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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES - CENTRAL**

12 HILARIO CRUZ, an individual,
13 Plaintiff,

14 vs.

15 SOLOMON METHENGE, an individual,
16 and DOES 1 to 100, inclusive,
17 Defendants.

18 CONSOLIDATED FOR ALL PURPOSES
19 WITH:

20 ARACELI MENDEZ v. NISSAN NORTH
21 AMERICA, CONTINENTAL
22 AUTOMOTIVE SYSTEMS et al;

23 and

24 JUANA DE LA CRUZ BERNARDINO v.
25 NISSAN NORTH AMERICA,
26 CONTINENTAL AUTOMOTIVE
27 SYSTEMS et al;

Consolidated Cases
No. BC 493949 (Lead Case)
No. BC 529912
No. BC 577815

CONSOLIDATED COMPLAINT

(Personal Injury, Wrongful Death, Property
Damage, Survival Claim, Product Liability)

Dept. 47

DEMAND FOR JURY TRIAL

28 Plaintiff Hilario Cruz ("CRUZ") brings this action on behalf of himself and as successor
in interest on behalf of his deceased minor children, Hilda Cruz and Stephanie Cruz, against

1 Defendants Nissan North America, Inc. (“NISSAN”), Continental Automotive Systems, Inc.
2 formerly known as Continental Teves (“CONTINENTAL”), Solomon Methenge
3 (“METHENGE”), and unknown persons DOES 1 to 98.

4 Plaintiff Araceli Mendez (“MENDEZ”), a minor by and through her guardian ad litem,
5 Juana Bernardino, brings this action on behalf of herself and as successor in interest on behalf of
6 decedent Saida Mendez-Bernardino against Defendants NISSAN, CONTINENTAL,
7 METHENGE, and DOES 1 to 20.

8 Plaintiff Juana de la Cruz Bernardino (“BERNARDINO”), brings this action on behalf
9 of herself against Defendants NISSAN, CONTINENTAL and DOES 1 to 25.

10 CRUZ, BERNARDINO, and MENDEZ (collectively “Plaintiffs”) allege the following:

11 **CONSOLIDATED CASES**

12 1. This case is the consolidation of three actions: *Hilario Cruz v. Solomon*
13 *Methenge*, LASC Case No. BC 493949 (LEAD CASE); *Araceli Mendez, by guardian ad litem*
14 *Juana Bernardino v. Solomon Methenge et al.*, LASC Case No. BC 529912; and *Juana de la*
15 *Cruz Bernardino v. Nissan North America, Inc. et al.*, LASC Case No. BC577815. These
16 separately filed actions involve the same parties and are based on the same or similar claims;
17 arise from the same or substantially identical transactions, incidents, or events requiring the
18 determination of the same or substantially identical questions of law or fact. Specifically, the
19 cases arise from the wrongful deaths of Saida Mendez-Bernardino and her children Hilda and
20 Stephanie Cruz from an automobile crash on August 29, 2012, involving defendant
21 METHENGE and his vehicle, a 2004 Infiniti QX56, VIN 5N3AA08C14N809115, bearing
22 California License Plate Number 6WQW730 (the “SUBJECT VEHICLE”).

23 2. Plaintiff CRUZ is the father of decedents Hilda and Stephanie Cruz, who were 4
24 and 6 years old. He was not married to decedent Saida Mendez-Bernardino at the time of the
25 accident. Plaintiff MENDEZ is the only surviving child of decedent Saida Mendez-Bernardino.
26 Plaintiff BERNARDINO is the mother of decedent Saida Mendez-Bernardino, who was her
27 only offspring. BERNARDINO is also the grandmother of decedents Hilda and Stephanie
28 Cruz.

JURISDICTION AND VENUE

3. This court is the proper court because the injury to Plaintiff occurred in its jurisdictional area.

4. Defendant NISSAN is a California corporation.

5. Defendant CONTINENTAL, formerly known as Continental Teves, does substantial business in the State of California, is registered to and in fact is doing business within the State of California, and otherwise maintains requisite minimum contacts with the State of California. Additionally, Defendant CONTINENTAL distributes in this district, receives substantial compensation and profits from sales, maintenance, and service of vehicles in this jurisdiction, including the SUBJECT VEHICLE.

6. None of the causes of action stated here has been assigned or otherwise given to any other court or tribunal.

THE PARTIES

7. Plaintiff CRUZ is, and at all times herein mentioned was, a resident of the County of Los Angeles, State of California. CRUZ is the father and sole heir of his daughters, decedents Stephanie Cruz and Hilda Cruz. CRUZ brings this action in his individual capacity for his claim of Wrongful Death pursuant to Cal. Code of Civ. Proc. §377.60 and as the decedents' successor in interest for all survival claims pursuant to Cal. Code Civ. Proc. §§377.10 *et seq.*

8. Plaintiff MENDEZ is, and at all times herein mentioned was, a resident of the County of Los Angeles, State of California. MENDEZ is a minor and is represented by her duly appointed guardian ad litem, Juana Bernardino. MENDEZ is the daughter and heir of decedent Saida Mendez-Bernardino. Plaintiff brings this action in her individual capacity for her claim of the Wrongful Death of her mother, Saida Mendez-Bernardino, pursuant to Cal. Code of Civ. Proc. §377.60 and as the decedent's successor in interest for all survival claims pursuant to Cal. Code Civ. Proc. §§377.10 *et seq.*

9. Plaintiff BERNARDINO is, and at all times herein mentioned was, a resident of the County of Los Angeles, State of California. BERNARDINO is the mother and heir of

1 decedent Saida Mendez-Bernardino. BERNARDINO brings this action in her individual
2 capacity for her claim of the Wrongful Death of her daughter, Saida Mendez-Bernardino,
3 pursuant to Cal. Code of Civ. Proc. §377.60. BERNARDINO received financial support from
4 her daughter, Saida Mendez-Bernardino.

5 10. Defendant NISSAN is a corporation organized under the laws of the State of
6 California with its principal place of business in Gardena, California. NISSAN directs and
7 coordinates all of Nissan's activities, including design, development, and marketing of Nissan
8 vehicles in the U.S. market. NISSAN engaged in these activities affecting the design and sale
9 of the SUBJECT VEHICLE from its principal place of business in Gardena, California, and has
10 continued to perform significant and meaningful activities in connection with them in California
11 since 2004.

12 11. Defendant CONTINENTAL is a corporation organized under the laws of the
13 State of Delaware with its principal place of business in Auburn Hills, Michigan.
14 CONTINENTAL designed, manufactured, and supplied defective component parts of the
15 SUBJECT VEHICLE in the U.S. market including California and maintains business and
16 engineering offices in California.

17 12. Defendant METHENGE is, and at all times herein mentioned was, a resident of
18 the County of Los Angeles, State of California, and was the driver of the SUBJECT VEHICLE
19 at the time of the August 29, 2012, collision.

20 13. The true names and capacities of the DOE defendants , whether individual,
21 corporate, partner, associate or otherwise, are unknown to Plaintiffs at this time. Plaintiffs
22 allege that each Defendant designated herein as a DOE is responsible in some manner for the
23 events and happenings referred to herein, and legally caused the injuries and damages alleged in
24 this complaint. Said DOE defendants were at all times herein mentioned agents, employees,
25 partners and/or joint venturers of their co-defendants, and each of them acted within the course
26 and scope of such agency, employment, partnership, or joint venture. Plaintiffs will amend this
27 CONSOLIDATED COMPLAINT to allege the true names and capacities of DOE defendants
28 when ascertained.

SUBJECT VEHICLE

1
2 14. The SUBJECT VEHICLE is a 2004 Infiniti QX56, VIN 5N3AA08C14N809115,
3 bearing California license plate number 6WQW730. Defendant NISSAN was the ultimate
4 developer, designer, manufacturer, assembler, tester, inspector, marketer, advertiser, distributor
5 and seller, warrantor, and service and maintenance provider for the SUBJECT VEHICLE.

6 15. Defendant CONTINENTAL was the designer, manufacturer, assembler, tester,
7 inspector, distributor, supplier, and seller of the defective component parts installed in the
8 SUBJECT VEHICLE.

9 16. Defendant NISSAN is the developer, designer, manufacturer, assembler, tester,
10 inspector, marketer, advertiser, distributor and seller, warrantor, and service and maintenance
11 provider of all 2004-2008 Nissan Armada and Titan Trucks, and Infiniti QX56 vehicles
12 (hereinafter "Defective Vehicles"), including the SUBJECT VEHICLE.

FACTS

13
14 17. The Defective Vehicles posed a significant and immediate safety threat to all
15 users of such vehicles and to the public in general in that the Delta Stroke Sensor ("DSS"), an
16 integral electronic component of the vehicles which affects critical safety aspects of braking,
17 was well known by Defendants NISSAN and CONTINENTAL to be defective and faulty,
18 having a high and unreasonably high incidence of failure during normal and customary use.
19 The failure of this defective part disables the braking ability of the Defective Vehicles to the
20 point where drivers are, without warning and suddenly, unable to stop their vehicle within a
21 reasonably safe time and distance, or at all.

22 18. Defendants NISSAN and CONTINENTAL have concealed, and continue to
23 conceal and omit to disclose the critical safety defect to consumers for their significant financial
24 gain. Defendants NISSAN and CONTINENTAL have failed to take steps to mitigate the
25 unreasonable danger and hazard posed by this concealed danger.

26 19. At all times relevant to this action, Defendant NISSAN marketed, sold,
27 distributed, advertised, warranted, serviced and maintained the Defective Vehicles as safe to
28

1 use, when, in fact, NISSAN had reason to know, and did know, that the Defective Vehicles,
2 including the SUBJECT VEHICLE, were not safe to use for their intended purpose.

3 20. Defendants NISSAN and CONTINENTAL intentionally, recklessly, and/or
4 negligently concealed, suppressed, and omitted the risks, dangers, defects and disadvantages of
5 the SUBJECT VEHICLE.

6 21. The failure of the Delta Stroke Sensor in the SUBJECT VEHICLE may have
7 caused Defendant METHENGE to drive through a controlled and busy intersection, and despite
8 applying the brakes in a manner reasonably anticipated to bring the SUBJECT VEHICLE to a
9 complete stop, he lost control of it and collided with the vehicle occupied by CRUZ's two
10 daughters and MENDEZ's mother/BERNARDINO's daughter, causing their deaths.

11 22. **Delta Stroke Sensor Function and Failure in the SUBJECT VEHICLE**

12 a. The Delta Stroke Sensor (or "DSS") in the Defective Vehicles is an electronic
13 component which interfaces with and connects to the Electronic Control Unit ("ECU"). The
14 Delta Stroke Sensor, which is contained within the sealed Brake Booster Assembly, collects
15 information about a vehicle's primary mechanical braking system and provides input and
16 information to the ECU.

17 b. The Delta Stroke Sensor measures the application of manual driver pressure to
18 the brake pedal. The Delta Stroke Sensor determines whether the driver has pressed the brake
19 pedal, and if so, how far and how quickly. The Delta Stroke Sensor performs these
20 measurements by converting the mechanical movement of the brake pedal into an electrical
21 signal within a range of pre-set values to be communicated to the ECU.

22 c. When properly functioning, the DSS monitors the performance of the primary
23 mechanical braking system and reports a failure of that system to the ECU which will then
24 trigger the functioning of the vehicle's secondary braking system. The defect in the DSS results
25 in a deactivation of an otherwise properly functioning primary mechanical braking system, and
26 as Defendants have known, materially and adversely affects the braking power of the Defective
27 Vehicles. Defendants NISSAN and CONTINENTAL have likewise known that it is not
28 possible to predict when a DSS failure will occur.

1 d. When the DSS fails, the electronic computer system in Defective Vehicles may
2 record a diagnostic trouble code C1179. This error code can be downloaded and read by
3 technicians using certain proprietary diagnostic equipment used by Defendants NISSAN and
4 CONTINENTAL to diagnose and repair the Defective Vehicles. On numerous occasions,
5 however, technicians at NISSAN dealerships have not been able to reproduce a reported braking
6 failure in Defective Vehicles on an initial test drive, or to retrieve any error code, despite the
7 driver's report of braking problems consistent with a DSS failure. Furthermore, DSS failures
8 are not always reproducible, and resulting error codes are not always stored in the ECU
9 indefinitely for a proper diagnosis.

10 e. Ultimately, as a result of a DSS failure, a Defective Vehicle will experience a
11 substantial loss of braking power, approximately fifty percent. In other words, a Defective
12 Vehicle's stopping distance can more than double. When this occurs, routine traffic stops
13 become emergency events where crashes are avoided only by the favor of good fortune.
14 Moreover, no inspection of a Defective Vehicle's mechanical brake system would reveal the
15 latent and dangerous defect hidden within the sealed Brake Booster Assembly that manifests
16 itself intermittently.

17 f. Defendant METHENGE may have experienced this loss of substantial braking
18 power caused by the failure of the DSS at the time of the August 29, 2012 collision.

19 23. **Defendants NISSAN and CONTINENTAL Knew About the Delta Stroke**
20 **Sensor Defect and its Safety-Related Consequences**

21 a. Since 2003, NISSAN and CONTINENTAL knew of the subject braking defect
22 in the Defective Vehicles but failed to take any action to notify owners and consumers alike of
23 the defect. Instead, Defendants NISSAN and CONTINENTAL manufactured, produced,
24 marketed, sold, and distributed the defective SUBJECT VEHICLE.

25 b. NISSAN's undisclosed internal documents described the true nature of the
26 defect. An internal communication from NISSAN's "Planner, Technical Training Instructional
27 Design" employee aptly describes the defect: "[i]ncidentally the vehicle exhibits radical braking
28 behavior in the event of this stroke sensor failure." Another internal document titled "Market

1 Reply” truthfully describes the failure as: “Brakes poor performance due to delta stroke sensor.”

2 c. By 2004, NISSAN knew the DSS in the Defective Vehicles suffered from a
3 serious safety defect.

4 d. In October 2005, one dealer reported to NISSAN “three QX56s that have failed
5 to stop when the brakes were applied...[W]e understand from Infiniti that the brake booster is
6 the problem...[T]he third occurred in a Dallas neighborhood and the driver, Mrs....Lesier, ran 2
7 or 3 stop signs but did not hit anything or anyone. This is a dangerous situation.”

8 e. On October 27, 2005, NISSAN and CONTINENTAL engineers held a “2nd
9 Meeting” to discuss the investigation of DSS failures. The discussions between Defendants
10 NISSAN and CONTINENTAL led to a root cause analysis implicating “[f]ailsafe logic not
11 optimal against the tolerance of DSS signal.” On December 22, 2005, NISSAN adopted an
12 “[i]mproved failsafe” reprogramming countermeasure to address this root cause. This
13 reprogramming “fix”, identified in the TSB, did not work.

14 f. On May 12, 2006, Defendant NISSAN issued a document entitled Technical
15 Service Bulletin (“TSB”) No. NTB06-040. The TSB involves all 2004-2006 Nissan Titan and
16 Armada vehicles fitted with Vehicle Dynamic Control (“VDC”). Likewise, on May 12, 2006,
17 NISSAN issued a similar TSB No. NTB06-011 involving the 2004-2006 Infiniti QX56 vehicles,
18 including the SUBJECT VEHICLE (the TSB’s are referred to herein collectively as “TSB”).
19 Specifically, the TSB involves a braking defect in the Defective Vehicles which reveals error
20 code C1179 only after computerized diagnostic interrogation. Error code C1179 refers to
21 failure of the Delta Stroke Sensor.

22 g. NISSAN delivered the TSB to the National Highway Traffic Safety
23 Administration (“NHTSA”) in compliance with 49 C.F.R. 579.5 which requires that Defendant
24 NISSAN “furnish to NHTSA’s Early Warning Division a copy of all notices, bulletins, and
25 other communications [sent to various sources] . . . regarding any *defect* in its vehicles or items
26 of equipment (including any failure or malfunction beyond normal deterioration in use, or any
27 failure of performance, or any flaw or unintended deviation from design specifications, whether
28 or not such *defect* is safety-related.” (Emphasis added). Therefore by May, 2006, NISSAN had

1 concluded that the *defect* identified in the TSB resulting in Delta Stroke Sensor failure/error
2 code C1179 constituted a defect in the Defective Vehicles.

3 h. The issuance and delivery of a technical service bulletin such as the TSB to
4 NHTSA requires the completion of several internal steps at NISSAN, each of which takes
5 significant time and effort. These steps were taken in conjunction with CONTINENTAL, the
6 designer and manufacturer of the DSS, the defective component part installed in the Defective
7 Vehicles' brake boosters. After the defect is isolated and analyzed, NISSAN purports to
8 develop a fix in conjunction with its component parts supplier, CONTINENTAL. Defendants
9 NISSAN and CONTINENTAL developed and implemented the lengthy 22 page TSB which
10 describes a means of reprogramming the VDC Control Unit through use of an 8 MB (Orange)
11 Reprogramming Card to address the Delta Stroke Sensor/C1179 defect in the Defective
12 Vehicles. The DSS failure investigation began, according to NISSAN, at the "start of
13 production" in 2003. As such, Defendants NISSAN and CONTINENTAL had actual
14 knowledge of the Delta Stroke Sensor/C1179 error code *defect* at the "start of production" in
15 the spring of 2003. But, Defendants hid this knowledge from the public.

16 i. To analyze the defect, Nissan's Total Customer Satisfaction is required to review
17 and analyze customer complaints of DSS failure/error code C1179.

18 j. NISSAN and CONTINENTAL performed testing that confirmed the same
19 failure effect in the DSS that creates a loss of braking power—a clear safety issue. However, in
20 NISSAN's TSB issued to its dealership network, NISSAN did not describe a safety issue, but
21 instead described a "vibration in the brake pedal while braking."

22 k. The cheap software reprogramming fix in the TSB that NISSAN touted to
23 NHTSA, its dealers, and technicians did not fix the defect, and NISSAN was aware of the
24 TSB's failure to correct the defect by the end of 2006

25 l. Throughout 2007, NISSAN and CONTINENTAL continued work on a real fix.

26 m. In April 2008, NISSAN manufactured new vehicles with safe DSSs that had
27 been redesigned by CONTINENTAL. But NISSAN and CONTINENTAL failed to disclose the
28 defect, the safety implications, and the true fix to the public or to those that purchased or drove

1 the Defective Vehicles, including the SUBJECT VEHICLE driven by Defendant METHENGE
2 on August 29, 2012.

3 n. NISSAN worked with CONTINENTAL to determine the root cause of the DSS
4 issues. Internally, NISSAN employees have made various claims about CONTINENTAL's role
5 in the development and manufacture of the defective component part at issue: "Continental
6 engineering did not have cable harness experience/design best practice...list this as a lesson
7 learned...."; "[T]hey have been very poor in response and difficult to work with....";
8 "[C]ontinental Teves was difficult to work with during the time of the Delta Stroke Sensor
9 issue...[t]hey—their primary focus was in not being responsible for the issue and providing
10 investigation results...."; "[T]hey have also shown that they don't have the capability to properly
11 test parts, especially on this side of the ocean, bottom line is that we are upsetting a lot of
12 customers, spending warranty money to replace boosters, and they have no financial incentive
13 to quickly identify root cause and take appropriate countermeasure...."

14 o. By late 2007, CONTINENTAL determined that the manufacturing process for
15 the DSS in the Defective Vehicles could be improved. The original process involved the
16 application of a flux solution to a DSS connector before soldering the terminal and wire harness.
17 However, CONTINENTAL determined that the flux solution would sometimes become
18 contaminated with excessive chlorine and result in a DSS with abnormal series resistance. The
19 manufacturer implemented a temporary countermeasure, modifying the process so that the flux
20 solution was changed every two days, and CONTINENTAL then developed a permanent
21 redesign of the terminal connector so that the process no longer required any application of flux.
22 The redesign, in which the connector was crimped instead of soldered, was implemented in
23 vehicles manufactured beginning April 2008.

24 p. Since 2003, NISSAN has received complaints relating to the alleged braking
25 defect in their Defective Vehicles through NHTSA, the Better Business Bureau, NISSAN
26 internet forums, NISSAN dealerships, and directly by owners of Defective Vehicles. Defendant
27 NISSAN shared this information with its component part supplier, Defendant CONTINENTAL,
28 as they worked in tandem to analyze and secretly develop a countermeasure and permanent fix

1 for the defect.

2 q. Despite NISSAN's and CONTINENTAL's wealth of knowledge relating to the
3 subject defect in the SUBJECT VEHICLE's braking system and its clear safety implications,
4 the Defendants have and continue to suppress and conceal this knowledge and have failed to
5 disclose that the SUBJECT VEHICLE's braking system is defective and dangerous.

6 r. NISSAN internally forecasted that another 10,000 Defective Vehicles in
7 California would experience a substantial braking failure. This forecast demonstrates that
8 NISSAN knowingly subjected those 10,000 innocent California consumers, their families, and
9 those driving in their vicinity to potentially fatal crashes.

10 s. NISSAN was not "concerned" about these potential future brake failures because
11 "customers are nontechnical, and many times they don't understand the operations of their
12 vehicle."

13 24. **Evidence of Defendants NISSAN's and CONTINENTAL's Intent to Conceal**

14 a. Defendants NISSAN's and CONTINENTAL's intent to conceal the Delta Stroke
15 Sensor/Error Code C1179 defect and its manifest safety implications are evidenced by each's
16 inactions and conduct in light of their undisputed knowledge of the safety defect.

17 b. NISSAN and CONTINENTAL began investigating the defect at the "start of
18 production" in 2003 and should have identified the cause of the defect soon thereafter. Through
19 customer complaints and their own testing of the Delta Stroke Sensor/error code C1179 defect,
20 Defendants NISSAN and CONTINENTAL knew that they were manufacturing and distributing
21 vehicles with a defect which causes substantial loss of braking power. Yet, rather than
22 acknowledge the safety hazard posed by the defect, NISSAN and CONTINENTAL concealed
23 the safety hazard posed by the defect through deception.

24 c. Defendant NISSAN deceptively described the manifestation of the defect in the
25 TSB as follows: "The brake warning light is or was ON, and/or the ABS warning light is or was
26 ON, and/or there is or was vibration in the brake pedal while braking." Defendants NISSAN
27 and CONTINENTAL intentionally and deceptively concealed the true safety hazard posed by
28 the Delta Stroke Sensor/error code C1179 defect in the TSB and elsewhere—that the defect can

1 cause sudden, unexpected, and substantial loss of braking power—because they were aware that
2 disclosure of the safety hazard posed by the defect would have forced them to incur significant
3 losses to cover the replacement/recall of Brake Boosters to render the Defective Vehicles safe to
4 drive.

5 d. In the TSBs, NISSAN failed to mention the Delta Stroke Sensor (or Brake
6 Booster) by name and failed to disclose that DSS failure causes this safety defect. NISSAN has
7 NOT updated, modified, or withdrawn the TSBs – despite identifying the actual root cause
8 (design of the sensor attachment) and secretly implementing an effective countermeasure (re-
9 design of DSS) in 2008. NISSAN continues to conceal the nature of the safety defect and to
10 promote an unnecessary and ineffective remediation identified in the TSB despite admitting
11 internally that the real fix requires replacement of the brake booster assembly.

12 e. Rather than disclose this critical safety defect and recall the Defective Vehicles
13 as Defendant should have done, Defendants NISSAN and CONTINENTAL made a conscious
14 decision to ignore the problem at the expense of the safety of its customers, those operating the
15 Defective Vehicles, and the public at large. Despite significant and exclusive knowledge of this
16 material safety defect, NISSAN and CONTINENTAL fraudulently concealed this safety
17 problem, and otherwise prevented reasonable consumers and members of the public, including
18 Plaintiffs, from discovering this hazard. As a result of this concealment, the SUBJECT
19 VEHICLE experienced a defect that caused the wrongful death of CRUZ’s daughters and
20 MENDEZ’s mother (BERNARDINO’s daughter).

21 25. **METHENGE and the SUBJECT VEHICLE**

22 a. On or about August 21, 2012, METHENGE purchased the “SUBJECT
23 VEHICLE,” a 2004 Infiniti QX56.

24 b. At the time of the purchase, the SUBJECT VEHICLE had recently been
25 approved for resale with a salvage certificate issued on August 2, 2012. The SUBJECT
26 VEHICLE cleared a full inspection of its braking system before it was certified on August 2,
27 2012. The inspection would not have revealed the latent DSS defect.
28

1 c. A post-collision mechanical inspection of the SUBJECT VEHICLE performed
2 by the Los Angeles Police Department (“LAPD”) on or about November 1, 2012 revealed no
3 defects in the SUBJECT VEHICLE’s braking system that would have contributed to the August
4 29, 2012 collision. The LAPD did not know about, or inspect for, the defective Delta Stroke
5 Sensor.

6 26. **The August 29, 2012 Collision**

7 a. On August 29, 2012, at approximately 7:30 a.m., decedent Saida Mendez-
8 Bernardino was driving her vehicle with CRUZ’s daughters, Hilda and Stephanie, as
9 passengers. CRUZ’s daughters were 4 and 6 years old.

10 b. Saida Mendez-Bernardino’s vehicle was westbound on Willoughby Avenue and
11 had a green light at the intersection of Highland Avenue and Willoughby Avenue in Los
12 Angeles, California. METHENGE was northbound on Highland Avenue.

13 c. Upon seeing traffic stopping in front of him, METHENGE drove around the
14 stopped cars in front of him and drove on opposite lanes of travel (i.e. southbound lanes) in an
15 attempt to avoid a collision.

16 d. The SUBJECT VEHICLE entered the intersection of Highland and Willoughby
17 and broadsided Saida Mendez-Bernardino’s vehicle.

18 e. Witnesses described the SUBJECT VEHICLE as “out of control.”

19 f. Decedents’ vehicle was run off the road and collided with a streetlamp pole.

20 g. The jaws-of-life had to be used to extricate decedents Stephanie and Hilda Cruz,
21 and their mother Saida Mendez-Bernardino, from their vehicle.

22 h. CRUZ’s daughters, Stephanie and Hilda, and MENDEZ’s
23 mother/BERNARDINO’s daughter, Saida, died as a result of their injuries sustained during the
24 collision.

25 27. **NISSAN and CONTINENTAL Recently Provided Notice of a Class Action**
26 **Lawsuit Settlement Regarding the Delta Stroke Sensor Defect in the**
27 **SUBJECT VEHICLE**

28 a. On December 5, 2014, plaintiffs in the class action litigation *Banks, et al. v.*
Nissan North America, Inc., Case No. 4:11-CV-02022-PJH currently pending in the United

1 States District Court for the Northern District of California, filed a motion for preliminary
2 approval of a nationwide class action settlement of consumer claims against NISSAN arising
3 from the Delta Stroke Sensor defect described herein.

4 b. On December 24, 2014, District Court Judge Phyllis J. Hamilton entered an
5 order preliminarily approving the *Banks* class action settlement, and provisionally certifying a
6 nationwide settlement class for consumer claims regarding the DSS failure in Defective
7 Vehicles, including the SUBJECT VEHICLE. The settlement excludes claims for personal
8 injuries.

9 c. When news reports surfaced in December 2014 concerning the class action
10 settlement in *Banks, et al. v. Nissan North America, Inc.*, Plaintiffs learned for the first time of
11 the possibility of a hidden defect in METHENGE's vehicle and began diligently investigating
12 before each filed their actions against NISSAN and CONTINENTAL shortly thereafter.

13 **FIRST CAUSE OF ACTION**

14 **STRICT PRODUCTS LIABILITY-WRONGFUL DEATH-SURVIVAL CLAIM**
15 **(By Plaintiffs CRUZ, MENDEZ, BERNARDINO Against Defendants**
NISSAN and CONTINENTAL and DOES 1-18 and 21- 98)

16 28. Plaintiffs incorporate by reference paragraphs 1 to 27 as if fully set forth herein.

17 29. Defendants NISSAN and DOES 1-18 and 21-98 designed, engineered,
18 manufactured, tested, assembled, marketed, advertised, distributed, sold and put into the stream
19 of commerce the Defective Vehicles including the SUBJECT VEHICLE.

20 30. Defendants CONTINENTAL and DOES 1-18 and 21-98 designed, engineered,
21 manufactured, tested, assembled, distributed, supplied, and/or sold and otherwise put into the
22 stream of commerce the defective Brake Booster Assembly, including the defective Delta
23 Stroke Sensor, installed in the SUBJECT VEHICLE that caused the brake failure experienced
24 by Defendant METHENGE on August 29, 2012.

25 31. Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 are strictly
26 liable for the deaths of Plaintiff CRUZ's children because the SUBJECT VEHICLE and its
27 component parts were defective and unreasonably dangerous for normal use due to its defective
28 design, manufacture, production, assembly, marketing, advertising, testing, sale, maintenance

1 and service; and due to said Defendants' failure to provide adequate warnings of the substantial
2 dangers known or knowable at the time of the SUBJECT VEHICLE's design, engineering,
3 manufacturing, testing, assembly, marketing, advertising, inspection, maintenance, sale and/or
4 distribution.

5 32. Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 designed,
6 engineered, manufactured, tested, assembled, marketed, advertised, inspected, maintained, sold,
7 distributed, and placed on the market and in the stream of commerce a defective product, the
8 SUBJECT VEHICLE, which was unreasonably dangerous to the consumer, knowing that the
9 product would reach and did reach the ultimate consumer without substantial change in the
10 defective condition it was in from the date when it left said Defendants' control.

11 33. Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 knew or
12 should have known that the ultimate users or consumers of this product would not, and could
13 not, inspect the SUBJECT VEHICLE so as to discover the latent defects described above.

14 34. The SUBJECT VEHICLE was defective when it left the control of Defendants
15 NISSAN, CONTINENTAL and DOES 1-18 and 21-98.

16 35. Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 knew or
17 should have known of the substantial dangers involved in the reasonably foreseeable use of the
18 SUBJECT VEHICLE, whose defective design, manufacturing and lack of warnings caused it to
19 have an unreasonably dangerous propensity to lose substantial braking ability without
20 warning—creating an unreasonably dangerous condition that would inevitably result in a fatal
21 traffic collision.

22 36. The SUBJECT VEHICLE was, at the time of the collision, being used in the
23 manner intended by Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98, and in
24 a manner that was reasonably foreseeable by said Defendants. Upon seeing the traffic stopping
25 in front of him, Defendant METHENGE attempted to apply his brakes but was unable to stop
26 the SUBJECT VEHICLE as a result of brake failure consistent with the failure of the Defective
27 Vehicles' defective Delta Stroke Sensor (DSS). Defendant METHENGE drove around the
28 stopped cars in front of him and drove on opposite lanes of travel (i.e. southbound lanes) in an

1 attempt to avoid a collision, and collided with the car driven by decedent Saida Mendez-
2 Bernardino.

3 37. Defendant METHENGE was a foreseeable user of the SUBJECT VEHICLE, and
4 Plaintiff CRUZ's children and Plaintiff MENDEZ's mother/BERNARDINO's daughter were
5 foreseeable victims of a collision caused by the hidden defect in the SUBJECT VEHICLE.

6 38. Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98, despite
7 clear knowledge of the extreme and hidden danger posed by the defect in the SUBJECT
8 VEHICLE, failed to provide adequate warnings of the defect to operators so that operators
9 could protect themselves from the danger posed by the SUBJECT VEHICLE.

10 39. The failure of Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-
11 98 to design, manufacture, and/or provide adequate warnings of the risks of substantial harm
12 associated with the foreseeable use of the SUBJECT VEHICLE was a substantial factor, and
13 legal and proximate cause, in causing the injuries and wrongful death of Plaintiff CRUZ's
14 daughters and MENDEZ's mother/BERNARDINO's daughter.

15 40. In addition, the aforementioned malfeasance, nonfeasance, defective design,
16 manufacture and distribution, failure to warn, conscious disregard and despicable conduct were
17 done with the advance knowledge, authorization, approval, and ratification of officers, directors
18 and/or managing agents of the aforesaid Defendants, and each of them. Persons within the
19 corporate hierarchy of Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98, who
20 were authorized to act on behalf of said Defendants, acted despicably in willful and conscious
21 disregard of the rights and safety of others. Acts of malicious conduct attributable to
22 Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 were done by a person or
23 persons with the authority to make corporate policy decisions on behalf of said Defendants
24 and/or the power within the corporate structure of said Defendants to enforce or not enforce the
25 corporate policies of said Defendants.

26 41. Information regarding risks of death and serious injury to others inherent in the
27 design, manufacture, sale and distribution of the Defective Vehicles including the SUBJECT
28 VEHICLE was known to responsible officers, employees and agents of Defendants NISSAN,

1 CONTINENTAL, and DOES 1-18 and 21-98 who exercised substantial discretionary authority
2 over decisions that resulted in the formulation of corporate policy for said Defendants.
3 Corporate decisions regarding the design, manufacture, distribution, warning, and marketing of
4 the Defective Vehicles including the SUBJECT VEHICLE that constituted despicable conduct
5 in this case were made by persons within the corporate hierarchy of said Defendants who were
6 authorized to make those decisions on behalf of Defendants NISSAN, CONTINENTAL and
7 DOES 1-18 and 21- 98.

8 42. As a legal and proximate result of the wrongful conduct of Defendants, NISSAN,
9 CONTINENTAL, and DOES 1-18 and 21-98, as alleged herein, decedents Hilda and Stephanie
10 Cruz suffered loss and damages before their death for which they had a cause of action. As
11 successor in interest to decedents' estate, Plaintiff CRUZ seeks recovery of decedents' survival
12 damages pursuant to C.C.P. §377.34 including but not limited to punitive damages. Based upon
13 said Defendants' malice and conscious disregard as set forth in greater particularity in
14 paragraphs 14-24 and 29-41, *supra*, Plaintiff CRUZ is entitled to an award of punitive and
15 exemplary damages.

16 43. As a legal and proximate result of the wrongful conduct of Defendants NISSAN,
17 CONTINENTAL, and DOES 1-18 and 21-98, Plaintiff CRUZ is entitled to wrongful death
18 damages, including but not limited to noneconomic damages for loss of love, companionship,
19 comfort, care, assistance, protection, affection, society, and moral support; and economic
20 damages including but not limited to loss of gifts, benefits, reasonable services, financial
21 support, property damage, funeral and burial expenses pursuant to C.C.P. §377.61.

22 44. As a legal and proximate cause of the wrongful conduct of Defendants NISSAN,
23 CONTINENTAL and DOES 1 to 18 and 21-98 as alleged herein, Plaintiff MENDEZ's mother,
24 decedent Saida Mendez-Bernardino, suffered loss and damages before her death for which she
25 had a cause of action. As successor in interest to decedents' estate, Plaintiff MENDEZ seeks
26 recovery of decedents' survival damages pursuant to C.C.P. §377.34 including but not limited to
27 punitive damages. Based upon said Defendants' malice and conscious disregard as set forth in
28 greater particularity in paragraphs 14-24 and 29-41, *supra*, Plaintiff MENDEZ is entitled to an

1 award of punitive and exemplary damages.

2 45. As a legal and proximate result of the wrongful conduct of Defendants NISSAN,
3 CONTINENTAL and DOES 1-18 and 21-98, Plaintiff MENDEZ is entitled to wrongful death
4 damages, including but not limited to noneconomic damages for loss of love, companionship,
5 comfort, care, assistance, protection, affection, society, and moral support; and economic
6 damages including but not limited to loss of gifts, benefits, reasonable services, financial
7 support, funeral and burial expenses pursuant to C.C.P. §377.61.

8 46. As a legal and proximate result of the wrongful conduct of Defendants NISSAN,
9 CONTINENTAL and DOES 1-18 and 21-98, Plaintiff BERNARDINO is entitled to wrongful
10 death damages, including but not limited to noneconomic damages for loss of love,
11 companionship, comfort, care, assistance, protection, affection, society, and moral support; and
12 economic damages including but not limited to loss of gifts, benefits, reasonable services,
13 financial support, funeral and burial expenses pursuant to C.C.P. §377.61.

14 47. Prejudgment interest on the damages set forth herein should be awarded in the
15 event that judgment for Plaintiffs be rendered; said sum should be calculated from the time that
16 this action arose or as provided under the California Civil Code.

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SECOND CAUSE OF ACTION

1 NEGLIGENCE – WRONGFUL DEATH – SURVIVAL CLAIMS
2 (By Plaintiffs CRUZ, MENDEZ, BERNARDINO Against Defendants
3 NISSAN, CONTINENTAL and DOES 1-18 and 21-98)

4 48. Plaintiffs incorporate by reference paragraphs 1 to 47 as if fully set forth herein.

5 49. At all times herein relevant, Defendants NISSAN, CONTINENTAL, and DOES
6 1-18 and 21-98 were and are engaged in the business of selling, designing, manufacturing,
7 fabricating, distributing, retailing, wholesaling, recommending, testing, modifying, controlling,
8 advertising, creating, processing, preparing, constructing, packaging, utilizing, warranting,
9 servicing, repairing, maintaining, marketing, leasing, renting, vending, installing, handling,
10 labeling, promoting, advertising, furnishing, retailing, analyzing, inspecting, supplying, warning
11 and placing into the stream of commerce the Defective Vehicles including the SUBJECT
12 VEHICLE.

13 50. Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98, including
14 their employees, agents, directors, officers, shareholders, partners and associates, had a legal
15 duty to act reasonably to protect persons who may come in contact with their product which
16 includes adequately and properly managing and operating their business and retail operations;
17 and to use reasonable care in the design, engineering, manufacturing, testing, assembly,
18 marketing, advertisement, inspection, maintenance, sale, supply, warning and distribution of the
19 Defective Vehicles including the SUBJECT VEHICLE; and to adequately and properly train
20 and supervise their employees and agents, including their designers, inspectors, quality control
21 agents and other manufacturing, testing, distribution, and delivery personnel; recalling the
22 Defective Vehicles including the SUBJECT VEHICLE; and acting without negligence,
23 conscious disregard, despicable or other wrongful conduct.

24 51. Defendants NISSAN and CONTINENTAL and DOES 1-18 and 21-98 breached
25 said duties and are guilty of one or more of the following negligent acts and/or omissions:

26 a. Failing to use due care in the design, engineering, manufacturing, testing,
27 assembly, marketing, advertising, inspection, maintenance, sale and/or distribution of the
28 SUBJECT VEHICLE and its components, and/or to utilize and/or implement reasonably safe

1 designs and/or warnings in its manufacture;

2 b. Failing to provide adequate and proper warnings to the public and to Plaintiffs of
3 the SUBJECT VEHICLE's danger when used in the manner for which it was intended;

4 c. Failing to design, manufacture, incorporate or to retrofit the SUBJECT VEHICLE
5 with reasonable safeguards and protections against brake failure that was reasonably foreseeable
6 when the SUBJECT VEHICLE was used in the manner for which it was intended;

7 d. Failing to adequately identify and mitigate hazards in accordance with good
8 engineering practices and to give reasonable warnings, including recall of the Defective Vehicles
9 and the SUBJECT VEHICLE;

10 e. Failing to make timely and adequate corrections to the manufacture and design of
11 the SUBJECT VEHICLE and its components; and

12 f. Failing to use due care in the testing, inspection, maintenance and servicing of the
13 SUBJECT VEHICLE and its components at all times prior to the incident;

14 52. Defendants NISSAN and CONTINENTAL and DOES 1-18 and 21-98 knew or
15 should have known from its testing of the production models of the SUBJECT VEHICLE and
16 its components, and/or other Defective Vehicles they manufactured, distributed, inspected and
17 maintained, that the SUBJECT VEHICLE and its components were defective, dangerous or
18 likely to become dangerous when used or misused in an intended or reasonably foreseeable
19 manner. Said Defendants had unfettered ability, after years of in-house testing and
20 investigations, to minimize the substantial risk of serious bodily harm or death caused by
21 Defective Vehicles including the SUBJECT VEHICLE by redesigning, properly manufacturing,
22 adequately warning, or recalling them. Said Defendants consciously chose not to take such
23 steps. These acts prevented the public from becoming aware that the SUBJECT VEHICLE
24 was, in reality, unsafe, dangerous and defective, thereby causing the described injuries, deaths,
25 and damages to Plaintiffs and the decedents herein.

26 53. Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 knew or
27 should have known that the SUBJECT VEHICLE and its components had a propensity to
28 become unreasonably dangerous during a catastrophic braking failure. Said Defendants knew

1 of and had developed safer alternatives, and adequate corrections were available which would
2 have avoided the incident and the deaths of Plaintiff CRUZ's minor children and MENDEZ's
3 mother/BERNARDINO's daughter.

4 54. Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 designed,
5 engineered, manufactured, tested, assembled, marketed, advertised, inspected, maintained, sold,
6 distributed, placed on the market and in the stream of commerce, and/or maintained and
7 serviced the SUBJECT VEHICLE in a manner and in a condition that was unreasonably
8 dangerous.

9 55. A reasonable manufacturer/distributor/seller under the same or similar
10 circumstances would have warned of the danger, and/or recalled the Defective Vehicles
11 including the SUBJECT VEHICLE.

12 56. The failure of Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-
13 98 to design, manufacture, or provide adequate warnings of the risks of substantial harm
14 associated with the foreseeable use of the SUBJECT VEHICLE was a substantial factor, and
15 legal and proximate cause, in causing the injuries and wrongful death of Plaintiff CRUZ's
16 children and Plaintiff MENDEZ's mother/Plaintiff BERNARDINO's daughter.

17 57. In addition, the aforementioned malfeasance, nonfeasance, defective design,
18 manufacture and distribution, failure to warn, conscious disregard and despicable conduct were
19 done with the advance knowledge, authorization, approval, and ratification of officers, directors
20 and/or managing, agents of the aforesaid defendants, and each of them. Persons within the
21 corporate hierarchy of Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98, who
22 were authorized to act on behalf of said Defendants, acted despicably in willful and conscious
23 disregard of the rights and safety of others. Acts of malicious conduct attributable to
24 Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 were done by a person or
25 persons with the authority to make corporate policy decisions on behalf of said Defendants
26 and/or the power within the corporate structure of said Defendants to enforce or not enforce the
27 corporate policies of said Defendants.

28 58. Information regarding risks of death and serious injury to others inherent in the

1 design, manufacture, sale and distribution of the Defective Vehicles including the SUBJECT
2 VEHICLE was known to responsible officers, employees and agents of Defendants NISSAN,
3 CONTINENTAL, and DOES 1-18 and 21-98, who exercised substantial discretionary authority
4 over decisions that resulted in the formulation of corporate policy for said Defendants.

5 Corporate decisions regarding the design, manufacture, distribution, warning, and marketing of
6 the Defective Vehicles including the SUBJECT VEHICLE that constituted despicable conduct
7 in this case were made by persons within the corporate hierarchy of said Defendants who were
8 authorized to make those decisions on behalf of Defendants NISSAN, CONTINENTAL and
9 DOES 1-18 and 21-98.

10 59. As a legal and proximate cause of the wrongful conduct, acts and omissions, of
11 Defendants NISSAN, CONTINENTAL, and DOES 1-18 and 21-98 as alleged herein, decedents
12 Hilda and Stephanie Cruz suffered loss and damages before their death for which they had a
13 cause of action. As successor in interest to decedents' estate, Plaintiff CRUZ seeks recovery
14 of decedents' survival damages pursuant to C.C.P. §377.34 including but not limited to punitive
15 damages. Based upon said Defendants' malice and conscious disregard as set forth in greater
16 particularity in paragraphs 14-24 and 49-58, *supra*, Plaintiff CRUZ is entitled to an award of
17 punitive and exemplary damages.

18 60. As a legal and proximate result of the negligence of Defendants NISSAN,
19 CONTINENTAL, and DOES 1-18 and 21-98, Plaintiff CRUZ is entitled to wrongful death
20 damages, including but not limited to noneconomic damages for loss of love, companionship,
21 comfort, care, assistance, protection, affection, society, and moral support; and economic
22 damages including but not limited to loss of gifts, benefits, reasonable services, financial
23 support, property damage, funeral and burial expenses pursuant to C.C.P. §377.61.

24 61. As a legal and proximate cause of the wrongful conduct, acts and omissions, of
25 Defendants NISSAN, CONTINENTAL and DOES 1-18 and 21-98 as alleged herein, decedent
26 Saida Mendez-Bernardino suffered loss and damages before her death for which she had a cause
27 of action. As successor in interest to decedents' estate, Plaintiff MENDEZ seeks recovery of
28 decedents' survival damages pursuant to C.C.P. §377.34 including but not limited to punitive

1 damages. Based upon said Defendants' malice and conscious disregard as set forth in greater
2 particularity in paragraphs 14-24, and 49-58, *supra*, Plaintiff MENDEZ is entitled to an award
3 of punitive and exemplary damages.

4 62. As a legal and proximate result of the negligence of Defendants NISSAN,
5 CONTINENTAL and DOES 1-18 and 21-98, Plaintiff MENDEZ is entitled to wrongful death
6 damages, including but not limited to noneconomic damages for loss of love, companionship,
7 comfort, care, assistance, protection, affection, society, and moral support; and economic
8 damages including but not limited to loss of gifts, benefits, reasonable services, financial
9 support, funeral and burial expenses pursuant to C.C.P. §377.61.

10 63. As a legal and proximate result of the negligence of Defendants NISSAN,
11 CONTINENTAL and DOES 1-18 and 21-98, Plaintiff BERNARDINO is entitled to wrongful
12 death damages, including but not limited to noneconomic damages for loss of love,
13 companionship, comfort, care, assistance, protection, affection, society, and moral support; and
14 economic damages including but not limited to loss of gifts, benefits, reasonable services,
15 financial support, funeral and burial expenses pursuant to C.C.P. §377.61.

16 64. Prejudgment interest on the damages set forth herein should be awarded in the
17 event that judgment for Plaintiffs be rendered; said sum should be calculated from the time that
18 this action arose or as provided under the California Civil Code.

THIRD CAUSE OF ACTION
NEGLIGENCE – WRONGFUL DEATH-SURVIVAL CLAIMS
(By Plaintiffs CRUZ and MENDEZ Against
SOLOMON METHENGE and DOES 1-18 and 21-98)

65. Plaintiff incorporates by reference paragraphs 1 to 14 and 26 as if fully set forth herein.

66. At all times relevant to this action, Defendant METHENGE and DOES 1-18 and 21-98, and each of them, owed the decedents a duty of reasonable care as well as statutory duties established in California Vehicle Code, which duties said Defendants and each of them did breach as described herein.

67. On August 29, 2012, at approximately 7:30 a.m., decedent Saida Mendez-Bernardino was driving her vehicle with her two daughters, decedents Hilda and Stephanie Cruz, as passengers.

68. Mendez-Bernardino’s vehicle was westbound on Willoughby Avenue and had a green light at the intersection of Highland Avenue and Willoughby Avenue in Los Angeles, California. Defendant METHENGE was northbound on Highland Avenue.

69. Witnesses described the SUBJECT VEHICLE as “out of control” as it swerved out of its northbound lane on Highland Ave. and onto the southbound lane on Highland Ave. and entered the intersection of Highland and Willoughby against a red light broadsiding decedents’ vehicle. Plaintiffs are informed and believe decedents’ vehicle was run off the road and collided with a streetlamp post.

70. Plaintiffs are informed Defendant METHENGE was driving over the posted speed limit and with a suspended license.

71. Plaintiffs are informed Defendant METHENGE entered the intersection of Highland and Willoughby against a red light when he broadsided decedents’ vehicle.

72. The jaws-of-life had to be used to extricate Hilda and Stephanie Cruz, as well as their mother, Saida Mendez-Bernardino, from the vehicle.

73. As a direct result of the negligence of Defendants METHENGE and DOES 1-18 and 21-98, Plaintiff CRUZ’s daughters and Plaintiff MENDEZ’s mother died as a result of the

1 injuries sustained during the collision.

2 74. Defendant METHENGE drove the SUBJECT VEHICLE with gross negligence,
3 recklessness and/or with a conscious disregard of the probability of harm to others, including
4 Plaintiff CRUZ's daughters and Plaintiff MENDEZ's mother.

5 75. As a proximate cause of the wrongful conduct of Defendants METHENGE and
6 DOES 1-18 and 21-98 as alleged herein, decedents Hilda and Stephanie Cruz suffered loss and
7 damages before their death for which they had a cause of action. As successor in interest to
8 decedents' estate, Plaintiff CRUZ seeks recovery of decedents' survival damages pursuant to
9 C.C.P. §377.34 including but not limited to punitive damages. Based upon said Defendants'
10 malice and conscious disregard as set forth in greater particularity in paragraphs 26 and 66-74,
11 *supra*, Plaintiff CRUZ is entitled to an award of punitive and exemplary damages.

12 76. As a proximate result of the negligence of Defendants METHENGE and DOES
13 1-18 and 21-98, Plaintiff CRUZ is entitled to wrongful death damages, including but not limited
14 to noneconomic damages for loss of love, companionship, comfort, care, assistance, protection,
15 affection, society, and moral support; and economic damages including but not limited to loss of
16 gifts, benefits, reasonable services, financial support, property damage, funeral and burial
17 expenses pursuant to C.C.P. §377.61.

18 77. As a proximate cause of the wrongful conduct of Defendants METHENGE and
19 DOES 1-18 and 21-98 as alleged herein, decedent Saida Mendez-Bernardino suffered loss and
20 damages before her death for which she had a cause of action. As successor in interest to
21 decedent's estate, Plaintiff MENDEZ seeks recovery of decedent's survival damages pursuant
22 to C.C.P. §377.34 including but not limited to punitive damages. Based upon said Defendants'
23 malice and conscious disregard as set forth in greater particularity in paragraphs 26 and 66-74,
24 *supra*, Plaintiff MENDEZ is entitled to an award of punitive and exemplary damages.

25 78. As a proximate result of the negligence of Defendants METHENGE and DOES
26 1-18 and 21-98, Plaintiff MENDEZ is entitled to wrongful death damages, including but not
27 limited to noneconomic damages for loss of love, companionship, comfort, care, assistance,
28 protection, affection, society, and moral support; and economic damages including but not

1 limited to loss of gifts, benefits, reasonable services, financial support, property damage, funeral
2 and burial expenses pursuant to C.C.P. §377.61.

3 79. Prejudgment interest on the damages set forth herein should be awarded in the
4 event that judgment for Plaintiffs be rendered; said sum should be calculated from the time that
5 this action arose or as provided under the California Civil Code.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

- 8 1. For economic and noneconomic damages as allowed by law according to proof;
9 2. For wrongful death damages that under all the circumstances of the case may be
10 just pursuant to C.C.P. §377.61 according to proof;
11 3. For survival damages as provided by C.C.P. §377.34 according to proof,
12 including but not limited to punitive damages;
13 4. For punitive and exemplary damages as allowed by law;
14 5. For costs of suit incurred herein;
15 6. For prejudgment interest on damages awarded from the time the action arose;
16 and
17 7. For such other and further relief as the court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs demand a jury trial as to all claims, issues, and requests for relief.

20
21 Dated: January 14, 2016

LAW OFFICES OF VICKI I. SARMIENTO

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23 By: 

Vicki I. Sarmiento, Esq.
Attorney for CRUZ

24
25 Dated: January 14, 2016

LAW OFFICES OF CLAUDIA C. BOHORQUEZ


26
27 By: 

Claudia C. Bohorquez, Esq. (SBN 150647)
Attorney for MENDEZ and BERNARDINO

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Dated: January 14, 2016

CORY WATSON, P.C.

By: 
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California, I am over the age of 18
6 and not a party in the within action; my business address is 333 N. GARFIELD AVENUE,
7 ALHAMBRA, CALIFORNIA 91801.

8 On January 14, 2016, I served the foregoing documents described as **CONSOLIDATED**
9 **COMPLAINT** served on all parties in this action by placing a true copy thereof enclosed in
10 sealed envelopes addressed as follows:

11 **[SEE ATTACHED SERVICE LIST]**

12 **(XX) BY MAIL.** I deposited such envelope(s) in the mail at Alhambra, California.
13 The envelope(s) were mailed with postage thereon fully prepaid. I am "readily
14 familiar" with the firm's practice of collection and processing correspondence for
15 mailing. Under that practice it would be deposited with the U.S. Postal Service
16 on the same day in the ordinary course of business. I am aware on motion of the
17 party served, service is presumed invalid if postal cancellation date or postage
18 meter date is more than one day after the date of deposit for mailing in affidavit.

19 **() BY OVERNIGHT MAIL.** I caused such envelope to be delivered by overnight
20 mail, to the offices of the addresses(s).

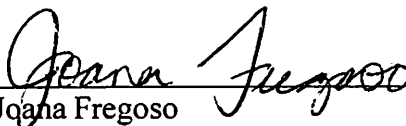
21 **() BY PERSONAL SERVICE.** I caused such envelope(s) to be delivered by hand
22 to the addressee(s).

23 **() BY FACSIMILE.** I caused all of the pages of the above entitled document to be
24 sent to the recipients noted on the attached service list via electronic transfer
25 (FAX) at the respective FAX numbers.

26 Executed this 14th day of January, 2016 at Alhambra, California.

27 I declare that I am employed in the office of a member of the bar of this Court at whose
28 direction the service was made.

I declare under penalty of perjury under the laws of the United States of America and the
State of California that the foregoing is true and correct.


Joana Fregoso

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CRUZ vs. METHENGE

CASE NO.: BC 493949 (Lead Case)

SERVICE LIST

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