 is clear on its face and thus applies to MCI, as there is no dispute that MCI and
13 the other defendants were liable for the same injury” and “the jury calculated
14 the total damages for that single injury and respondents had already received
15 partial payment from the settling defendants.” *Motor Coach Indus., Inc.*, 137
16 Nev. Adv. Op. 42, 493 P.3d at 1017. The Supreme Court reasoned that to hold
17 otherwise would permit a double recovery by respondents for the same injury.

18 The Supreme Court remanded and directed this Court “to offset the
19 settlement proceeds paid by other defendants” and calculate the amount due.
20 *Id.* The opinion says absolutely nothing about punitive damages or any
21 possibility of reducing the offset (*id.*), even though plaintiffs’ counsel argued for
22 that (belatedly) during the oral argument on appeal.

23 **ARGUMENT**

24 **I.**
25 **CORRECTLY APPLYING NRS 17.245, THE SUPREME COURT**
26 **UNAMBIGUOUSLY DIRECTED THE COURT TO OFFSET**
ALL “THE SETTLEMENT PROCEEDS”

27 The opinion tracks the simple clarity of Nevada law. The axiom that “a
28 plaintiff is entitled to only one recovery” runs throughout the law, both as a

1 freestanding equitable principle, and as codified in the Uniform Contribution
2 Among Tortfeasors Act (UCATA) and the Uniform Joint Obligations Act
3 (UJOA). A plain reading of the statute indicates there is no distinction between
4 compensatory and punitive damages.

5 Under NRS 17.245(1)(a)

6 When a release or a covenant not to sue or not to en-force
7 judgment is given in good faith to one of two or more persons
8 liable in tort for the same injury or the same wrongful death .
9 . . it reduces the claim against the others to the extent of any
amount stipulated by the release or the covenant, or in the
amount of the consideration paid for it, whichever is the
greater.

10 “[W]hen considering whether NRS 17.245 applies in a given matter,
11 ‘district courts must determine whether both the settling and the nonsettling
12 defendants were responsible for the same injury.’” *Motor Coach Indus., Inc.*,
13 137 Nev. Adv. Op. 42, 493 P.3d at 1017. MCI is entitled to an offset “as there is
14 no dispute the that MCI and the other defendants were liable for the same
15 injury” and because “the jury calculated the total damages for that single injury
16 and respondents had already received partial payment from the settling
17 defendants.” *Id.* The Supreme Court, in following that statutory language,
18 expressly found that “the district court should have granted MCI's motion to
19 alter or amend the judgment to offset the settlement proceeds paid by other
20 defendants.” *Id.* It did not find that an undetermined portion of the settlement
21 proceeds should have been awarded, but rather all “the settlement proceeds.”
22 *Id.*

23 The presumption is that a defendant must receive an offset of all the
24 settlement proceeds, unless a plaintiff can prove the basis for apportionment by
25 entitlement of law,¹ or by apportionment of the settlement in fact with evidence.

26
27
28 ¹ See *J.E. Johns & Assoc. v. Lindberg*, 470 P.3d at 210 (amount of settlement
was reduced “in recognition that the [plaintiffs] ‘would be **entitled** to treble

1 *Dionese v. City of West Palm Beach*, 500 So.2d 1347, 1349 (Fla. 1987) (where a
2 settlement agreement fails to apportion proceeds among the separate and
3 distinctive causes of action, the total amount of the settlement must be set off
4 from the entire verdict); *Knox v. Los Angeles County*, 167 Cal.Rptr. 463, 469
5 (1980) (absent good faith allocation of settlement consideration between causes
6 of action in which joint tortfeasor status was alleged, defendants were entitled
7 to setoff of entire settlement figures).²

8 **II.**
9 **THE OFFSET CANNOT BE DIMINISHED ON A NEW CLAIM THAT THEY**
10 **INCLUDE PUNITIVE DAMAGES FROM HUBBARD AND MICHELANGELO**

11 Relying on *J.E. Johns & Associates v. Lindberg*, 136 Nev. 477, 470 P.3d
12 204 (2020), plaintiffs may claim the case falls within an exception to the rule
13 that all settlement proceeds from a co-tortfeasor liable for the same injury must
14 be offset—to wit that part of their settlement proceeds released the settling
15 defendant(s) of liability for punitive damages. But that concept is inapplicable
16 and the representation hollow.

17 **A. Unlike *J.E. Johns*, this Case Does Not Involve**
18 **a Statutory Entitlement to Treble Damages**

19 Plaintiffs previously argued that MCI was not entitled to an offset. They
20 never argued that some of the settlement included defendants' punitive
21 damages. Plaintiffs now for the first time re on the *J.E. Johns* case which

22 damages against the sellers associated with any claim established *under NRS*
23 *113.150.*”)

24 ² In some jurisdictions, the non-settling defendants simply are entitled to an
25 offset of all settlement proceeds in every case. *See, e.g., Fix v. First State Bank*
26 *of Roscoe*, 807 N.W.2d 612, 620 (S.D. 2011) (finding that amount of alleged joint
27 tortfeasor's settlement with possessor should have reduced total judgment
28 amount, not just compensatory damages because the Uniform Contribution
Among Tortfeasors Act expressly allowed a reduction to total claim against the
remaining joint tortfeasors, it made no distinction between compensatory and
punitive damages).

1 involved a statutory entitlement to trebled damages (*id.*, 136 Nev. at 485, 470
2 P.3d at 211 (discussing NRS 113.150(4)). Plaintiffs are *never entitled* to
3 punitive damages even if a tortfeasor's conduct might warrant them. *Evans v.*
4 *Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000). Rather, where the
5 district court has determined that the conduct at issue is subject to civil
6 punishment, the allowance or denial of exemplary or punitive damages rests
7 entirely in the discretion of the trier of fact. *Id.* Further, the plaintiff must
8 prove by clear and convincing evidence that the defendant had been guilty of
9 oppression, fraud or malice. NRS § 42.005.

10 In *J.E. Johns*, the Supreme Court determined that the district court
11 properly offset the judgment by one-third of the pretrial settlement amount
12 because the purchasers would have been statutorily entitled to recover treble
13 damages and thus the settlement accounted for the vendors' exposure to treble
14 damages 136 Nev. 477, 470 P.3d 204 (2020). The Court applied NRS 114.150
15 which provides that where a seller fails to provide written notice of all defects in
16 the property, the purchaser is *entitled* to treble damages. *Id.* The Court
17 reasoned that plaintiffs should not be precluded from receiving the portion of a
18 settlement award that resolves settling defendant's exposure beyond actual
19 damages if such exposure is unique to the settling defendant. *Id.*

20 This limited circumstance is inapplicable here. Unlike the treble damages
21 at issue in *J.E. Johns*, a plaintiff is never entitled to punitive damages.
22 Further, treble damages awarded under the statute are not dependent on the
23 mental culpability of the party. Accordingly, it was not an abuse of discretion
24 for the district court in *J.E. Johns* to attribute a portion of the settlement funds
25 to treble damages.

26 **B. It is Law of the Case that Hubbard Acted Unaware of**
27 **Danger and Would Have Acted Differently if He Had Known,**
28 **Inconsistent with Punitive Damages as a Matter of Law**

Not only is the Supreme Court's opinion devoid of any notion the offset

1 may be limited, but it is also *law of the case* that the settling defendants’
2 conduct was of a nature that cannot be deemed malicious. Under the doctrine
3 of the law of the case, where an appellate court states a principal or rule of law
4 in deciding a case, that rule becomes the law of the case and is controlling both
5 in the lower courts and on subsequent appeals, so long as the facts remain
6 substantially the same. *Geissel v. Galbraith*, 105 Nev. 101, 103, 769 P.2d 1294,
7 1296 (1989), *holding modified by Willerton v. Bassham, by Welfare Div., State,*
8 *Dep’t of Hum. Res.*, 111 Nev. 10, 889 P.2d 823 (1995). The “law of the case”
9 policy is also applicable to fact questions where there has been no new evidence.
10 *Coty v. Ramsey Assocs., Inc.*, 154 Vt. 168, 171, 573 A.2d 694, 696 (1990) *citing*
11 *Wright, Miller & Cooper* (questions of fact “absent significant new evidence” are
12 particularly unsuited for reconsideration following a remand).

13 Here, the Supreme Court, in finding that respondents presented sufficient
14 evidence for a reasonable jury to find that the failure to warn about air
15 displacements effect on passing bicyclists caused Khiabani's injury, relied on
16 Hubbard’s testimony and the reasonable inferences drawn from it. Hubbard
17 testified that he had seen Khiabani turn onto South Pavilion Center Drive
18 before he swerved in the bus. The Court determined that on this ground, the
19 district court correctly found that

20 there was "sufficient evidence for a reasonable jury to find
21 that, had the driver been adequately warned about the
22 dangerous nature of the [bus], he would have driven
23 differently as early as when he turned onto Pavilion Center—
24 for example by driving in the left lane instead of the right
25 lane, or by driving slower so as to not pass the bicycle.

25 *Motor Coach Indus., Inc.*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1012 (2021). The
26 crux of the Supreme Court’s reasoning is that Hubbard was unaware of any
27 hazardous air displacement and therefore needed to be warned about the
28 dangerous conditions. Supreme Court accepted that Hubbard acted

1 unknowingly that that we would have acted to avoid the accident if he had been
2 aware. Under these findings, plaintiffs cannot now contend Hubbard acted with
3 malice and was liable for punitive damages.

4 These findings are inconsistent with punitive damages. Malice requires
5 that the conduct was intended to injure a person or was with conscious
6 disregard of another's rights. *Garcia v. Awerbach*, 136 Nev. 229, 233, 463 P.3d
7 461, 464 (2020). Proving malice entails demonstrating at least the following
8 additional elements necessary to justify a punitive damages: (1) “despicable
9 conduct” NRS 42.005(3); (2) “with a conscious disregard of the rights or safety of
10 others,” *Id.* which (3) has a causal “nexus to the specific harm suffered by the
11 plaintiff.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409–10,
12 123 S. Ct. 1513, 1516 (2003) (the “conduct must have a nexus to the specific
13 harm suffered by the plaintiff”). To show a defendant is “guilty” of malice, each
14 of those aspects must be proven by clear and convincing evidence.³ NRS
15 42.005(1). “In other words, under NRS 42.001(1), to justify punitive damages,
16 the defendant's conduct must have exceeded ‘mere recklessness or gross
17 negligence.’” *Wyeth v. Rowatt*, 126 Nev. 446, 473, 244 P.3d 765, 783 (2010); *see*
18 *also Countrywide Home Loans v. Thitchener*, 124 Nev. 725, 742-43, 192 P.3d
19 243, 2554-55 (2008); *Bongiovi v. Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 450-
20 51 (2006) (providing that punitive damages may be awarded to a plaintiff who
21 establishes by clear and convincing evidence that the defendant *acted* with
22 “oppression, fraud or malice, [either] express or implied” (internal quotation
23 marks omitted)). Proving malice is as much about what the defendant did as
24 about what knowledge the defendant allegedly knew beforehand. *Echanove v.*

25
26 _____
27 ³ “Clear and convincing evidence is defined as ‘evidence establishing every
28 factual element to be highly probable.’” *SOC-SMG, INC. v. Christian &*
Timbers, LLC, 2010 WL 11591060, at *8 (D. Nev. Feb. 4, 2010) (quoting *In re*
Discipline of Drakulich, 908 P.2d 709, 715 (Nev. 1995).).

1 *Allstate Ins. Co.*, 752 F. Supp. 2d 1105, 1110 (D. Ariz. 2010) (“To recover
2 punitive damages, the plaintiffs must prove each of the following by clear and
3 convincing evidence: (1) Beyond the elements merely required to establish the
4 tort of bad faith, defendant engaged in outrageous, aggravated, malicious or
5 fraudulent conduct similar to that usually found in crime; and (2) Defendant
6 acted with an evil mind in engaging in such conduct”).

7 That the settling defendants were not blameworthy is further indication
8 that none of the settlement went to punitive damages. Indeed, the settling
9 defendants never received an assessment of equitable shares by the jury. And
10 because under NRS 41.131 non-parties cannot be on the verdict, any settlement
11 amounts are complete offsets from the judgment principal, itself.

12 **C. Judicial Estoppel and Waiver Bar Plaintiffs’**
13 **New Allocation-to-Punitive-Damages Theory**

14 Independently, plaintiffs are barred under principles of *judicial estoppel*
15 and *waiver* from taking the position now on remand that the settling parties
16 actually intended to fund an award of punitive damages.

17 **1. *Plaintiffs Are Judicially Estopped from***
18 ***Allocating the Settlement Punitive Damages***

19 Plaintiffs are *judicially estopped* from alleging the settling defendants’
20 conduct justified punitive damages based on their previous representations to
21 this Court and the orders they procured from this Court. Judicial estoppel
22 prevents a party from taking inconsistent positions when “the party was
23 successful in asserting the first position (i.e., the tribunal adopted the position
24 *or accepted it as true*).” *In re Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev.
25 50, 390 P.3d 646, 652 (2017) (emphasis added). The court does not have to
26 formally “adopt” the party’s argument before judicial estoppel applies. *See id.*

27 That element is satisfied where a court approves a settlement. *Id.* at 56,
28 390 P.3d at 652 (noting the third element was satisfied because party asserted

1 position in his petition and the district court approved his petition); *Kale v.*
2 *Obuchowski*, 985 F.2d 360, 361 (7th Cir. 1993) (holding that where court
3 approved settlement, judicial estoppel applied because no case “makes
4 application of judicial estoppel depend on the existence of a judicial opinion
5 adopting the litigant’s position; it is enough that the litigant win,” and
6 “[p]ersons who triumph by inducing their opponents to surrender have
7 ‘prevailed’ as surely as persons who induce the judge to grant summary
8 judgment.”); *see also Reynolds v. C.I.R.*, 861 F.2d 469, 473 (6th Cir. 1988)
9 (holding that because bankruptcy agreements must be approved as fair and
10 equitable, bankruptcy agreements satisfy judicial acceptance prong of judicial
11 estoppel inquiry).

12 In the present case, plaintiffs are judicially estopped from arguing the
13 settling defendants’ conduct exposed them to liability for punitive damages.

14 a. Plaintiffs Are Judicially Estopped from Alleging that
15 Hubbard Acted with Conscious Disregard of Danger

16 As discussed above, the Supreme Court’s determination regarding
17 causation—that far from exhibiting any despicable conduct, Hubbard would
18 have followed a warning about the motor coach’s air displacement to act
19 differently and avoid the accident—is law of the case.

20 That determination also based on arguments that plaintiffs pressed in
21 this Court and the Supreme Court, and which judicially estop plaintiffs from
22 taking the opposite position now. Plaintiffs successfully avoided judgment as a
23 matter of law by pointing to the evidence that MCI’s failure to warn *caused* the
24 accident, an argument that necessarily entailed showing that Hubbard, far
25 from exhibiting conduct worthy of punitive damages, would have with a proper
26 warning *avoided* the accident entirely. In fact, the key points in the Supreme
27 Court’s opinion—that Hubbard could have avoided the accident “by driving in
28 the left lane instead of the right lane, or by driving slower so as to not pass the

bicycle,” 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1012 (2021)—are lifted directly from plaintiffs’ brief: “Hubbard could have taken the left thru lane on Pavilion Center instead of the adjoining right thru lane,” or he could have “continued to slowly follow the doctor down Pavilion Center without passing.” (RAB 51-52.) Having persuaded this Court and the Supreme Court to uphold the jury’s verdict on these grounds, plaintiffs cannot retreat from them now. Plaintiffs are estopped from suggesting that Hubbard’s conduct displayed the kind of conscious disregard necessary to sustain an award of punitive damages against him or his employer.

b. Plaintiffs Are Judicially Estopped from
Claiming that the Settlements Were Not
Entirely for Compensatory Damages

Ironically enough, the arguments that plaintiffs crafted last time to avoid judicial estoppel now create an estoppel with regard to what the settlements represent. Back then, MCI had argued that plaintiffs were estopped on the straightforward ground that they represented that “non-settling defendants will receive an offset” to persuade this Court to grant the motion for good-faith settlement. (Ex. A, at 4–5.) This Court disagreed, indicating that it instead had “the \$5,110,000 represented a relatively large 40% of plaintiffs’ damages, even though “[w]hen looking at the potential liability of all defendants the Court finds that MCI was responsible for a large majority of the damages.” (*Id.*) Critical to this determination was the finding that the plaintiffs’ settlements and the compensatory-damages verdict constituted an apples-to-apples comparison—the “same injury,” in the parlance of NRS 17.245(1). If, of course, some portion of the \$5,110,000 were actually allocated to those defendants’ personal exposure to *punitive* damages, then the comparison would not have worked, as that amount would no longer represent the same injuries for which the jury found MCI responsible. Indeed, without a breakdown of what solely represented compensatory damages, this Court would have had no basis to find

1 that the settling defendants had paid anything close to “their fair share of the
2 liability.” (*Id.*)

3 Having succeeded in that argument, plaintiffs cannot now avoid the
4 consequences of that finding: the Court’s analysis rested upon the apples-to-
5 apples comparison of a compensatory settlement to a compensatory verdict.

6 **2. *Plaintiffs Waived this Argument by Not Raising It***
7 ***Here or in their Supreme Court Answering Brief***

8 In addition, while plaintiffs’ arguments fail on their merits, as discussed,
9 those arguments are also forfeited by their failure to timely raise them either in
10 this Court or in their answering brief to the Supreme Court.

11 Raise it or waive it is the rule on appeal. *United States v. Dreyer*, 804
12 F.3d 1266, 1277 (9th Cir. 2015) (“Generally, an appellee waives any argument it
13 fails to raise in its answering brief.”); *In re Cellular 101, Inc.*, 539 F.3d 1150,
14 1155 (9th Cir. 2008); *cf. Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.*, 671
15 F.3d 261, 270-71 (2d Cir. 2012) (parties waived argument by failing to raise it in
16 the first round of appeal). Supplemental briefs⁴ or oral argument⁵ are not the
17 place for new substantive arguments. MCI understands that a respondent
18 otherwise satisfied with the judgment below need not “put forth every
19

20 ⁴ *Pakootas v. Teck Cominco Metals, LTD.*, 830 F.3d 975, 986 n.12 (9th Cir. 2016)
21 (citing *United States v. McEnry*, 659 F.3d 893, 902 (9th Cir. 2011)); *Kreisner v.*
22 *City of San Diego*, 1 F.3d 775, 778 n.2 (9th Cir. 1993).

23 ⁵ *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 6 n.1, 953 P.2d 24, 27 n.1 (1998)
24 (declining to entertain respondent rental agency’s argument regarding limits on
25 strict liability that were not addressed in the briefs); *United States v. Gaines*,
26 918 F.3d 793, 800–01 (10th Cir. 2019) (“We typically decline to consider an
27 appellee’s contentions raised for the first time in oral argument.”); *see also State*
28 *ex rel. Dept. of Highways v. Pinson*, 65 Nev. 510, 530, 199 P.2d 631, 640–41
(1948) (“The parties, in oral argument, are confined to issues or matters
properly before the court, and we can consider nothing else, and, certainly,
cannot give heed to any ground not based upon facts appearing in the record on
appeal or disclosed in the motion papers.”).

1 conceivable alternative ground for affirmance” on threat of waiver, as doing so
2 “might increase the complexity and scope of appeals more than it would
3 streamline the progress of the litigation.” *Recontrust Co. v. Zhang*, 130 Nev. 1,
4 9–10, 317 P.3d 814, 819–20 (2014). But this does not excuse a respondent from
5 fully responding to the issues that the appellant *has* raised and from clearly
6 dispelling any assumption that the appellant would, if correct in the legal
7 arguments, be entitled to the full relief it is requesting. *See Maduike v. Agency*
8 *Rent-A-Car*, 114 Nev. 1, 6 n.1, 953 P.2d 24, 27 n.1 (1998) (refusing to let a
9 respondent question the application of strict liability after it had “predicated its
10 brief on the assumption that strict liability is applicable”).

11 Here, plaintiffs long ago forfeited their new position that the available
12 offset is something other than the full amount of the settlements. That is the
13 only amount they ever presented to this Court; punitive damages were never
14 considered.⁶ And plaintiffs knew that MCI was arguing, both in this Court and
15 on appeal, for an offset of the full amount. Indeed, in their answering brief they
16 weaponized that number to argue that it would be an unjust windfall to MCI:

17 If the Khiabanis had not sued the bus company and the
18 driver, MCI would get no credit because there would be no \$5
19 Million settlement from the bus company and its driver and
20 MCI has no right of contribution. MCI should not profit on
21 the Khiabani’s success against other entities (i.e., get a
windfall) when MCI would get no credit if only MCI had been
sued.

22 (RAB 74.) Plaintiffs also expressly “agree[d]” with this Court’s analysis (quoted
23

24 ⁶ None of the motions for good faith settlement mentioned punitive damages.
25 Further, neither plaintiffs nor co-defendants mentioned punitive damages
26 during the hearing on the good faith settlement. The parties simply stated that
27 “The settlement was encouraged by the financial condition of Michelangelo and
28 Hubbard, the applicable insurance policy limits, and a balance of the risks and
benefits of continued litigation.” See Plaintiffs’ Motion for Good Faith
Determination filed January 18, 2018.

1 in the answering brief and discussed above) that the \$5,110,000 settlement
2 “constitutes almost 40% of the total award” for which MCI was supposedly
3 disproportionately liable. Even assuming that plaintiffs were excused from
4 raising the prospect of an allocation to punitive damages in this Court before
5 the appeal, at a minimum plaintiffs needed to raise the allocation issue in its
6 brief, rather than simply “predicat[ing] its brief on the assumption,” shared by
7 both parties, that the offset over which we were fighting was the full
8 \$5,110,000. *Cf. Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 6 n.1, 953 P.2d 24,
9 27 n.1 (1998).

10 Plaintiffs’ belated attempt to ride the coattails of *J.E. Johns & Associates*
11 *v. Lindberg*, 136 Nev. 477, 484–85, 470 P.3d 204, 211 (2020) in oral argument
12 does not excuse the waiver, either. Although the Supreme Court decided *J.E.*
13 *Johns* after plaintiffs’ answering brief, that decision does not *overturn* settled
14 law so as to justify plaintiffs’ silence in the brief. Instead, the Supreme Court
15 simply answered the question of whether an offset includes amounts beyond
16 actual damages because the parties in that case briefed it. Were a question’s
17 unsettled nature a refuge not to raise the issue at all, in the district court or on
18 appeal, then waiver guardrails would quickly crumble. Indeed, it is telling that
19 the Supreme Court’s opinion in this case cites *J.E. Johns* just once, for the
20 proposition that offset is a function of “whether both the settling and the
21 nonsettling defendants were responsible for the same injury,” not whether the
22 nonsettling defendant would have a claim of contribution, *Motor Coach*, 137
23 Nev. Adv. Op. 42, 493 P.3d at 1016–17 (2021) (citing *J.E. Johns*, 136 Nev. at
24 478, 470 P.3d at 206)—in other words, for the arguments that were actually
25 addressed in the parties’ briefs. (*See, e.g.*, AOB 93-99, RAB 72-74.) Nowhere in
26 the opinion is *J.E. Johns*’s discussion of calculating an offset with regard to
27 settlement amounts beyond actual damages, precisely because plaintiffs elected
28 not to address the issue. That argument is waived on remand.

1 **D. Plaintiffs Would Have to Prove that the Settlement in Fact**
2 **Allocated for Punitive Damages, and they Cannot**

3 It is plaintiffs burden to prove that the settlement funds received from co-
4 defendants included an allocation to punitive damages. A non-settling
5 defendant need only prove that it is entitled to an offset of the judgment. *See*
6 *Matter of Texas General Petroleum Corp.*, 52 F.3d 1330, 1340 (5th Cir. 1995).
7 “The burden then shifts to the plaintiff to offer proof that the settlement does
8 not provide him with a double recovery.” *Id.* “[A] plaintiff that is a party to the
9 settlement agreement is in a better position than a nonsettling defendant to
10 allocate damages in the settlement.” *Mobil Oil Corporation v. Ellender*, 968
11 S.W.2d 917, 928 (Tex. 1998) (citing *Texas Gen. Petroleum Corp. v. Leyh*, 52 F.3d
12 1330, 1340 (5th Cir. 1995)).

13 The plain language of the statute presumes that a defendant is entitled to
14 an offset of the entire settlement. To rebut that presumption, plaintiffs have to
15 prove either a statutory entitlement to apportionment—as was the case in *J.E.*
16 *Johns & Assoc.* but is not here—or that the settling defendants and plaintiffs
17 actually did allocate a certain amount to punitive damages. *See* NRS 17.245;
18 *Dionese v. City of West Palm Beach*, 500 So.2d 1347, 1349 (Fla. 1987) (where a
19 settlement agreement fails to apportion proceeds among the separate and
20 distinctive causes of action, the total amount of the settlement must be set off
21 from the entire verdict); *Knox v. Los Angeles County*, 167 Cal.Rptr. 463, 469
22 (1980) (absent good faith allocation of settlement consideration between causes
23 of action in which joint tortfeasor status was alleged, defendants were entitled
24 to setoff of entire settlement figures).

25 **1. *The Record Demonstrates Co-Defendants***
26 ***Did Not Act with Oppression, Fraud or Malice***

27 Plaintiffs cannot point to any evidence that the settling co-defendants
28 intended to include punitive damages in the settlement amount. Their self-
serving representations are not enough. Plaintiffs have disclosed *no evidence*

1 that the settling defendants at the time agreed to apportion part of the
2 settlement to punitive damages—*e.g.*, the settlement agreements themselves or
3 documentation that plaintiffs paid taxes on any portion allegedly attributable to
4 punitive damages. At very least, this court could not reduce the offset without
5 allowing full discovery, including depositions of the settling parties and their
6 counsel.

7 The record demonstrates that defendants did not act with fraud,
8 oppression, or malice. Here, again, proving malice entails demonstrating the
9 following elements by clear and convincing evidence: (1) “despicable conduct”
10 NRS 42.005(3); (2) “with a conscious disregard of the rights or safety of others,”
11 *Id.* which (3) has a causal “nexus to the specific harm suffered by the plaintiff.”
12 *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409–10, 123 S. Ct.
13 1513, 1516 (2003). For example, plaintiffs alleged that Michelangelo negligently
14 hired and trained its driver Hubbard. However, Michelangelo provided
15 classroom learning curriculum, driver training and employee new hire training,
16 training videos, safety posters and operator development

17 Jeffrey Justice, the safety director, testified that Michelangelo provided
18 monthly safety meetings, road tests, and included safety measures in the
19 procedure manual.

20 Q. . . Okay. Did the company provide training to newly hired
21 bus drivers?

22 A. . . We would typically take them out on a road test, make
sure that they could handle the vehicle they were driving.

23 (Ex. B, 08.16.2017 Deposition Transcript, 13:23–14:2).

24 The record demonstrates that plaintiffs could not have proved with clear
25 and convincing evidence that Michelangelo acted with oppression, fraud, or
26 malice.

27
28

1 **2. *Additional Discovery Is Required to Demonstrate***
2 ***Whether Defendants Intended a Portion of the***
3 ***Settlement Funds to Include Punitive Damages***

4 The court cannot determine whether any of the settling co-defendants
5 intended the settlement funds to include punitive damages without further
6 discovery. The best way for a plaintiff to satisfy his burden is to offer as proof
7 the written settlement, which should specifically stipulate the allocation of
8 damages to each cause of action.” *Hess Oil V.I. Corp. v. UOP, Inc.*, 861 F.2d
9 1197, 1209 (10th Cir. 1988); *see Mobil Oil Corp. v. Ellender*, 968 S.W.2d 917
10 (Tex. 1998) (finding that to limit a nonsettling defendant's dollar-for-dollar
11 settlement credit to amount of settlement representing actual damages,
12 plaintiff must tender a valid settlement agreement allocating between actual
13 and punitive damages to trial court otherwise, nonsettling party is entitled to a
14 credit equaling entire settlement amount); *Nauman v. Eason*, 572 So. 2d 982
15 (Fla. Dist. Ct. App. 1990)(stating that after jury had awarded damages against
16 nonsettling defendant, trial court erred in attempting to determine, without
17 participation of settling defendant, how the settling parties intended the
18 undifferentiated settlement to be applied to plaintiff's causes of action; entire
19 settlement amount should have been offset against damages awarded by the
20 jury); *see also See Brown & Root Inc. v. Shelton*, 446 S.W.3d 386 (Tex. App.
21 2003) (stating that because portion of settlements, in personal injury action by
22 worker exposed to asbestos, were not specifically designated as punitive
23 damages, nonsettling defendant was entitled to credit for total amount of
24 settlements).

25 Here, MCI is entitled to additional discovery to determine which portion,
26 if any, of the settlement funds applied to punitive damages. Specifically, MCI
27 seeks to depose the settling parties and disclosure of the settlement agreements
28 between the parties. Further, plaintiffs should disclose the 2018 tax return. The
contention that any portion of the settlement funds included punitive damages

1 would be bolstered or disproven with these tax returns because any settlement
2 portion attributable to punitive damages must be reported as taxable
3 income. See IRS Publication 4345, Settlements—Taxability (rev. Nov. 2021)
4 (“Punitive damages are taxable and should be reported as ‘Other Income’ on
5 line 8z of Form 1040, Schedule 1, even if the punitive damages were received in
6 a settlement for personal physical injuries or physical sickness.”).

7 **E. The Settlements Could Not Have Apportionment for**
8 **Punitive Damages Since they Were Paid with Insurance**

9 Further, all the settling co-defendants contributed funds from their
10 respective insurance policies. It is well established that insurance policies
11 generally do not cover punitive damages. See *Lombardi v. Maryland Cas. Co.*,
12 894 F. Supp. 369 (D. Nev. 1995) (finding that Under Nevada law as predicted by
13 district court, commercial general liability (CGL) insurance policy did not
14 provide indemnification for punitive damages; policy covered damages because
15 of bodily injury caused by occurrence, and “bodily injury” encompassed
16 compensatory damages, not punitive damages); *Ross Neely Sys., Inc. v.*
17 *Occidental Fire & Cas. Co. of N. Carolina*, 196 F.3d 1347 (11th Cir. 1999)
18 (finding that insurer fulfilled its duty, of good faith in defending insured by
19 informing insured that it was not planning to cover punitive damages and that
20 insured should consider hiring its own counsel to represent it on punitive
21 damages claims).

22 Here, SevenPlus, Bell Sports, and Michelangelo and Hubbard all note in
23 their motions for good faith settlement that before entering into this settlement
24 agreement, the parties and their counsel gave full consideration to the policy
25 limits available. It would be nonsensical to assume that the parties’ insurance
26 carrier intended to contribute settlement funds to punitive damages when it
27 was not required to do so.

28 There is simply no evidence in the record that indicates co-defendants

1 attributed settlement funds to punitive damages. And this court cannot
2 determine whether any of the settling co-defendants intended the settlement
3 funds to include punitive damages without further discovery.

4 **F. Current Value of the Judgment**
5 **Following Application of Offset**

6 The prejudgment interest must be calculated following proper allocation
7 of the settlement proceeds. By defendant's calculation, the correct amount of
8 prejudgment interest is \$182,826.85. as detailed below. The present value of the
9 judgment is \$17,524.764.77.

10 **1. *The Offset is Applied to the Verdict***
11 ***Before Prejudgment Interest is Calculated***

12 In Nevada, prejudgment interest is calculated after settlement proceeds
13 are deducted from jury's assessment of compensatory damages. *Ramadanis v.*
14 *Stupak*, 107 Nev. 22, 23-24, 805 P.2d 65, 65-66 (1991); *c.f.* NRS 41.141(3)
15 (directing the court to subtract settlement proceeds "the net sum otherwise
16 recoverable by the plaintiff pursuant to the general and special verdicts,"
17 without reference prejudgment interest). Settlements with co-defendants are
18 not presumed to include both principal and interest to date of settlement.
19 *Ramadanis*, 107 Nev. at 23-24, 805 P.2d at 65-66.

20 Additionally, under Nevada law, the appropriate amount of the punitive
21 damages under NRS 42.005 can only be calculated using the *net* compensatory
22 damages following the offset. *Coughlin*, 879 F. Supp. at 1051 ("[T]he language
23 'compensatory damages awarded' in the punitive damages statute refers to the
24 reduced [i.e., after-offset,] compensatory damages award Plaintiff . . . is to
25 receive according to Nevada's comparative negligence statute[, NRS
26 41.141(3)].").

27 **2. *Apportionment of Offset***

28 Plaintiffs' past compensatory damages were \$4,546,003.62. The pro rata

share of the \$5 million offset attributable to those damages (24.25%)⁷ is \$1,239,175.00 bringing the award of past compensatory damages to \$3,306,828.62, on which prejudgment interest accrued.

Plaintiffs' future compensatory damages were \$14,200,000.00. The pro rata share of the \$5 million offset attributable to those damages (75.75%)⁸ is \$3,870,825.00 bringing the award of future compensatory damages to \$10,329,175.00.

3. Calculation of Prejudgment Interest

By defendant's calculation, the amount of prejudgment interest awardable to plaintiff is \$182,826.85. That represents interest on plaintiffs' past compensatory damages of \$3,306,828.62 at the statutory rate of 5.75% from June 1, 2017 through June 30, 2017 for a total of \$15,628.16; the statutory rate of 6.25% from July 1, 2017 through December 31, 2017 for a total of \$104,187.75; the statutory rate of 6.50% from January 1, 2018 through April 17, 2018 for a total of \$63,010.94.

| | | | | | |
|---------------------------|---------------------------|---------------------------------------|------------------|---|---|
| 3/23/2018 | Verdict | \$ | 18,746,003.62 | | |
| | Past Damages | \$ | 4,546,003.62 | | |
| | Future Damages | \$ | 14,200,000.00 | | |
| 4/17/2018 | Total Judgment | \$ | 18,746,003.62 | | |
| 8/19/2021 | Offset | \$ | 5,110,000.00 | | |
| | Past Damages After Offset | \$ | 3,306,828.62 | 0.2425 Pro Rata Offset for Past Damages | \$ 1,239,175.00 |
| Past Damages After Offset | | | | \$ | 3,306,828.62 |
| | Interest Rate Begins | Interest Rate Ends | NV Interest Rate | Interest Applied | |
| | 6/1/2017 | 6/30/2017 | 5.75% | 15,628.16 | |
| | 7/1/2017 | 12/31/2017 | 6.25% | 104,187.75 | |
| | 1/1/2018 | 4/17/2018 | 6.50% | 63,010.94 | |
| | | Interest on Past Damages After Offset | | \$ | 182,826.85 |
| Total Past Damages | | | | \$ | 3,489,655.47 |
| | | Future Damages After Offset | \$ | 10,329,175.00 | 0.7575 Pro Rata Offset for Future Damages |
| | | Judgment After Offset | \$ | 13,818,830.47 | \$ 3,870,825.00 |

⁷ Of the total \$18,746,003.62 in compensatory damages found by the jury, the past damages to plaintiffs (\$4,546,003.62) account for %24.25.

⁸ Of the total \$18,746,003.62 in compensatory damages found by the jury, the future damages to plaintiffs (\$14,200,000.00) account for %75.75.

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Dated this 13th day of December, 2021.

By /s/Joel D. Henriod

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LEWIS ROCA

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2021, I served the foregoing "Brief Regarding Offset" on counsel by the Court's electronic filing system and by courtesy email to the persons and addresses listed below:

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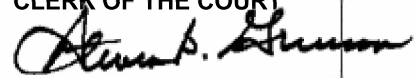
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Defendant Edward Hubbard

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

EXHIBIT A

FILED UNDER SEAL

EXHIBIT A



1 **ORDR**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 KEON KHIABANI and ARIA KHIABANI, minors, by
6 and through their Guardian, MARIE-CLAUDE
7 RIGAUD; SIAMAK BARIN, as Executor of the Estate of
8 Kayvan Khiabani, M.D. (Decedent), the Estate of
9 Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN,
10 as Executor of the Estate of Katayoun Barin, DDS
11 (Decedent); and the Estate of Katayoun Barin, DDS
12 (Decedent);

Case No.: A-17-755977-C

Dept. No.: XIV

ORDER

13 Plaintiffs,

14 vs.

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

23 Defendants.

24 Defendant's Motion to Alter or Amend Judgment to Offset Settlement Proceeds paid by
25 other defendants came on for a hearing before Department XIV of the Eighth Judicial District
26 Court, the Honorable Adriana Escobar presiding, on September 25, 2018.

27 After considering the moving papers and argument of counsel, the Court **DENIES**
28 Defendants' motion.

29 In this matter, the Plaintiffs settled with Defendants Michelangelo Leasing Inc., Edward
30 Hubbard, Bell Sports Inc., and SevenPlus Bicycles Inc. for a total settlement of \$5,110,000.00.
31 Plaintiffs and the remaining defendant, Motor Coach Industries ("MCI"), proceeded to trial. The
32 jury awarded \$18,746,003.62 in favor of the Plaintiffs.

33 Defendant MCI moved to offset the jury award by the settlement proceeds pursuant to
34 NRS 17.245(1)(a). Specifically, it asked the court to reduce the jury award (\$18,746,003.62) by

1 the total settlement proceeds (\$5,110,000.00) for a total reduced judgment resulting in
2 \$13,636,003.62.

3 Under NRS 17.245(1)(a), “when a release ... is given in good faith to one of two or more
4 persons liable in tort for the same injury or the same wrongful death...it reduces the claim
5 against the others to the extent of any amount stipulated by the release or the covenant...”

6 MCI is not entitled to an offset under NRS 17.245 because defendants that are liable for
7 strict products liability, such as MCI, have no right to contribution from any other defendants.
8 *Norton v. Fergstrom*, 2001 WK 1628302 *5 (Nev. Nov. 9, 2001); see also *Andrews v. Harley*
9 *Davidson*, 106 Nev. 533, 537-38, 796 P.2d 1092, 1094 (1990); *Central Telephone Co. v.*
10 *Fixtures Mfg.*, 103 Nev. 298, 299, 738 P.2d 510, 511 (1987); NRS 17.225, NRS 41.141. While
11 *Norton* is unpublished and cannot be used as precedent because it was decided prior to 2016, the
12 Court finds its rationale persuasive and agrees with the Nevada Supreme Court’s rationale.
13 *Norton* was decided in 2001, after NRS 17.245 was enacted in 1973 and amended in 1997.
14 NRS 41.141 was enacted in 1973, and amended in 1979, 1987, and 1989, and also precedes the
15 Court’s decision in *Norton*. Contributory negligence is not a defense in strict products liability.
16 *Andrews v. Harley Davidson*, 796 P.2d 1092 (Nev. 1990). Because contributory negligence is
17 not a defense in strict products liability, MCI is not entitled to contribution. *Id.*

18 MCI has no right to contribution from the settling Defendants because plaintiff’s
19 judgment against MCI is based on strict products liability failure to warn and strict products
20 liability has no right to contribution. To the extent that MCI would have otherwise been able to
21 assert contribution claims against the settling defendants, those claims would have necessarily
22 been premised on contributory negligence. Because contributory negligence is not a defense to
23 a strict products liability claim, MCI has no right to receive contribution from the settling
24 defendants.

25 NRS 17.245 applies to joint tortfeasors, but is silent concerning an offset for defendants
26 found liable in strict products liability. But, it follows logically, that similar to NRS 17.255,
27 which bars intentional tortfeasors from contribution, a defendant found liable in strict products
28 liability would also be barred from receiving contribution from the other defendants. Unlike

1 other products liability cases where defendants receive offsets, here, none of the other
2 defendants in this case acted in concert with MCI in manufacturing the coach.

3 MCI also argues it is entitled to an offset under NRS 41.141. Pursuant to NRS 41.141,
4 defendants are responsible for 100% of plaintiff's injuries if their liability arises from a claim
5 based on strict liability, an intentional tort, or any of the other enumerated categories. *Café*
6 *Moda v. Palma*, 272 P.3d 137 (Nev. 2012).

7 Because the jury found against MCI based on strict liability failure to warn, MCI is not
8 entitled to an offset under NRS 41.141. Any alleged fault of the settling defendants had nothing
9 to do with this failure to warn. Thus, MCI is not entitled to apportion any percentage of its
10 responsibility to the settling defendants.

11 Plaintiffs analogized this matter to *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043
12 (Nev. 2000). In *Evans*, the Court enforced the principle that although offsets are typically
13 allowed in a case that involves joint tortfeasors, there is a carve-out for intentional torts.
14 Intentional tortfeasors "may not apply credits from settlements by their joint tortfeasors in
15 reduction of judgments against them arising from their intentional misconduct. *Id.* Moreover,
16 equitable offsets are based on a right to contribution and intentional tortfeasors have no right to
17 contribution under NRS 17.255. *Id.*

18 Just like the intentional tortfeasors in *Evans*, MCI has no right to contribution from the
19 settling defendants. See *Andrews, Norton Co., Café Moda*, and NRS 41.141, *supra*. As in
20 *Evans*, MCI has no right to receive contribution from the settling defendants – either directly
21 through a contribution claim or indirectly through a post-judgment offset. MCI was never
22 entitled to seek contribution or indemnity from any other tortfeasors. NRS 17.245 cannot and
23 did not bar MCI from pursuing contribution claims that never existed in the first place; and MCI
24 is not entitled to indirectly receive a nonexistent right to contribution under the guise of an
25 "offset."

26 MCI also asserts that Plaintiffs will receive a double recovery if no offset is granted.
27 For the foregoing reasons, an offset is not permissible, thus no double recovery will occur.

28

1 Finally, MCI argues that Plaintiffs are judicially estopped from asserting that the
2 defendant has no right to offset. Plaintiff's motion for good faith settlement stated:

3 Indeed, the proposed settlement is favorable to any remaining defendants.
4 Plaintiffs' remaining claims will be reduced by the settlement amounts
5 contributed by Michelangelo and Hubbard. NRS 17.245(1)(a). As set forth
above, the remaining defendants will receive a contribution toward any
future judgment entered against them.

6 When considering a claim of judicial estoppel, Nevada's courts look for the following
7 five elements: (1) the same party has taken two positions; (2) the positions were taken in
8 judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting
9 the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two
10 positions are totally inconsistent; and (5) the first position was not taken as a result of
11 ignorance, fraud, or mistake. *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 8,
12 390 P.3d 646, 652 (2017). All five elements are necessary to sustain a finding of judicial
13 estoppel. *Id.*

14 Here, element three is not met. The plaintiff did not successfully assert their prior
15 position because the Court granted the motion for good faith settlement based on Plaintiff's
16 assertion that the non-settling defendants will receive an offset. When conducting the analysis
17 of Plaintiff's good faith settlement, the Court considered the relative liability of the defendants
18 and determined that the settlement amount was proper. The Court did not adopt the plaintiff's
19 argument that the non-settling defendant would be entitled to an offset. Further, the jury verdict
20 was based on failure to warn, which has absolutely no bearing on the plaintiffs' claim against
21 the other defendants - the settling defendants. Now, considering the jury verdict, it appears that
22 the settling defendants might have paid even more than their fair share of the liability.

23 ///

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1 Collectively, the defendants settled for \$5,110,000.00 which constitutes almost 30% of
2 the total award in this matter. When looking at the potential liability of all defendants, the Court
3 finds that MCI was responsible for a large majority of the damages. Thus, judicial estoppel does
4 not apply here.

5 **IT IS SO ORDERED.**

6 Dated this 26th day of March, 2019.

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9 ADRIANA ESCOBAR
DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Order was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

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11 

12 Diana D. Powell, Judicial Assistant

EXHIBIT B

EXHIBIT B

| | | |
|----|---|---|
| 1 | DISTRICT COURT | |
| 2 | COUNTY OF CLARK, NEVADA | |
| 3 | | |
| 4 | KEON KHIABANI and ARIA |) |
| | KHIABANI, minors by and |) |
| 5 | through their natural mother, |) |
| | KATAYOUN BARIN; KATAYOUN |) |
| 6 | BARIN, individually; KATAYOUN |) |
| | BARIN as Executrix of the |) |
| 7 | Estate of Kayvan Khiabani, |) |
| | M.D. (Decedent), and the |) |
| 8 | Estate of Kayvan Khiabani, |) |
| | M.D. (Decedent), |) |
| 9 | |) |
| | Plaintiffs, |) |
| 10 | |) |
| | v. |) |
| 11 | |) |
| | MOTOR COACH INDUSTRIES, INC., |) |
| 12 | a Delaware corporation; |) |
| | MICHELANGELO LEASING, INC. |) |
| 13 | d/b/a RYAN'S EXPRESS, an |) |
| | Arizona corporation; EDWARD |) |
| 14 | HUBBARD, a Nevada resident; |) |
| | BELL SPORTS, INC. d/b/a GIRO |) |
| 15 | SPORT DESIGN, a California |) |
| | corporation; SEVENPLUS |) |
| 16 | BICYCLES, INC. d/b/a Pro |) |
| | Cyclery, a Nevada corporation; |) |
| 17 | DOES 1 through 20; and ROE |) |
| | CORPORATIONS 1 through 20, |) |
| 18 | |) |
| | Defendants. |) |
| 19 | | |
| 20 | VIDEOTAPED DEPOSITION OF JEFFERY E. JUSTICE | |
| 21 | Taken at the instance of the Plaintiffs | |
| 22 | | |
| 23 | August 16, 2017 | |
| | 10:06 a.m. | |
| 24 | 1312 N. Monroe | |
| | Spokane, Washington | |
| 25 | Job Number: 411170 | |

1 Q. Okay. All right. What were your duties and
2 responsibilities as safety director when you were in
3 Clark County?

4 A. Check driver logs, make sure the vehicle
5 inspection reports were done, go out and make sure the
6 drivers were doing what they were supposed to and not
7 being unsafe.

8 Q. Anything else you can think of?

9 A. There was a lot more involved in it, but I --
10 it's -- you know, trying to remember everything, every
11 little thing I did, it's -- you know, it's hard this far
12 out --

13 Q. Sure.

14 A. -- being that I don't do it anymore.

15 Q. When you were the safety director of
16 Ryan's Express in Las Vegas, did the company have a policy
17 and procedure manual?

18 A. Yes.

19 Q. Did the procedure manual have a section with
20 regards to safety in it?

21 A. It did, but what it specifically said, I don't
22 really -- don't really remember all of it because --

23 Q. Okay. Did the company provide training to
24 newly hired bus drivers?

25 A. We would typically take them out on a road

1 test, make sure that they could handle the vehicle they
2 were driving.

3 Q. By "road test," do you mean go out in a bus?

4 A. Yeah.

5 Q. Okay.

6 A. Make sure they, you know, drove safely and not
7 reckless, and there was a probation period for new
8 drivers.

9 Q. Okay. And when you took them out on a road
10 test, did you do that as the safety director, or did
11 someone else do that?

12 A. It was me.

13 Q. All right. And so how long did those tests
14 take?

15 A. Anywhere from 15 minutes to, let's say,
16 possibly an hour, taking them on various roadways and
17 highways just to get an idea.

18 Q. Okay. Other than that, was there any other
19 training?

20 A. Do you mean new drivers as in no experience or
21 new with the company?

22 Q. New hires.

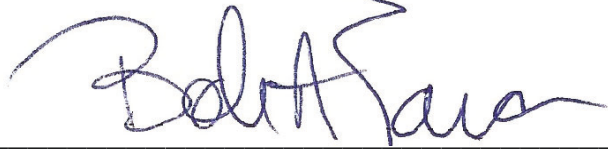
23 A. Training as far as, you know, company policies
24 and procedures and what we expected as far as, you know,
25 not to do while you're out there driving and representing

1 STATE OF WASHINGTON)
2 COUNTY OF SPOKANE) ss.
3

4 I, Bob A. Zaro, do hereby certify that at the
5 time and place heretofore mentioned in the caption of the
6 foregoing matter, I was a Certified Court Reporter for
7 Washington; that at said time and place I reported in
8 stenotype all testimony adduced and proceedings had in
9 the foregoing matter; that thereafter my notes were
10 reduced to typewriting and that the foregoing transcript
11 consisting of pages 1 through 68 is a true and correct
12 transcript of all such testimony adduced and proceedings
13 had and of the whole thereof.

14 Review of the transcript was waived.

15 Witness my hand at Spokane,
16 Washington, on the 24th day of August, 2017

17 
18

19 Bob A. Zaro, RPR
20 Washington Certified Court Reporter
21 No. 3413 Expires 9/7/2017
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