

In the Supreme Court 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.

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

**RESPONDENT'S APPENDIX
PAGES 1-13**

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CERTIFICATE OF SERVICE

I certify that on this 19th day of March, 2024, I submitted the foregoing “Respondent’s Appendix” for e-filing and service *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

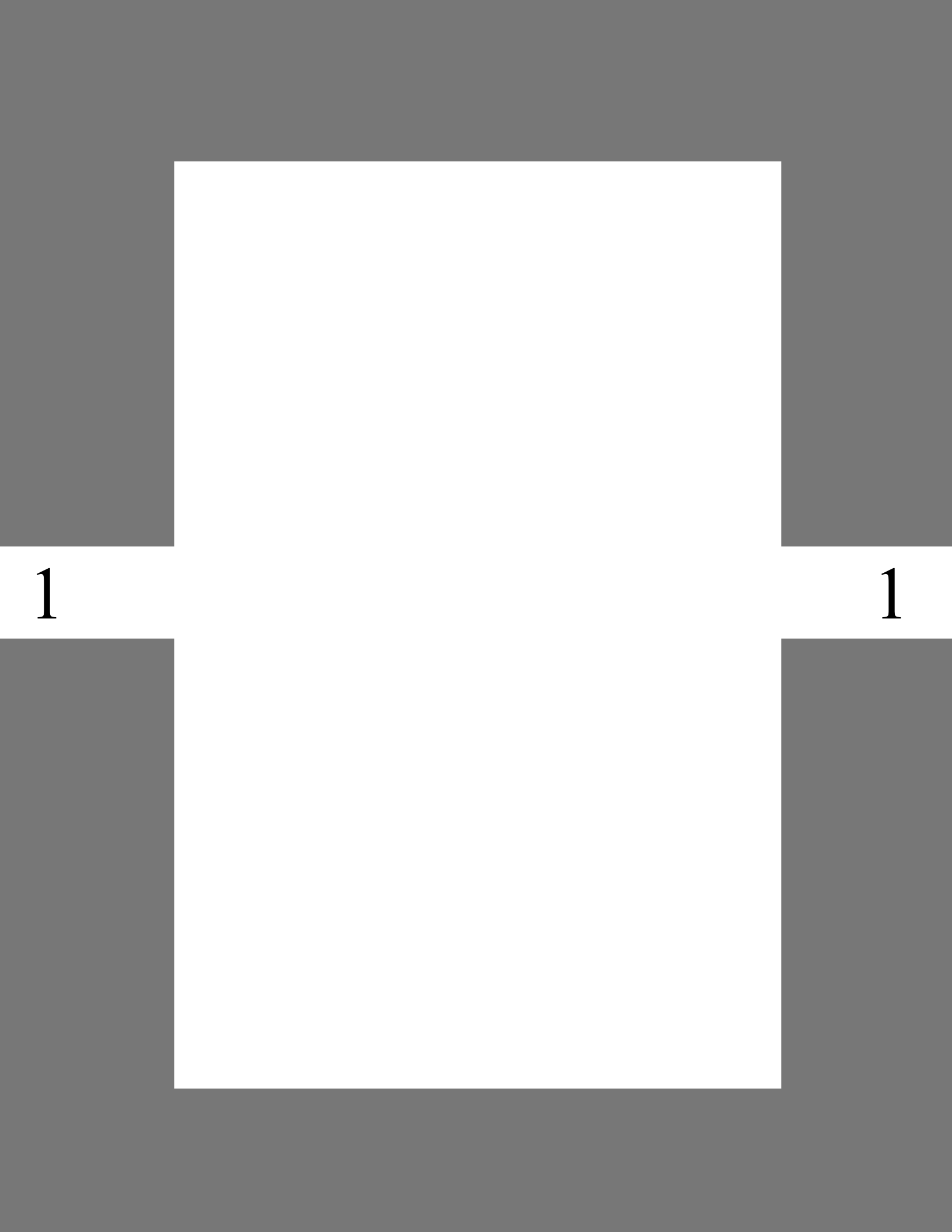
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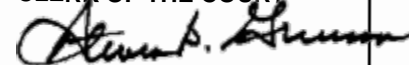
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/s/ Cynthia Kelley
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DISTRICT COURT

CLARK COUNTY, NEVADA

11
12
13 KEON KHIABANI and ARIA KHIABANI,
minors, by and through their Guardian,
14 MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as Executor of the Estate of Kayvan
15 Khiabani, M.D. (Decedent), the Estate of
Kayvan Khiabani, M.D. (Decedent);
16 SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and the
17 Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**PLAINTIFFS' MOTION FOR
DETERMINATION OF GOOD
FAITH SETTLEMENT WITH
DEFENDANTS MICHELANGELO
LEASING, INC. d/b/a RYAN'S
EXPRESS AND EDWARD
HUBBARD ONLY**

ENTERED
JOP

AND

ORDER SHORTENING TIME

Date: January 23, 2018

Time: 9:30 a.m.

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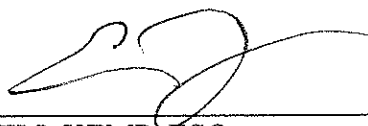
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1 Under NRS 17.245, Plaintiffs move this Honorable Court for a determination that: (1)
 2 the settlement and release agreement entered into between Plaintiffs and Defendants
 3 Michelangelo Leasing, Inc. d/b/a Ryan's Express ("Michelangelo") and Edward Hubbard
 4 ("Hubbard") was made and entered into in good faith, and that (2) Michelangelo and Hubbard
 5 are discharged from any liability for contribution and/or equitable indemnity to any other
 6 defendant or tortfeasor.

7 This Motion is made pursuant to Nevada Revised Statute 17.245, on grounds that the
 8 settlement between Plaintiffs and Michelangelo and Hubbard has been made in good faith. This
 9 Motion is based upon the attached Memorandum of Points and Authorities and exhibits thereto;
 10 upon the pleadings, records, and other documents on file with the Court in this action; and upon
 11 such oral and documentary evidence as may be presented at the hearing of this Motion.

12 Dated this 18 day of January, 2018

13 KEMP, JONES & COULTHARD, LLP

14
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**DECLARATION OF ERIC PEPPERMAN, ESQ. IN SUPPORT OF ORDER
SHORTENING TIME**

I, Eric Pepperman, Esq., declare under penalty of perjury as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada and am an attorney with the law firm of KEMP, JONES & COULTHARD, LLP ("KJC"). KJC and Christiansen Law Offices are counsel of record for Plaintiffs in the above-entitled action. I have personal knowledge about the matters contained in this Declaration.

2. Plaintiffs initiated this action on May 25, 2017 and filed amended complaints on June 6, 2017 and November 17, 2017. In their operative complaint, Plaintiffs assert negligence claims against Michelangelo and Hubbard, and product liability claims against Motor Coach Industries, Inc. ("MCI"), Bell Sports, Inc. and Sevenplus Bicycles, Inc.

3. The trial in this matter is currently set to commence on February 12, 2018.

4. Plaintiffs and Michelangelo and Hubbard have reached a confidential settlement resolving Plaintiffs claims against Michelangelo and Hubbard. Their proposed settlement is contingent upon the Court granting this motion, and Plaintiffs' contemporaneous petition for minors' compromise.

5. I believe that good cause exists to hear this motion on shortened time so Plaintiffs can finalize their settlement with Michelangelo and Hubbard prior to the February 12, 2018, trial date.

6. At the January 18, 2018, calendar call, the Court advised that this motion would be set on January 23, 2018, along with the other pretrial motions scheduled on that date.

7. I make this declaration under penalty of perjury.

Dated this 18 day of January, 2018.

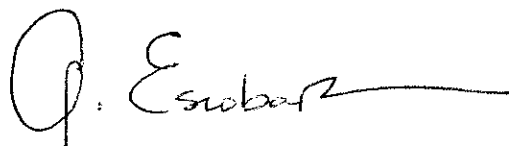

ERIC PEPPERMAN, ESQ.

ORDER SHORTENING TIME

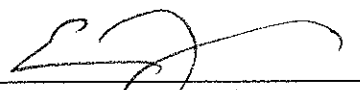
Upon Plaintiffs' ex parte application, supported by the declaration of Eric Pepperman, Esq., counsel for the Plaintiffs, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the time for notice and hearing of PLAINTIFFS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT WITH DEFENDANTS MICHELANGELO LEASING, INC. d/b/a RYAN'S EXPRESS AND EDWARD HUBBARD is shortened. This matter shall now be heard on the 23rd day of January, 2018, at the hour of 9:30 AM, before Department XIV in the above-entitled Court.

DATED this 16th day of January, 2018.


DISTRICT COURT JUDGE *g*

Respectfully Submitted by:


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MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

On April 18, 2017, Kayvan Khiabani, M.D., a renowned surgeon, was struck and killed by a large tour bus while riding his bicycle. On May 25, 2017, Dr. Khiabani's wife, Katayoun "Katy" Barin, DDS, filed a lawsuit as the Executrix of her late husband's estate and on behalf of herself and her two sons, Aria and Keon. The complaint was amended on June 6, 2017, to substitute parties. Plaintiffs alleged product liability claims against MCI, Bell Sports, and SevenPlus, and negligence claims against Michelangelo and Hubbard.

Approximately two months before her husband's tragic death, Katy Barin was diagnosed with stage IV colon cancer. Unfortunately, on October 12, 2017, Katy died. Plaintiffs allege that the stress, grief, and sorrow caused by her husband's wrongful death accelerated and exacerbated her cancer and that Katy died as a direct and proximate result of the underlying accident. Plaintiffs amended their complaint on November 17, 2017, to assert a claim for the wrongful death for Katy Barin. The trial in this matter is presently set to commence on February 12, 2018.

Plaintiffs have agreed to proposed settlements with Defendants (i) Michelangelo and Hubbard, (ii) Bell Sports, and (iii) SevenPlus. Plaintiffs have not resolved their claims against Defendant MCI. On January 5, 2018, the Court granted SevenPlus' motion for good faith settlement and entered its order determining that the settlement between Plaintiffs and SevenPlus was made and entered into in good faith. On January 12, 2018, with respect to its own proposed settlement with Plaintiffs, Defendant Bell Sports filed a motion for good faith settlement determination, which is currently pending before the Court. By this motion, Plaintiffs ask the Court to enter an order determining that the settlement between Plaintiffs and Michelangelo and Hubbard was made and entered into in good faith as well.

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II

THE SETTLEMENT WITH MICHELANGELO AND HUBBARD

Plaintiffs and Michelangelo and Hubbard have reached a settlement resolving Plaintiffs' claims against Michelangelo and Hubbard. Their proposed settlement is contingent upon the Court granting this motion and a contemporaneous petition for minors' compromise. If the Court approves the proposed settlement, any judgment that may be entered against any other defendant would be reduced by the settlement amount, and Michelangelo and Hubbard will each be discharged from liability for the claims brought by Plaintiffs and from liability for contribution and/or equitable indemnity to any other joint tortfeasor. *See* NRS 17.245.

The proposed settlement amount is confidential, and it will be presented to the Court *in camera* at the time of the hearing on this matter. The settlement was encouraged by the financial condition of Michelangelo and Hubbard, the applicable insurance policy limits, and a balance of the risks and benefits of continued litigation. Pursuant to NRS 17.245, the settlement is now subject to this Court's determination that it satisfies the statutory requirement of "good faith."

III

LEGAL ARGUMENT

A. Good Faith Standard

In Nevada, a good faith determination is made pursuant to NRS 17.245, which states in relevant part:

(1) When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death...

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.

The Nevada Supreme Court has held that the determination of whether a settlement is entered in good faith is left to the “discretion of the trial court based upon all relevant facts available.” *Velsicol Chem. Corp. v. Davidson*, 107 Nev. 356, 360 (1991). In considering a motion for good faith settlement, a court can consider the following relevant, but not exclusive, factors: “[t]he amount paid in settlement, the allocation of settlement proceeds among Plaintiffs, the insurance policy limits of settling defendants, the financial condition of settling defendants, and the existence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants.” *Doctors Company v. Vincent*, 120 Nev. 644, 651-52 (2004) (following the facts established in *In re MGM Grand Hotel Fire Litigation*, 570 F. Supp. 913, 9127 (D. Nev. 1983)). In view of these factors as explained below, and in light of the relevant facts, it is clear that the settlement reached between Plaintiffs and Ryan’s Express and Hubbard is in good faith.

B. Analysis of Good Faith Factors

1. Settlement Amount, Financial Conditions, and Policy Limits

As Plaintiffs’ settlement with Michelangelo and Hubbard is confidential, the amount will be presented *in camera* at the time of hearing on the instant motion. Still, the settlement amount is considerable and constitutes a good faith resolution of the potential liability of Michelangelo and Hubbard given the facts and practical considerations. Before entering into this settlement agreement, the parties and their counsel gave full consideration to the financial conditions of the settling parties, the policy limits available, the strengths and weaknesses of Plaintiffs’ claims and Michelangelo and Hubbard’s defenses, the merits of all potential contribution and indemnity claims, the risks and possible result of a trial on the merits, the litigation costs and expenses that would be incurred absent a settlement, and other benefits resolving the claims at this time.

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1 **2. Allocation of Settlement Proceeds Among Plaintiffs**

2 As this is a case involving claims by minors, the overall settlement with Michelangelo
3 and Hubbard, and the allocation of the settlement proceeds, must be approved by the Court.
4 Contemporaneous with this motion, Plaintiffs are submitting a petition to compromise the
5 Minor Plaintiffs' claims against Michelangelo and Hubbard. In their petition, Plaintiffs propose
6 an allocation of the settlement proceeds from Michelangelo and Hubbard that they believe to be
7 fair. Whether or not it accepts this proposal, the ultimate allocation of the settlement proceeds
8 must meet the Court's approval.

9 **3. The Existence of Collusion, Fraud, or Tortious Conduct**

10 Plaintiffs represent to this Court that the settlement negotiations between them and
11 Michelangelo and Hubbard were carried out absent any collusion, fraud, or tortious conduct
12 aimed at injuring the interests of the non-settling parties. The settlement amounts were guided
13 by the risks and benefits of further litigation. There was no intent or thought to injure any
14 interest of any non-settling tortfeasor, who have all offered to stipulate to this motion.

15 Indeed, the proposed settlement is favorable to any remaining defendants. Plaintiffs'
16 remaining claims will be reduced by the settlement amounts contributed by Michelangelo and
17 Hubbard. NRS 17.245(1)(a). As set forth above, the remaining defendants will receive a
18 contribution toward any future judgment entered against them.

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IV

CONCLUSION

For all the forgoing reasons, Plaintiffs respectfully request the following:

- (1) That the Court grant their Motion for Determination of Good Faith Settlement with Michelangelo and Hubbard only;
- (2) That the Court order that the settlement Plaintiffs reached with Michelangelo and Hubbard is in good faith and in accordance with NRS 17.245; and
- (3) That the Court order that no party or entity may proceed with or recover on any claims for indemnity and/or contribution against Michelangelo or Hubbard.

DATED this 18 day of January, 2018.

KEMP, JONES & COULTHARD, LLP



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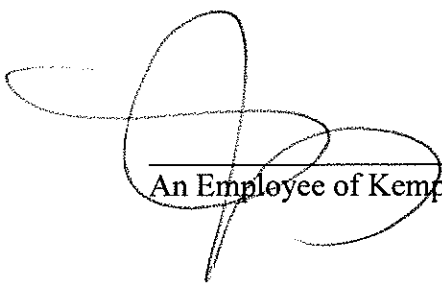
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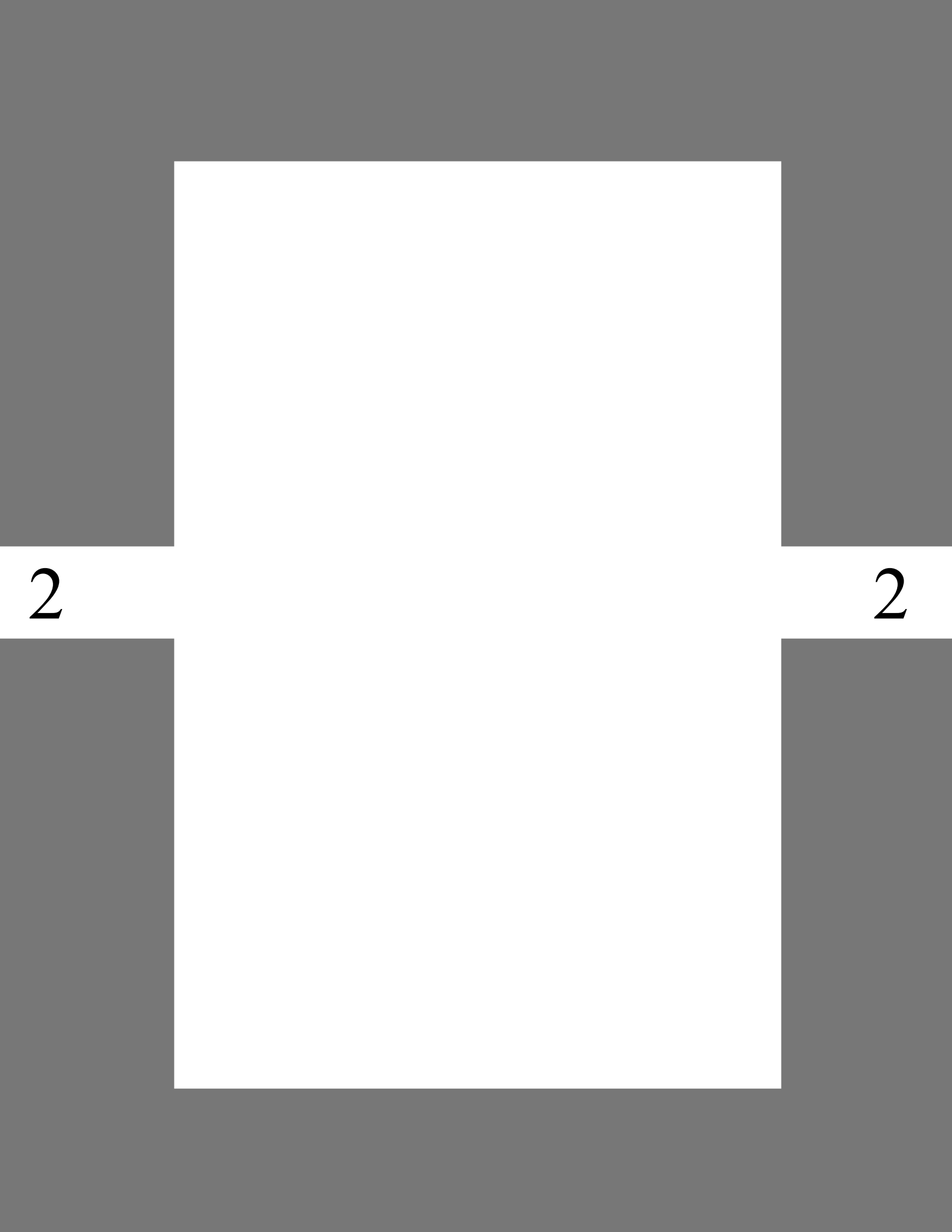
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CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of January, 2018, the foregoing PLAINTIFFS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT WITH DEFENDANTS MICHELANGELO LEASING, INC. d/b/a RYAN'S EXPRESS AND EDWARD HUBBARD 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.

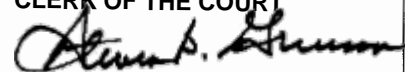

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

**DEFENDANTS MICHELANGELO
LEASING, INC. D/B/A RYAN'S EXPRESS
AND EDWARD HUBBARD'S JOINDER
TO PLAINTIFFS' MOTION FOR
DETERMINATION OF GOOD FAITH
SETTLEMENT WITH MICHELANGELO
LEASING, INC. D/B/A RYAN'S EXPRESS
AND EDWARD HUBBARD**

**DEFENDANTS MICHELANGELO LEASING, INC. D/B/A RYAN'S EXPRESS
AND EDWARD HUBBARD'S JOINDER TO PLAINTIFFS' MOTION FOR
DETERMINATION OF GOOD FAITH SETTLEMENT WITH MICHELANGELO
LEASING, INC. D/B/A RYAN'S EXPRESS AND EDWARD HUBBARD**

Defendants, MICHELANGELO LEASING, INC. d/b/a RYAN'S EXPRESS and EDWARD HUBBARD, by and through their attorneys of record, Selman Breitman, LLP, hereby submit this Joinder in the foregoing Plaintiffs' Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing, Inc. d/b/a Ryan' Express and Edward Hubbard on Order Shortening Time, pursuant to NRS 17.245.

This Joinder hereby adopts and incorporates by reference the legal arguments and analysis detailed in Plaintiffs' Motion as if stated herein. This Joinder is further based upon the pleadings and papers on file with this Court and other such evidence as may be offered at the time of the hearing of this Motion.

DATED: January 22, 2018

SELMAN BREITMAN LLP

By: /s/ Eric O. Freeman


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EDWARD HUBBARD

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. D/B/A RYAN'S EXPRESS AND EDWARD HUBBARD'S JOINDER TO PLAINTIFFS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT WITH MICHELANGELO LEASING, INC. D/B/A RYAN'S EXPRESS AND EDWARD HUBBARD**, this 22 day of January 2018.


CRYSTAL MARTIN
An Employee of Selman Breitman LLP

Selman Breitman LLP
ATTORNEYS AT LAW