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County of Los Angeles

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 ROSEMARIE MARTINEZ, an individual;
14 YVETTE TANNER, an individual;
15 ANNETTE GOMEZ, an individual; THE
16 ESTATE OF ARMANDO MARTINEZ, by
17 and through its Successor-in-Interest,
18 ROSEMARIE MARTINEZ,

19 Plaintiffs,

20 v.

21 LA BAHN RANCH, a business entity; LUIS
22 ALBERTO SILVA, an individual; MARIA
23 DE LOS ANGELES GARCIA ACUNA, an
24 individual; WHITTIER UPTOWN
25 ASSOCIATION, a corporation; WHITTIER
26 UPTOWN ASSOCIATION FARMERS
27 MARKET, a corporation; and DOES 1
28 through 50, inclusive,

Defendants.

Case No. BC617733

PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR WRONGFUL DEATH
AND SURVIVAL ACTION DAMAGES
SOUNDING IN THE FOLLOWING
CAUSES OF ACTION:

1. NEGLIGENCE
2. NEGLIGENT HIRING /
RETENTION / SUPERVISION /
TRAINING

DEMAND FOR JURY TRIAL

21 COMES NOW Plaintiffs, ROSEMARIE MARTINEZ, an individual, YVETTE TANNER,
22 an individual, ANNETTE GOMEZ, an individual, THE ESTATE OF ARMANDO MARTINEZ,
23 by and through its Successor-in-Interest, ROSEMARIE MARTINEZ, for Causes of Action against
24 Defendants, LA BAHN RANCH, a business entity, LUIS ALBERTO SILVA, an individual,
25 MARIA DE LOS ANGELES GARCIA ACUNA, an individual, WHITTIER UPTOWN
26 ASSOCIATION, a corporation, WHITTIER UPTOWN ASSOCIATION FARMERS MARKET, a
27 corporation, and DOES 1 through 50, inclusive, and each of them, complain and allege as follows:

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GENERAL ALLEGATIONS

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2 1. The true names and capacities, whether individual, plural, corporate, partnership,
3 associate, or otherwise, of DOES 1 through 50, inclusive, are unknown to Plaintiffs, who therefore
4 sues said Defendants by such fictitious names. The full extent of the facts linking such fictitiously
5 sued Defendants is unknown to Plaintiffs. Plaintiffs are informed and believe, and thereupon
6 allege, that each of the Defendants designated herein as a DOE was, and is, negligent, or in some
7 other actionable manner, responsible for the events and happenings hereinafter referred to, and
8 thereby negligently, or in some other actionable manner, legally and proximately caused the
9 hereinafter described injuries and damages to Plaintiffs. Plaintiffs will hereafter seek leave of the
10 Court to amend this Complaint to show the Defendants' true names and capacities after the same
11 have been ascertained.

12 2. At all times relevant, Plaintiffs ROSEMARIE MARTINEZ, YVETTE TANNER,
13 ANNETTE GOMEZ, and THE ESTATE OF ARMANDO MARTINEZ, by and through its
14 Successor-in-Interest, ROSEMARIE MARTINEZ, are now, and at all relevant times were,
15 residents of the County of Los Angeles.

16 3. Plaintiff THE ESTATE OF ARMANDO MARTINEZ is represented by and
17 through its successor-in-interest, ROSEMARIE MARTINEZ, wife of decedent ARMANDO
18 MARTINEZ, and as such, ROSEMARIE MARTINEZ is decedent's Successor-in-interest
19 pursuant to California *Code of Civil Procedure* § 377.11. Plaintiff ROSEMARIE MARTINEZ
20 has executed and filed with this Complaint a declaration of Successor-in-Interest under penalty of
21 perjury pursuant to California *Code of Civil Procedure* § 377.32. Plaintiff THE ESTATE OF
22 ARMANDO MARTINEZ, by and through its successor-in-interest, ROSEMARIE MARTINEZ
23 seeks survival action damages pursuant to California *Code of Civil Procedure* §§ 377.30 and
24 377.34 which provides that the damages recoverable under the survival action include the loss or
25 damage that the decedent sustained or incurred before death, including any penalties or punitive or
26 exemplary damages that the decedent would have been entitled to recover had the decedent lived.

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1 4. Plaintiffs are informed and believe, and thereon allege, that Defendant LA BAHN
2 RANCH (hereafter "LBR") is, and at all times herein relevant was, a business entity form
3 unknown authorized to do, and that has regularly done, and is doing, business within the County
4 of Los Angeles, in the State of California.

5 5. Plaintiffs are informed and believe, and thereon allege, that Defendant, LUIS
6 ALBERTO SILVA (hereafter "SILVA"), is, and at all relevant times was, a resident of the County
7 of Los Angeles, State of California.

8 6. Plaintiffs are informed and believe, and thereon allege, that Defendant MARIA DE
9 LOS ANGELES GARCIA ACUNA (hereafter "ACUNA"), is, and at all relevant times was, a
10 resident of the County of Los Angeles, State of California.

11 7. Plaintiffs are informed and believe, and thereon allege, that Defendant WHITTIER
12 UPTOWN ASSOCIATION (hereafter "WUA"), is, and at all times herein relevant was, a business
13 entity form unknown authorized to do, and that has regularly done, and is doing, business within
14 the County of Los Angeles, in the State of California.

15 8. Plaintiffs are informed and believe, and thereon allege, that Defendant WHITTIER
16 UPTOWN ASSOCIATION FARMERS MARKET (hereafter "WUAFM"), is, and at all times
17 herein relevant was, a business entity form unknown authorized to do, and that has regularly done,
18 and is doing, business within the County of Los Angeles, in the State of California.

19 9. Plaintiffs are informed, and thereon believe, and thereon alleges, that at all times
20 mentioned herein, Defendants WUA, WUAFM, LBR, SILVA, ACUNA, and each of them,
21 including DOES 1 through 50, inclusive, and each of them, were agents, servants, employees,
22 successors in interest, and/or joint venturers of their co-Defendants, and were acting within the
23 course, scope, and authority of said agency, employment, and/or venture, and that each and every
24 Defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring of
25 each and every other defendant as an agent, servant, employee, successor in interest, and/or joint
26 venturer.

27 10. Plaintiffs are informed and believe, and thereon allege, that Defendants WUA,
28 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, owned,

1 leased, managed, built, constructed, designed, inspected, maintained, regulated, directed, operated
2 and controlled the subject "Whittier Farmers Market" located at or near the intersection of
3 Philadelphia Street and Bright Avenue in the City of Whittier, County of Los Angeles, specifically
4 including the area within the parking lot on the south/west corner of the intersection of
5 Philadelphia Street and Bright Avenue (hereafter "SUBJECT MARKET PROPERTY").

6 11. Plaintiffs are informed and believe, and thereon allege, that at all times herein
7 relevant, including the time of the subject incident, Defendants WUA, WUAFM, LBR, SILVA,
8 ACUNA and DOES 1 through 50, inclusive, and each of them, owned, leased, managed,
9 maintained, regulated, directed, operated and controlled the subject 1999 Ford E-350 van bearing
10 California License Plate Number 7FQP519 ("SUBJECT VEHICLE").

11 12. Plaintiffs are further informed and believe, and thereon allege, that at all times
12 herein relevant, Defendants ACUNA, was employed by, or was the agent of, Defendants SILVA,
13 LBR, WUA, WUAFM and DOES 1 through 50, inclusive, and each of them, and was at all times
14 herein relevant acting within the course and scope of her duties for her employer and/or principal,
15 Defendants SILVA, LBR, WUA, WUAFM and DOES 1 through 50, inclusive, and each of them.

16 13. Plaintiffs are further informed and believe, and thereon allege, that at all times
17 herein relevant, Defendants LBR, SILVA and ACUNA, were employed by, or was the agents of,
18 Defendants WUA, WUAFM and DOES 1 through 50, inclusive, and each of them, and was at all
19 times herein relevant acting within the course and scope of her duties for their employer and/or
20 principal, Defendant WUA, WUAFM and DOES 1 through 50, inclusive, and each of them.

21 14. Plaintiffs are informed and believe, and thereon alleges, that Defendants LBR,
22 SILVA, WUA, WUAFM and DOES 1 through 50, inclusive, and each of them, authorized
23 Defendant ACUNA to drive and use the SUBJECT VEHICLE for the work purposes, and
24 specifically authorized Defendant ACUNA to drive and use the SUBJECT VEHICLE on the
25 SUBJECT MARKET PROPERTY, including driving the SUBJECT VEHICLE on the SUBJECT
26 MARKET PROPERTY at the time of the subject incident.

27 15. Plaintiffs are informed and believes, and thereon alleges, that Defendants WUA,
28 WUAFM, LBR, SILVA, and DOES 1 through 50 inclusive, and each of them, were informed for a

1 substantial period of time prior to the date of the subject incident that Defendant ACUNA was
2 clearly unfit, unqualified and/or not capable to safely drive a vehicle on public roadways.
3 Plaintiffs are further informed and believe, and thereon allege, that despite the knowledge of
4 Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them,
5 with regard to obvious dangers associated with allowing Defendant ACUNA to drive a motor
6 vehicle on public roadways for work related purposes, Defendants negligently, recklessly and in
7 conscious disregard for public safety, authorized and required Defendant ACUNA to drive the
8 SUBJECT VEHICLE on the public highways for purposes related to her employment with
9 Defendants for purposes of making profits.

10 16. Plaintiffs are informed and believe, and thereon allege, that Defendants WUA,
11 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50 inclusive, and each of them, were
12 informed for a substantial period of time prior to the date of the subject incident that their own
13 rules, policies, procedures, regulations, contracts, licenses, permits and agreements, as well as
14 City, State and/or Federal laws, statutes and/or regulations, provided, directed and/or instructed
15 that no vehicles of any kind, including the SUBJECT VEHICLE, were permitted on and/or within
16 the SUBJECT MARKET PROPERTY for 30 minutes prior to the market opening business to the
17 public at 8:00 A.M. on every Friday. Plaintiffs are further informed and believe, and thereon
18 allege, that despite such knowledge and awareness relating to any vehicles, including the
19 SUBJECT VEHICLE, not being permitted on the SUBJECT MARKET PROPERTY within 30
20 minutes prior to the market opening business to the public at 8:00 A.M., Defendants WUA,
21 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50 inclusive, and each of them,
22 negligently, recklessly and with a conscious disregard for public safety would operate the
23 SUBJECT VEHICLE on the SUBJECT MARKET PROPERTY after the market opened up
24 business to the public at 8:00 A.M. on every Friday. Defendants engaged in these negligent and
25 reckless acts in the interest of maximizing profits while knowingly putting the lives of innocent
26 members of the public in danger of severe injury or death.

27 17. On or about April 1, 2016 at approximately 8:30 A.M., after the SUBJECT
28 MARKET PROPERTY had opened up business to the public, decedent ARMANDO MARTINEZ

1 was acting in a reasonable manner and with due care while lawfully standing within the SUBJECT
2 MARKET PROPERTY waiting to purchase food and/or merchandise from one of the Farmers
3 Market vendors. Unbeknownst to decedent ARMANDO MARTINEZ, Defendants WUA,
4 WUAFM, LBR, SILVA and ACUNA were negligently and recklessly operating and controlling
5 the SUBJECT VEHICLE on the SUBJECT MARKET PROPERTY with a conscious disregard for
6 the safety of innocent members of the public. Also unbeknownst to decedent ARMANDO
7 MARTINEZ, Defendants WUA, WUAFM, LBR, SILVA and ACUNA were attempting to
8 maximize profits while consciously putting the public in danger of severe injury or death by
9 operating the SUBJECT VEHICLE on and/or within the SUBJECT MARKET PROPERTY after
10 the market had opened up for business to the public. As a legal and proximate result of these
11 negligent and reckless acts by Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1
12 through 50, done with a conscious disregard for public safety, suddenly and without any warning
13 the SUBJECT VEHICLE began reversing at a high speed and violently collided with decedent
14 ARMANDO MARTINEZ, which legally and proximately caused severe injuries that eventually
15 led to his death (hereafter "SUBJECT INCIDENT").

FIRST CAUSE OF ACTION

(Wrongful death and Survival Action Sounding In Negligence and Negligence Per Se By All Plaintiffs As Against All Defendants and DOES 1 through 50, Inclusive)

18 18. Plaintiffs re-allege and incorporate herein by reference each and every allegation
19 and statement contained in the prior paragraphs.

20 19. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
21 herein, Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive,
22 and each of them, owned, leased, maintained, inspected, entrusted, delegated, managed, regulated,
23 controlled and operated the SUBJECT VEHICLE.

24 20. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
25 herein, Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive,
26 and each of them, owed a duty of care to all reasonably foreseeable people, including Plaintiffs, to
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own, lease, maintain, inspect, entrust, delegate, manage, regulate, control and operate the
SUBJECT VEHICLE in a reasonable manner. Plaintiffs are further informed and believes, and
thereon alleges, that said Defendants also owed a nondelegable duty to third persons, including
Plaintiffs, for any harm caused by the negligence or other wrongful conduct of independent
contractor(s) and/or agent(s).

21. Plaintiffs are informed and believe, and thereon allege, that the negligent, reckless
and unlawful conduct by Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1
through 50, inclusive, and each of them, in regard to the ownership, leasing, entrustment,
delegation, management, maintenance, inspection, regulation, control and operation of the
SUBJECT VEHICLE was the direct, legal and proximate cause of the severe injuries and death of
decedent ARMANDO MARTINEZ and damages of Plaintiffs as herein alleged.

22. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
herein, Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive,
and each of them, negligently and recklessly owned, leased, maintained, inspected, entrusted,
delegated, managed, regulated, controlled and operated the SUBJECT VEHICLE with a conscious
disregard for public safety so as to legally and proximately cause the SUBJECT VEHICLE to
collide with decedent ARMANDO MARTINEZ, who was acting in a reasonable manner and with
due care while standing within the SUBJECT MARKET PROPERTY as one of many innocent
members of the public.

23. Plaintiffs are informed and believe, and thereon allege, that Defendants WUA,
WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, owned,
leased, rented, managed, built, constructed, designed, inspected, maintained, regulated, warned,
directed, operated and controlled the SUBJECT MARKET PROPERTY.

24. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
herein, Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive,
and each of them, owed a duty of care to all reasonably foreseeable people, including Plaintiffs, to
own, lease, rent, manage, build, construct, design, inspect, maintain, regulate, provide warning,
direct, operate and control the SUBJECT MARKET PROPERTY in a reasonable manner.

25. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, negligently and recklessly owned, leased, rented, managed, built, constructed, designed, inspected, maintained, regulated, warned, directed, operated and controlled the SUBJECT MARKET PROPERTY, in such a manner that the SUBJECT MARKET PROPERTY was in a dangerously defective condition creating a significant safety risk for foreseeable persons, including decedent ARMANDO MARTINEZ, of being struck by a vehicle within the SUBJECT MARKET PROPERTY during hours of operation open to the public.

26. Plaintiffs are informed and believe, and thereon allege, that the negligent and reckless conduct by Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, in regard to the ownership, building, construction, design, management, failure to warn, regulation, maintenance, inspection, renting, leasing and control of the SUBJECT MARKET PROPERTY such that it was in a dangerously defective condition creating a significant safety risk for foreseeable persons, including Plaintiff, of being struck by a vehicle within the SUBJECT MARKET PROPERTY during hours of operation and suffer serious injury or death, was the direct, legal and proximate cause of the SUBJECT INCIDENT and the direct, legal and proximate cause of the severe injuries and death of decedent ARMANDO MARTINEZ and damages of Plaintiffs as herein alleged.

27. Plaintiffs are informed and believe, and thereon allege, that Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, were also per se negligent for operating the SUBJECT VEHICLE in violation of the following California Vehicle Code Sections: (a) 22106. No person shall start a vehicle stopped, standing, or parked on a highway, nor shall any person back a vehicle on a highway until such movement can be made with reasonable safety; (b) 22350. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property; (c) 21952. The driver of any motor vehicle, prior to driving over or upon any sidewalk, shall yield the right-of-way to any pedestrian approaching thereon; (d) 22107. No

1 person shall turn a vehicle from a direct course or move right or left upon a roadway until such
2 movement can be made with reasonable safety and then only after the giving of an appropriate
3 signal in the manner provided in this chapter in the event any other vehicle may be affected by the
4 movement.

5 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein
6 mentioned, decedent ARMANDO MARTINEZ and Plaintiffs were in the class of people the
7 aforementioned California Vehicle Code Sections, 22106, 22350, 21952, 22107, were meant to
8 protect, and decedent ARMANDO MARTINEZ and Plaintiffs suffered the type(s) of injury(ies)
9 the aforementioned Vehicle Code Sections, 22106, 22350, 21952, 22107, were meant to prevent.
10 Plaintiffs are further informed and believe, and thereon allege, that said violation of Vehicle Code
11 Sections 22106, 22350, 21952, 22107 was the legal and proximate cause of the death of decedent
12 ARMANDO MARTINEZ and damages Plaintiffs complain of herein.

13 29. As a legal, direct and proximate result of the conduct of Defendants WUA,
14 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, as
15 aforesaid, decedent ARMANDO MARTINEZ suffered pre-death physical injuries, mental
16 anguish, terror, anxiety, unconsciousness, and ultimately death. This paragraph pertains to the
17 survival action damages of Plaintiff THE ESTATE OF ARMANDO MARTINEZ, by and through
18 its successor-in-interest, ROSEMARIE MARTINEZ, pursuant to California *Code of Civil*
19 *Procedure* §§ 377.30 and 377.34 which provides that the damages recoverable under the survival
20 action include the loss or damage that the decedent sustained or incurred before death, including
21 any penalties or punitive or exemplary damages that the decedent would have been entitled to
22 recover had the decedent lived.

23 30. As a legal, direct and proximate result of the conduct of Defendants WUA,
24 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, as
25 aforesaid, Plaintiffs have sustained damages resulting from the loss of love, affection, society,
26 service, relationship, comfort, care, support, right of support, expectations of future support and
27 counseling, companionship, solace and mental support, training, guidance as well as other benefits
28 and assistance, of decedent ARMANDO MARTINEZ, all to their general damages in a sum in

1 excess of the jurisdictional limits of this Court, which will be stated according to proof, pursuant
2 to Section 425.10 of the California Code of Civil Procedure.

3 31. As a legal, direct and proximate result of the conduct of Defendants WUA,
4 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, as
5 aforesaid, Plaintiffs will be deprived of the financial support and assistance of decedent
6 ARMANDO MARTINEZ, the exact amount of such losses to be stated according to proof,
7 pursuant to Section 425.10 of the California Code of Civil Procedure.

8 32. As a legal, direct and proximate result of the conduct of Defendants WUA,
9 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, as
10 aforesaid, Plaintiffs have incurred property, medical, funeral and burial expenses, all in relation to
11 the death of decedent ARMANDO MARTINEZ, in an amount to be stated according to proof,
12 pursuant to Section 425.10 of the California Code of Civil Procedure.

13 33. As a legal, direct and proximate result of the conduct of Defendants WUA,
14 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, as
15 aforesaid, decedent ARMANDO MARTINEZ was compelled to, and did, employ the services of
16 hospitals, physicians, surgeons, nurses, and the like, to care for and treat him, the exact amount of
17 such losses to be stated according to proof, pursuant to Section 425.10 of the California Code of
18 Civil Procedure.

19 34. As a legal, direct and proximate result of the conduct of Defendants WUA,
20 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, as
21 aforesaid, decedent ARMANDO MARTINEZ suffered lost earnings and property damages, the
22 exact amount of such losses to be stated according to proof, pursuant to Section 425.10 of the
23 California Code of Civil Procedure.

24 35. Plaintiffs are informed and believe, and thereon allege, that Defendants WUA,
25 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, inclusive, and each of them, engaged
26 in said misconduct with a conscious disregard of the dangers such misconduct would and did
27 create for the rights and safety of the public, including decedent ARMANDO MARTINEZ and
28 Plaintiffs. Plaintiffs are further informed and believe, and thereon allege, that for a substantial

1 period of time prior to the SUBJECT INCIDENT, said Defendants acted with malice in that they
2 engaged in despicable conduct in conscious disregard of the rights, safety, and welfare of decedent
3 ARMANDO MARTINEZ and Plaintiffs by reasons that include the following:

4 a. Defendants were fully aware and on notice that there had been prior
5 incident(s) of persons(s) being struck by vehicles operated within the SUBJECT MARKET
6 PROPERTY during hours of operation. It was because of this known danger that Defendants' own
7 rules, policies, procedures, regulations, contracts, licenses, permits and agreements, as well as
8 City, State and/or Federal laws, statutes and/or regulations, provided, directed and/or instructed
9 that no vehicles of any kind, including SUBJECT VEHICLE, were permitted on and/or within the
10 SUBJECT MARKET PROPERTY for a minimum of 30 minutes prior to the market opening
11 business to the public at 8:00 A.M. on every Friday.

12 b. Defendants were fully aware and on notice of that their own rules, policies,
13 procedures, regulations, contracts, licenses, permits and agreements, as well as City, State and/or
14 Federal laws, statutes and/or regulations, provided, directed and/or instructed that no vehicles of
15 any kind, including SUBJECT VEHICLE, were permitted on and/or within the SUBJECT
16 MARKET PROPERTY for a minimum of 30 minutes prior to the market opening business to the
17 public at 8:00 A.M. on every Friday.

18 c. Despite Defendants having knowledge and awareness their own rules,
19 policies, procedures, regulations, contracts, licenses, permits and agreements, as well as City, State
20 and/or Federal laws, statutes and/or regulations, provided, directed and/or instructed that no
21 vehicles of any kind, including SUBJECT VEHICLE, were permitted on and/or within the
22 SUBJECT MARKET PROPERTY for a minimum of 30 minutes prior to the market opening
23 business to the public at 8:00 A.M. on every Friday, Defendants WUA, WUAFM, LBR, SILVA,
24 ACUNA and DOES 1 through 50 inclusive, and each of them, negligently, recklessly and with a
25 conscious disregard for public safety would operate the SUBJECT VEHICLE on the SUBJECT
26 MARKET PROPERTY after the market opened up business to the public at 8:00 A.M. on every
27 Friday.

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d. Defendants were on notice and fully aware that allowing vehicles, such as the SUBJECT VEHICLE, to be operated within the SUBJECT MARKET PROPERTY during hours of operation would create a high probability of an innocent member of the public being violently struck causing severe injury or death.

e. Despite such knowledge, Defendants would recklessly and with a conscious disregard for public safety have a dangerous practice of permitting and/or allowing vehicles such as the SUBJECT VEHICLE to be operated within the SUBJECT MARKET PROPERTY after the market had opened business to the public.

f. Despite such knowledge, Defendants engaged in a further conscious disregard of public safety by taking no action to provide any form of warnings relating to the reckless and dangerous practice of allowing vehicles on and/or within the SUBJECT MARKET PROPERTY after the market had opened for business to the public.

g. Defendants knew or were reckless for not knowing that such misconduct created a substantial risk and high probability of injury or death to members of the public, including Plaintiff. Despite such knowledge, said Defendants knowingly and recklessly permitted and continued to permit the SUBJECT VEHICLE to be operated on and/or within the SUBJECT MARKET PROPERTY in a willful and conscious disregard for the rights and safety of members of the public, including decedent ARMANDO MARTINEZ and Plaintiffs;

h. Defendants WUA, WUAFM, LBR, SILVA knew or were reckless for not knowing that for a substantial period of time prior to the date of the subject incident that Defendant ACUNA was clearly unfit, unqualified and/or not capable to safely drive a vehicle on public roadways, and was especially clearly unfit, unqualified and/or not capable to safely operate the SUBJECT VEHICLE on and/or within the SUBJECT MARKET PROPERTY after the market had opened business to the public.

i. Defendants WUA and WUAFM knew or were reckless for not knowing that for a substantial period of time prior to the date of the subject incident that Defendant LBR, SILVA, ACUNA were clearly unfit, unqualified and/or not capable to safely drive a vehicle on public roadways, and were especially unfit, unqualified and/or not capable to safely operate the

1 SUBJECT VEHICLE on and/or within the SUBJECT MARKET PROPERTY after the market
2 had opened business to the public.

3 j. Defendants WUA, WUAFM, LBR, SILVA hired and retained Defendants
4 ACUNA with job duties that included driving the SUBJECT VEHICLE despite lacking the proper
5 training, experience or ability necessary to safely drive such a vehicle;

6 k. Defendants WUA, WUAFM, LBR, SILVA ratified, consented, permitted,
7 allowed, authorized, Defendant ACUNA to continue driving the SUBJECT VEHICLE despite
8 knowing she had a common practice of driving the SUBJECT VEHICLE without due care, and
9 specifically would recklessly operate the SUBJECT VEHICLE on and/or within the SUBJECT
10 MARKET PROPERTY after the market had opened business to the public despite knowing it was
11 in violation of the safety rules and regulations and was extremely dangerous for the innocent
12 members of the public coming to this farmers market.

13 l. Defendants engaged in these negligent and reckless acts in the interest of
14 maximizing profits while knowingly putting the lives of innocent members of the public in danger
15 of severe injury or death.

16 m. Defendants engaged in these wrongful acts with a conscious disregard for
17 public safety by making the decision to place profits ahead of safety.

18 36. Defendants WUA, WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50,
19 inclusive, and each of them, had prior knowledge of the dangers and risks that such misconduct
20 would and did create, including causing innocent members of the public serious injury or death.
21 Said misconduct by Defendants, in knowingly or recklessly creating said substantial risk and high
22 probability of injury or death to members of the public, was oppressive, despicable, highly
23 reprehensible and done in the conscious disregard for the rights and safety of the public, including
24 Plaintiffs. Said acts and omissions were authorized and/or ratified by managerial employees of
25 said Defendants, and were carried out with the consent of their officers, directors, and/or
26 managing agents. As such, the imposition of punitive damages against Defendants WUA,
27 WUAFM, LBR, SILVA, ACUNA and DOES 1 through 50, and each of them, is appropriate.

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SECOND CAUSE OF ACTION

(Wrongful death and Survival Action Sounding In Negligent

**Hiring/Retention/Supervision/Training By All Plaintiffs As Against Defendants WUA,
WUAFM, LBR, SILVA and DOES 1 through 50, Inclusive)**

37. Plaintiffs re-allege and incorporate herein by reference each and every allegation and statement contained in the prior paragraphs.

38. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendant ACUNA was acting within the course and scope of her duties for his employer(s) and/or principal(s), Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them. Plaintiffs are further informed and believe, and thereon allege, that at all times mentioned herein, Defendants LBR, SILVA and ACUNA were acting within the course and scope of their duties for their employer(s) and/or principal(s), Defendants WUA, WUAFM and DOES 1 through 50, inclusive, and each of them.

39. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, were negligent and reckless in the hiring and/or retention of Defendants ACUNA in that Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, and each of them, knew or should have known that Defendants ACUNA was unfit for the specific tasks to be performed during the course of her employment, namely the general safe operation of the SUBJECT VEHICLE.

40. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants WUA, WUAFM and DOES 1 through 50, inclusive, and each of them, were negligent and reckless in the hiring and/or retention of Defendants LBR, SILVA and ACUNA in that Defendants WUA, WUAFM and DOES 1 through 50, and each of them, knew or should have known that Defendants LBR, SILVA ACUNA were unfit for the specific tasks to be performed during the course of her employment, namely the general safe operation of the SUBJECT VEHICLE.

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1 41. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
2 herein, Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of
3 them, were negligent and reckless by failing to provide any or sufficient training or supervision to
4 Defendant ACUNA after hiring her, and continued to retain Defendant ACUNA as an agent
5 and/or employee for job performance which included driving motor vehicles such as the
6 SUBJECT VEHICLE for Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50.

7 42. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
8 herein, Defendants WUA, WUAFM and DOES 1 through 50, inclusive, and each of them, were
9 negligent and reckless by failing to provide any or sufficient training or supervision to Defendant
10 ACUNA after hiring her, and continued to retain Defendants LBR, SILVA and ACUNA as agents
11 and/or employees for job performance which included driving motor vehicles such as the
12 SUBJECT VEHICLE for Defendants WUA, WUAFM and DOES 1 through 50.

13 43. Plaintiffs are informed and believe, and thereon allege, that at all times herein
14 relevant, Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each
15 of them, owed a duty of care to the public, including decedent ARMANDO MARTINEZ,
16 including the duty to act reasonably in the hiring, retention, training and supervision of their
17 agents, employees, servants, and/or independent contractors, which they assigned to operate motor
18 vehicles such as the SUBJECT VEHICLE.

19 44. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
20 herein, Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of
21 them, failed to act reasonably in the hiring, retention, training, and supervision of their agents,
22 employees, servants and/or independent contractors, including Defendant ACUNA.

23 45. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
24 herein, Defendants WUA, WUAFM and DOES 1 through 50, inclusive, and each of them, failed
25 to act reasonably in the hiring, retention, training, and supervision of their agents, employees,
26 servants and/or independent contractors, including Defendant LBR, SILVA and ACUNA.

27 46. Plaintiffs are informed and believe, and thereon allege, that the aforementioned
28 negligent and reckless hiring, retention, training, and supervision of Defendant ACUNA by

Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, directly, legally and proximately caused or contributed to a violent collision between the SUBJECT VEHICLE and decedent ARMANDO MARTINEZ, who was acting in a reasonable manner and with due care while standing within the SUBJECT MARKET PROPERTY as an innocent member of the public.

47. Plaintiffs are informed and believe, and thereon allege, that the aforementioned negligent and reckless hiring, retention, training, and supervision of Defendant LBR, SILVA and ACUNA by Defendants WUA, WUAFM and DOES 1 through 50, inclusive, and each of them, directly, legally and proximately caused or contributed to a violent collision between the SUBJECT VEHICLE and decedent ARMANDO MARTINEZ, who was acting in a reasonable manner and with due care while standing within the SUBJECT MARKET PROPERTY as an innocent member of the public.

48. As a legal, direct and proximate result of the conduct of Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, as aforesaid, decedent ARMANDO MARTINEZ suffered pre-death physical injuries, mental anguish, terror, anxiety, unconsciousness, and ultimately death. This paragraph pertains to the survival action damages of Plaintiff THE ESTATE OF ARMANDO MARTINEZ, by and through its successor-in-interest, ROSEMARIE MARTINEZ, pursuant to California *Code of Civil Procedure* §§ 377.30 and 377.34 which provides that the damages recoverable under the survival action include the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived.

49. As a legal, direct and proximate result of the conduct of Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, as aforesaid, Plaintiffs have sustained damages resulting from the loss of love, affection, society, service, relationship, comfort, care, support, right of support, expectations of future support and counseling, companionship, solace and mental support, training, guidance as well as other benefits and assistance, of decedent ARMANDO MARTINEZ, all to their general damages in a sum in

1 excess of the jurisdictional limits of this Court, which will be stated according to proof, pursuant
2 to Section 425.10 of the California Code of Civil Procedure.

3 50. As a legal, direct and proximate result of the conduct of Defendants WUA,
4 WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, as aforesaid,
5 Plaintiffs will be deprived of the financial support and assistance of decedent ARMANDO
6 MARTINEZ, the exact amount of such losses to be stated according to proof, pursuant to Section
7 425.10 of the California Code of Civil Procedure.

8 51. As a legal, direct and proximate result of the conduct of Defendants WUA,
9 WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, as aforesaid,
10 Plaintiffs have incurred property, medical, funeral and burial expenses, all in relation to the death
11 of decedent ARMANDO MARTINEZ, in an amount to be stated according to proof, pursuant to
12 Section 425.10 of the California Code of Civil Procedure.

13 52. As a legal, direct and proximate result of the conduct of Defendants WUA,
14 WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, as aforesaid,
15 decedent ARMANDO MARTINEZ was compelled to, and did, employ the services of hospitals,
16 physicians, surgeons, nurses, and the like, to care for and treat him, the exact amount of such
17 losses to be stated according to proof, pursuant to Section 425.10 of the California Code of Civil
18 Procedure.

19 53. As a legal, direct and proximate result of the conduct of Defendants WUA,
20 WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, as aforesaid,
21 decedent ARMANDO MARTINEZ suffered lost earnings and property damages, the exact
22 amount of such losses to be stated according to proof, pursuant to Section 425.10 of the California
23 Code of Civil Procedure.

24 54. Plaintiffs are informed and believe, and thereon allege, that Defendants WUA,
25 WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, engaged in said
26 misconduct with a conscious disregard of the dangers such misconduct would and did create for
27 the rights and safety of the public, including decedent ARMANDO MARTINEZ and Plaintiffs.
28 Plaintiffs are further informed and believe, and thereon allege, that for a substantial period of time

1 prior to the SUBJECT INCIDENT, said Defendants acted with malice in that they engaged in
2 despicable conduct in conscious disregard of the rights, safety, and welfare of decedent
3 ARMANDO MARTINEZ and Plaintiffs by reasons that include the following:

4 a. Defendants were fully aware and on notice that there had been prior
5 incident(s) of persons(s) being struck by vehicles operated within the SUBJECT MARKET
6 PROPERTY during hours of operation. It was because of this known danger that Defendants' own
7 rules, policies, procedures, regulations, contracts, licenses, permits and agreements, as well as
8 City, State and/or Federal laws, statutes and/or regulations, provided, directed and/or instructed
9 that no vehicles of any kind, including SUBJECT VEHICLE, were permitted on and/or within the
10 SUBJECT MARKET PROPERTY for a minimum of 30 minutes prior to the market opening
11 business to the public at 8:00 A.M. on every Friday.

12 b. Defendants were fully aware and on notice that their own rules, policies,
13 procedures, regulations, contracts, licenses, permits and agreements, as well as City, State and/or
14 Federal laws, statutes and/or regulations, provided, directed and/or instructed that no vehicles of
15 any kind, including SUBJECT VEHICLE, were permitted on and/or within the SUBJECT
16 MARKET PROPERTY for a minimum of 30 minutes prior to the market opening business to the
17 public at 8:00 A.M. on every Friday.

18 c. Despite Defendants having knowledge and awareness their own rules,
19 policies, procedures, regulations, contracts, licenses, permits and agreements, as well as City, State
20 and/or Federal laws, statutes and/or regulations, provided, directed and/or instructed that no
21 vehicles of any kind, including SUBJECT VEHICLE, were permitted on and/or within the
22 SUBJECT MARKET PROPERTY for a minimum of 30 minutes prior to the market opening
23 business to the public at 8:00 A.M. on every Friday, Defendants WUA, WUAFM, LBR, SILVA,
24 ACUNA and DOES 1 through 50 inclusive, and each of them, negligently, recklessly and with a
25 conscious disregard for public safety would operate the SUBJECT VEHICLE on the SUBJECT
26 MARKET PROPERTY after the market opened up business to the public at 8:00 A.M. on every
27 Friday.

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d. Defendants were on notice and fully aware that allowing vehicles, such as the SUBJECT VEHICLE, to be operated within the SUBJECT MARKET PROPERTY during hours of operation would create a high probability of an innocent member of the public being violently struck causing severe injury or death.

e. Despite such knowledge, Defendants would recklessly and with a conscious disregard for public safety have a dangerous practice of permitting and/or allowing vehicles such as the SUBJECT VEHICLE to be operated within the SUBJECT MARKET PROPERTY after the market had opened business to the public.

f. Despite such knowledge, Defendants engaged in a further conscious disregard of public safety by taking no action to provide any form of warnings relating to the reckless and dangerous practice of allowing vehicles on and/or within the SUBJECT MARKET PROPERTY after the market had opened for business to the public.

g. Defendants knew or were reckless for not knowing that such misconduct created a substantial risk and high probability of injury or death to members of the public, including Plaintiff. Despite such knowledge, said Defendants knowingly and recklessly permitted and continued to permit the SUBJECT VEHICLE to be operated on and/or within the SUBJECT MARKET PROPERTY in a willful and conscious disregard for the rights and safety of members of the public, including decedent ARMANDO MARTINEZ and Plaintiffs;

h. Defendants WUA, WUAFM, LBR, SILVA knew or were reckless for not knowing that for a substantial period of time prior to the date of the subject incident that Defendant ACUNA was clearly unfit, unqualified and/or not capable to safely drive a vehicle on public roadways, and was especially clearly unfit, unqualified and/or not capable to safely operate the SUBJECT VEHICLE on and/or within the SUBJECT MARKET PROPERTY after the market had opened business to the public.

i. Defendants WUA and WUAFM knew or were reckless for not knowing that for a substantial period of time prior to the date of the subject incident that Defendant LBR, SILVA, ACUNA were clearly unfit, unqualified and/or not capable to safely drive a vehicle on public roadways, and was especially clearly unfit, unqualified and/or not capable to safely operate

the SUBJECT VEHICLE on and/or within the SUBJECT MARKET PROPERTY after the market had opened business to the public.

j. Defendants WUA, WUAFM, LBR, SILVA hired and retained Defendant ACUNA with job duties that included driving the SUBJECT VEHICLE despite lacking the proper training, experience or ability necessary to safely drive such a vehicle;

k. Defendants WUA, WUAFM, LBR, SILVA ratified, consented, permitted, allowed, authorized, Defendant ACUNA to continue driving the SUBJECT VEHICLE despite knowing she had a common practice of driving the SUBJECT VEHICLE without due care, and specifically would recklessly operate the SUBJECT VEHICLE on and/or within the SUBJECT MARKET PROPERTY after the market had opened business to the public despite knowing it was in violation of the safety rules and regulations and was extremely dangerous for the innocent members of the public coming to this farmers market.

l. Defendants engaged in these negligent and reckless acts in the interest of maximizing profits while knowingly putting the lives of innocent members of the public in danger of severe injury or death.

m. Defendants engaged in these wrongful acts with a conscious disregard for public safety by making the decision to place profits ahead of safety.

55. Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, inclusive, and each of them, had prior knowledge of the dangers and risks that such misconduct would and did create, including causing innocent members of the public serious injury or death. Said misconduct by Defendants, in knowingly or recklessly creating said substantial risk and high probability of injury or death to members of the public, was oppressive, despicable, highly reprehensible and done in the conscious disregard for the rights and safety of the public, including Plaintiffs. Said acts and omissions were authorized and/or ratified by managerial employees of said Defendants, and were carried out with the consent of their officers, directors, and/or managing agents. As such, the imposition of punitive damages against Defendants WUA, WUAFM, LBR, SILVA and DOES 1 through 50, and each of them, is appropriate.

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PRAYER FOR DAMAGES

WHEREFORE, Plaintiffs, ROSEMARIE MARTINEZ, YVETTE TANNER, ANNETTE GOMEZ, THE ESTATE OF ARMANDO MARTINEZ, by and through its Successor-in-Interest, ROSEMARIE MARTINEZ, hereby pray for judgment against Defendants, LA BAHN RANCH, LUIS ALBERTO SILVA, MARIA DE LOS ANGELES GARCIA ACUNA, WHITTIER UPTOWN ASSOCIATION, WHITTIER UPTOWN ASSOCIATION FARMERS MARKET and DOES 1 through 50, inclusive, for wrongful death and survival action damages as follows:

1. For general damages (also known as non-economic damages) resulting from the loss of love, affection, society, service, relationship, comfort, care, support, right of support, expectations of future support and counseling, companionship, solace and mental support, training, guidance as well as other benefits and assistance of Decedent ARMANDO MARTINEZ, according to proof;
2. For special damages (also known as economic damages), including being deprived of the financial support and assistance of Decedent ARMANDO MARTINEZ, according to proof;
3. For funeral and burial expenses, according to proof;
4. For hospital, medical, professional and incidental expenses, according to proof;
5. For loss of earnings and property, according to proof;
6. For punitive damages against all Defendants by Plaintiff THE ESTATE OF ARMANDO MARTINEZ, by and through its successor-in-interest, ROSEMARIE MARTINEZ, pursuant to California *Code of Civil Procedure* §§ 377.30 and 377.34, according to proof;
7. For prejudgment interest, fees and costs of suit incurred herein, according to proof;
8. For such other and further relief as the Court may deem just and proper.

DATED: September 2, 2016

PANISH SHEA & BOYLE LLP

By: 

Brian Panish
David Rudorfer
Attorneys for Plaintiffs

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury as to all Causes of Action.

DATED: September 2, 2016

PANISH SHEA & BOYLE LLP

By: 

Brian Panish
David Rudorfer
Attorneys for Plaintiffs