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16 17	JONATHAN HUNTER WAINSCOTT,)	Case No.: BCV-18-100410
18	Plaintiffs,)	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL
19 20)) VS.)	 NEGLIGENCE NEGLIGENCE PER SE VICARIOUS LIABILITY
21)	4. NEGLIGENT HIRING,
22	KRISTOPHER DEAN MARCHANT,) MARCHANT SITE DEVELOPMENT,)	RETENTION, TRAINING, SUPERVISION AND
23	INC., GABRIEL ARMENTA GARCIA,) JUAN JARAMILLO DIAZ, JESUS M.)	ENTRUSTMENT
24	PERALTA and RANCHO BUILDING)	Assigned to:
25	MATERIALS, INC., and DOES 1) through 100, inclusive,)	Dept: Complaint Filed:
26) Defendants.	Trial Date:
27))	UNLIMITED JURISDICTION
28	COMPLAINT FOR DAMAGE	S AND DEMAND FOR JURY TRIAL -1-

COMES NOW Plaintiff JONATHAN HUNTER WAINSCOTT for causes of action against
 Defendants GABRIEL ARMENTA GARCIA, JUAN DIAZ, KRISTOPHER DEAN MARCHANT,
 MARCHANT SITE DEVELOPMENT, INC., JESUS M. PERALTA, RANCHO BUILDING
 MATERIALS, INC. AND DOES 1 through 100, inclusive, and each of them, and herein alleges, based on
 information and belief as follows:

INTRODUCTION

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7 1. This is a personal injury action arising out of the injury to JONATHAN HUNTER 8 WAINSCOTT on or about August 2, 2017 on Wible Road, 107 feet south of White Lane, in Bakersfield, 9 California. At said time and place, WAINSCOTT was a pedestrian lawfully walking northbound on the 10 sidewalk of Wible Road. Shortly before 13:08 at said time and place, the ball and tongue connection on a 11 2002 Carson Dump trailer (the "Trailer") which was being towed by a 2006 Ford F-350 truck (the 12 "Truck") failed. At approximately 13:08 on August 2, 2017, the Trailer disconnected from the Truck and 13 became uncontrollable. The Trailer jumped the Wible Road sidewalk curb south of where WAINSCOTT 14 was walking, traveled a short distance along the sidewalk and struck WAINSCOTT, causing him serious 15 bodily injury. The Truck was driven by Defendant GABRIEL ARMENTA GARCIA. The Truck was 16 owned by MARCHANT SITE DEVELOPMENT, INC., Mr. Garcia's employer. 17

THE PARTIES

At all times relevant, Plaintiff JONATHAN HUNTER WAINSCOTT ("WAINSCOTT")
was and is a competent adult and a resident of the State of South Carolina.

At all times relevant, Defendant GABRIEL ARMENTA GARCIA ("GARCIA") was and
 is a competent adult and an individual residing in Bakersfield, Kern County, California. Plaintiff is
 informed and believes, and herein alleges, that defendant GARCIA was, at all times herein relevant, an
 employee of Defendant MARCHANT SITE DEVELOPMENT, INC. At all times relevant GARCIA was
 the driver, operator and controller of the Truck and Trailer, assisted in connecting the Truck to the Trailer

- COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL
 - -2-

and supervised the loading of the Trailer. GARCIA can be served by delivering a copy of the Summons and Complaint to him at his residence at 1010 L. Street, Apt. D, Bakersfield, California 93306.

4. At all times relevant, Defendant Juan Jaramillo Diaz a/k/a Juan Antonio Jaramillo ("DIAZ") was and is a competent adult and an individual residing in the Bakersfield, Kern County, California. Plaintiff is informed and believes, and herein alleges, that defendant DIAZ was, at all times herein relevant, an employee of MARCHANT SITE DEVELOPMENT, INC. At all times relevant, DIAZ was a passenger in the Truck, assisted in connecting the Truck to the Trailer and supervised the loading of the Trailer. DIAZ can be served by delivering a copy of the Summons and Complaint to him at his residence at 4308 Isla Verde Street, Apt. 6, Bakersfield, California 93301 or, in the alternative, at 248 Simpson Road, Apt. A1, Bakersfield, California.

5. At all times relevant, Defendant KRISTOPHER DEAN MARCHANT ("MARCHANT"), was and is a competent adult and an individual residing in Bakersfield, Kern County, California. Plaintiff is informed and believes, and herein alleges that defendant MARCHANT was, at all times herein relevant, the owner and operator of MARCHANT SITE DEVELOPMENT, INC. At all times relevant, MARCHANT SITE DEVELOPMENT was the owner of the Truck, possessor of the trailer, and inspected the connection of the Truck to the Trailer on August 2, 2017 before it left MARCHANT SITE DEVELOPMENT, INC. At all times relevant MARCHANT hired, trained and supervised Defendants GARCIA and DIAZ. MARCHANT can be served by delivering a copy of the Summons and Complaint to him at his residence at 14408 Via Contento, Bakersfield, California 93314.

22 6. Defendant MARCHANT SITE DEVELOPMENT, INC. is a corporation organized under
 23 the laws of the State of California and authorized to do and doing business within the State of California,
 24 including Kern County, with its principal place of business in Bakersfield, California. MARCHANT SITE
 25 DEVELOPMENT, INC. may be served through its registered agent Kristopher Dean Marchant at 9316
 26 Shellabarger Road, Unit D, Bakersfield, California 93312.

7. At all times relevant, Defendant MARCHANT SITE DEVELOPMENT, INC. employed Defendants GARCIA and DIAZ.

8. At all times relevant, Defendant Jesus M. Peralta ("PERALTA") was and is a competent
adult and an individual residing in the Bakersfield, Kern County, California. Plaintiff is informed and
believes, and herein alleges that defendant PERALTA was, at all times herein relevant, employed as a
forklift operator at Rancho Building Materials, Inc. ("RANCHO BUILDING MATERIALS, INC."). At
all times relevant, PERALTA loaded the Trailer. PERALTA can be served by delivering a copy of the
Summons and Complaint to him at his residence at 915 Maitland Drive, Bakersfield, California 93304.

9. Defendant RANCHO BUILDING MATERIALS, INC. is a corporation organized under
the laws of the State of California and authorized to do and doing business within the State of California,
including Kern County, with its principal place of business in Bakersfield, California. RANCHO
BUILDING MATERIALS, INC. may be served through its registered agent Cesar Maldonado, 23655 Via
Andorra, Valencia California 91355.

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 10. At all times relevant, Defendant RANCHO BUILDING MATERIALS, INC. employed
 16
 Defendant PERALTA.

17 11. At all times herein mentioned, the individual defendants GARCIA and DIAZ, and each of
18 them, were the agents, servants, employees and permissive users of MARCHANT SITE
19 DEVELOPMENT, INC. and were acting within the time, purpose, course and scope of such agency or
20 permission; and all acts or omissions alleged herein of each such defendant were authorized, adopted,
21 approved, or ratified by MARCHANT SITE DEVELOPMENT, INC.

At all times herein mentioned, the individual defendant PERALTA was the agent,
 servant, employee and permissive user of RANCHO BUILDING MATERIALS, INC. and was acting
 within the time, purpose, course and scope of such agency or permission; and all PERALTA's acts or
 omissions alleged herein were authorized, adopted, approved, or ratified by RANCHO BUILDING
 MATERIALS, INC.

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1 13. The true names and capacities of Defendants DOES 1 through 100 are unknown to
 WAINSCOTT at this time. WAINSCOTT will seek leave of Court to amend this Complaint to allege such
 names and capacities as they are ascertained. WAINSCOTT is informed and believes and theron alleges
 that each of the Defendants designated as "DOE" are legally responsible for the events and happenings
 alleged herein and that WAINSCOTT'S damages as alleged were proximately caused by said DOE
 DEFENDANT(S).

7 14. WAINSCOTT is informed and believes and thereon alleges, that at all times relevant 8 hereto, GARCIA and DOES 1 through 10, were the agents, affiliates, officers, directors, managers, 9 principals, alter-egos, or employees of GARCIA and DOES 1 through 10, and were at all times acting 10 within the scope of such agency, affiliation, alter-ego relationship, or employment and actively 11 participated in, or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, 12 with full knowledge of all the facts and circumstances, including but not limited to, full knowledge of each 13 and all of the violations of WAINSCOTT's rights and the damages to WAINSCOTT proximately caused 14 thereby. 15

15. WAINSCOTT is informed and believes and thereon alleges, that at all times relevant hereto, DIAZ and DOES 11 through 20, were the agents, affiliates, officers, directors, managers, principals, alter-egos, or employees of DIAZ and DOES 11 through 20, and were at all times acting within the scope of such agency, affiliation, alter-ego relationship, or employment and actively participated in, or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including but not limited to, full knowledge of each and all of the violations of WAINSCOTT's rights and the damages to WAINSCOTT proximately caused thereby.

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COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

hereto, MARCHANT and DOES 21 through 30, were the agents, affiliates, officers, directors, managers,

principals, alter-egos, or employees of MARCHANT and DOES 21 through 30, and were at all times

acting within the scope of such agency, affiliation, alter-ego relationship, or employment and actively

WAINSCOTT is informed and believes and thereon alleges, that at all times relevant

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participated in, or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including but not limited to, full knowledge of each and all of the violations of WAINSCOTT's rights and the damages to WAINSCOTT proximately caused thereby.

5 17. WAINSCOTT is informed and believes and thereon alleges, that at all times relevant 6 hereto, MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40, were the agents, affiliates, 7 officers. directors. managers, principals, alter-egos, or employees of MARCHANT SITE 8 DEVELOPMENT, INC. and DOES 31 through 40, and were at all times acting within the scope of such 9 agency, affiliation, alter-ego relationship, or employment and actively participated in, or subsequently 10ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the 11 facts and circumstances, including but not limited to, full knowledge of each and all of the violations of 12 WAINSCOTT's rights and the damages to WAINSCOTT proximately caused thereby. 13

18. WAINSCOTT is informed and believes and thereon alleges, that at all times relevant 14 hereto, PERALTA and DOES 41 through 50, were the agents, affiliates, officers, directors, managers, 15 principals, alter-egos, or employees of PERALTA and DOES 41 through 50, and were at all times acting 16 within the scope of such agency, affiliation, alter-ego relationship, or employment and actively 17 participated in, or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, 18 with full knowledge of all the facts and circumstances, including but not limited to, full knowledge of each 19 20and all of the violations of WAINSCOTT's rights and the damages to WAINSCOTT proximately caused 21 thereby.

19. WAINSCOTT is informed and believes and thereon alleges, that at all times relevant
hereto, RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60, were the agents, affiliates,
officers, directors, managers, principals, alter-egos, or employees of RANCHO BUILDING MATERIALS
and DOES 51 through 60, and were at all times acting within the scope of such agency, affiliation, alterego relationship, or employment and actively participated in, or subsequently ratified and adopted, or both,

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1	each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances,		
2	including but not limited to, full knowledge of each and all of the violations of WAINSCOTT's rights and		
3	the damages to WAINSCOTT proximately caused thereby.		
4	GENERAL ALLEGATIONS		
5	20. MARCHANT SITE DEVELOPMENT, INC. is a closely-held corporation, which is		
6	owned and operated by Defendant MARCHANT.		
7	21. Defendant MARCHANT owned and/or furnished to MARCHANT SITE		
8	DEVELOPMENT, INC. the Truck and the Trailer that caused Plaintiff's injuries, leading to this lawsuit.		
9	22. At all times relevant hereto, Defendant GARCIA was employed by MARCHANT SITE		
10 11	DEVELOPMENT, INC., having been hired less than three weeks before the incident that is the subject of		
11	this Complaint.		
13	23. At all times relevant hereto, Defendants DIAZ was employed by MARCHANT SITE		
14	DEVELOPMENT, INC.		
15	24. At all times relevant hereto, Defendant MARCHANT SITE DEVELOPMENT, INC. was		
16	engaged in the masonry and landscape contracting business and was acting by and through its		
17	employees/agents DIAZ and GARCIA and is responsible for the acts of those employees and agents		
18	pursuant to respondeat superior, agency, or a similar theory of law.		
19	25. RANCHO BUILDING MATERIALS, INC. is a closely held corporation, which sells		
20	building materials, including masonry products.		
21	26. At all times relevant Defendant PERALTA was a forklift driver employed by RANCHO		
22	BUILDING MATERIALS, INC.		
23	27. At all times relevant hereto, Defendant RANCHO BUILDING MATERIALS, INC. was		
24	acting by and through its employee/agent PERALTA and is responsible for the acts of its employee/agent		
25	PERALTA pursuant to respondeat superior, agency, or a similar theory of law.		
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28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -7-		

1 28. On or about August 2, 2017, Defendants GARCIA and DIAZ were directed by 2 MARCHANT, INC. to drive the Truck and Trailer to RANCHO BUILDING MATERIALS, INC. to pick 3 up 100 concrete masonry unit blocks (the "CMU's") for use on a MARCHANT SITE DEVELOPMENT, 4 INC. jobs. 5 29. In preparation for this assignment, on August 2, 2017, Defendants DIAZ and GARCIA 6 worked in conjunction with each other, at MARCHANT SITE DEVELOPMENT, INC.'s premise, to 7 attach the Trailer's tongue coupler to the Truck's towing ball and to connect the Trailer's thin emergency 8 breakaway brake activation cable to the Truck's tow hitch. 9 30. In the course of attaching the Trailer to the Truck, Defendants GARCIA and DIAZ were 10 aware that the Trailer had no functioning safety chains or safety cables to attach to the Truck and that 11 faulty wiring on the Trailer prevented the Trailer's emergency braking system from working. 12 31. Defendant MARCHANT personally inspected the hookup of Trailer to Truck after 13 Defendants GARCIA and DIAZ completed it, but ignored the fact that the Trailer lacked functioning 14 safety chains or cables and had faulty wiring, which prevented the Trailer's lights and emergency braking 15 system from working. 16 32. Trailers are equipped with safety chains or cables and emergency braking systems as 17 backup safety precautions in the event the tongue and ball or other mechanical connection fails to secure a 18 19 trailer to a truck. 33. 20After hooking the Trailer to the Truck, Defendant GARCIA, accompanied by DIAZ, 21 drove the Truck and attached Trailer to RANCHO BUILDING MATERIALS, INC. to purchase CMUs to 22 be loaded onto the trailer. 23 34. At RANCHO BUILDING MATERIALS, INC., Defendants GARCIA and DIAZ watched 24 as Defendant PERALTA used a forklift to load a pallet of the CMUs onto the Trailer bed. 25 35. Defendant PERALTA loaded the CMUs onto the rearmost edge of the Trailer bed. 26 27 28 COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -8-

1	36. The CMU pallet's weight at the rear of the Trailer bed weighed approximately 2,500	
2	pounds. This weight caused the Trailer's rear to be lower than the Trailer's front, creating negative tongue	
3	weight and causing undue stress on the tongue and ball connection between the Trailer and the Truck.	
4	37. Negative tongue weight creates an extremely dangerous condition for towing a trailer and	
5	presents an immediate safety hazard because negative tongue weight can cause a trailer to detach from the	
6	towing vehicle.	
7	38. The manner in which the CMU's were positioned in the Trailer bed presented an	
8	immediate hazard that the Trailer would detach from the Truck.	
9	39. Defendant PERALTA did not position the CMU pallet closer to the Trailer's axle to	
10	stabilize the load.	
11	40. Defendants GARCIA and DIAZ, while in the course and scope of their employment with	
12	MARCHANT SITE DEVELOPMENT, INC., drove away from RANCHO BUILDING MATERIALS,	
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14	INC. in the Truck and Trailer, heading North on Wible Road in Bakersfield, California.	
15	41. Defendants GARCIA and DIAZ knew the Trailer was improperly loaded and created a	
16	safety risk when they drove away from RANCHO BUILDING MATERIALS, INC.	
17	42. As they drove north on Wible Road, if they had been paying attention, Defendants	
18	GARCIA and DIAZ, while acting in the course and scope of their employment with Defendant	
19	MARCHANT SITE DEVELOPMENT, INC., would have observed the Trailer's rear was significantly	
20	lower than the Trailer's front and the Trailer's front was lifting up the rear of the Truck, signaling undue	
21	stress on the connecting tongue and ball and presenting an immediate hazard of detaching.	
22	43. Instead of remaining alert to what they knew was an extremely hazardous condition,	
23	Defendants GARCIA and DIAZ were both preoccupied with their cell phones as they proceeded north on	
24	Wible Road and failed to notice the impending danger.	
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28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -9-	

1	44.	Approximately three minutes after leaving Rancho, Inc., the Trailer detached from the	
2	Truck and trav	veled north, passing the Truck, jumping the sidewalk curb and continuing to travel along the	
3	east sidewalk of Wible Road.		
4	45.	At the time the Trailer detached and jumped the sidewalk, WAINSCOTT and his friend	
5	and traveling o	companion Michael Franklin Evans ("EVANS") were pedestrians, lawfully walking north on	
6	the east sidewalk of Wible Road.		
7	46.	The Trailer violently struck WAINSCOTT and EVANS, throwing both of them into the	
8	Trailer's bed,	where the CMU's were dislodging from the pallet and randomly being thrust into the air and	
9	throughout the	e Trailer's bed.	
10 11	47.	After striking WAINSCOTT and EVANS, the Trailer continued northeast, crossing the	
11	eastbound land	es of White Lane where it intersected with Wible Road, striking a signal pole and another	
12	vehicle, which	in turn caused a chain reaction between two other vehicles before the Trailer finally came	
14	to rest.		
15	48.	Following the collision, Defendant GARCIA was charged with:	
16	a.	Penal Code 192(c)(1) – Vehicular Manslaughter with Gross Negligence;	
17	b.	Vehicle Code 29004(a)(1)/(b) - Towed Vehicle (requiring safety connections and	
18		attachments of sufficient strength to control the towed vehicle in the event of failure of the	
19		regular hitch, coupling device, drawbar, tongue or other connection);	
20	c.	Vehicle Code 23123.5(a) – Text Messaging (prohibiting text messaging while driving);	
21	d.	Vehicle Code 24603(b) - Stop lamps (requiring a motor vehicle to be equipped with	
22		operative tail lights); and	
23	e.	Vehicle Code 26453 – Condition of Brakes (prohibiting the use of a motor vehicle without	
24		operative emergency brakes).	
25	49.	EVANS was pronounced dead at the scene as a result of the runaway Trailer striking him.	
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28		COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -10-	

50. As a direct and proximate result of Defendants' acts and/or omissions, WAINSCOTT suffered severe personal injuries, including, but not limited to thoracic spine fracture.

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51. As a direct and proximate result of Defendants' acts and/or omissions, WAINSCOTT has
suffered reasonable and necessary medical expenses in the past and will incur reasonable and reasonable
and necessary medical expenses in the future in an amount which is currently unknown but which will be
pleaded when ascertained.

52. As a direct and proximate result of Defendants' acts and/or omissions WAINSCOTT has
suffered lost income and loss of earning capacity in amounts which are currently unknown but which will
be pleaded when ascertained.

53. As a direct and proximate result of the aforesaid negligence of the Defendants,
 WAINSCOTT was physically injured, and experienced and will continue to experience pain and suffering
 as a result of said injuries.

54. By reason of the foregoing, WAINSCOTT is entitled to recover past, present, and future
general damages from the Defendants in such an amount as may be shown by the evidence and as may be
determined by the enlightened conscience of the jury.

17 55. As a direct and proximate result of the aforesaid negligence of the Defendants,
18 WAINSCOTT's ability to labor and earn money has been diminished and he is therefore entitled to
19 recover damages in an amount as may be shown by the evidence and determined by the enlightened
20 conscience of the jury for the loss and reduction in his ability to labor and earn money.

56. By reason of the foregoing, WAINSCOTT is entitled to recover damages from the
Defendants for his past and future lost earnings in such an amount as may be shown by the evidence and
proven at trial.

As a direct and proximate result of Defendants' acts and/or omissions Defendants' are
liable to Plaintiff pursuant to the provisions of California law.

1	58. As a direct and proximate result of the acts and omission of Defendants, WAINSCOTT		
2	has been injured and otherwise suffered damages for which the DEFENDANTS are liable.		
3	59. If the Trailer had been equipped with functioning safety chains or cables, it would not		
4	have separated from the Truck and traveled out of the control along the highway and jumped the sidewalk		
5	curb, striking and injuring WAINSCOTT.		
6	60. If the Trailer had been equipment with a functioning emergency braking system, the		
7	Trailer would not have traveled out of control along the highway and jumped the sidewalk, striking and		
8	injuring WAINSCOTT.		
9	61. If the Trailer had been properly loaded, the Trailer would not have had a negative tongue		
10 11	weight, causing undue stress on the ball and tongue, which resulted in the Trailer disconnecting from the		
11	Truck and traveling out of control along the highway, jumping the sidewalk and striking and injuring		
12	WAINSCOTT.		
14	62. The direct and proximate cause of the Trailer disconnecting from the Truck and striking		
15	and injuring WAINSCOTT was the negligence of the Defendants, as more specifically articulated below.		
16	63. By reason of the foregoing and as more fully articulated below, WAINSCOTT is entitled		
17	to recover punitive damages from the Defendants in such an amount as may be shown by the evidence and		
18	as may be determined by the enlightened conscience of the jury.		
19	FIRST CAUSE OF ACTION - NEGLIGENCE AGAINST DEFENDANT GARCIA		
20	64. Allegations 1 through 63 of Plaintiff's Complaint are hereby incorporated by reference		
21	and made a part hereof, as if each such allegation was set forth herein.		
22	65. At all times relevant, Defendant GARCIA and DOES 1 through 10 had a duty to use		
23	ordinary care with respect to:		
24	a. Driving the Truck and Trailer;		
25	b. Connecting the Trailer to the Truck;		
26	c. Operating the Trailer with proper equipment;		
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28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -12-		

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1	d. Supervising the safe loading of the CMUs onto the Trailer;	
2	e. Confirming that the CMUs were safely loaded before taking the Truck and Trailer on the highway; and	
4	f. Paying attention that the Trailer was safely secured to the Truck while traveling on the highway.	
5	66. Defendant GARCIA and DOES 1 through 10 breached his duty owed to WAINSCOTT by	
7	driving the Truck and Trailer in an unsafe, negligent, and reckless manner.	
8	67. Defendant GARCIA and DOES 1 through 10 breached his duty owed to WAINSCOTT by	
9	failing to safely and securely connect the Trailer to the Truck.	
10	68. Defendant GARCIA and DOES 1 through 10 breached his duty owed to WAINSCOTT by	
11	operating the Trailer without proper equipment.	
12	69. Defendant GARCIA and DOES 1 through 10 breached his duty owed to WAINSCOTT by	
13	failing to properly supervise the safe loading of the CMUs onto the Trailer.	
14	70. Defendant GARCIA and DOES 1 through 10 breached his duty owed to WAINSCOTT by	
15	failing to confirm that the CMUs were safely loaded before taking the Truck and Trailer on the highway.	
16	71. Defendant GARCIA and DOES 1 through 10 breached his duty owed to WAINSCOTT	
17	failing to pay attention that the Trailer was safely secured to the Truck while traveling on the highway.	
18	72. The foregoing actions of Defendant GARCIA and DOES 1 through 10 directly and	
19	proximately caused the incident involved herein.	
20	73. As a direct and proximate result of the aforesaid conduct of Defendant GARCIA and	
21 22	DOES 1 through 10, WAINSCOTT suffered and continues to suffer the damages described more	
22	specifically above.	
24	74. Defendant GARCIA and DOES 1 through 10 acted with a despicable conduct which was	
25	carried on with a willful and wanton conscious disregard for the rights and safety of WAINSCOTT, who	
26	would reasonably be expected to be effected by GARCIA and DOES 1 through 10's actions and conduct,	
27	and was the direct, legal and proximate cause of WAINSCOTT's injuries, so as to impose the assessment	
28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -13-	╞

1	of punitive da	mages against Defendant GARCIA and DOES 1 through 10 in an amount appropriate to
2	punish or set a	n example, pursuant to Cal. Civ. Code § 3294.
3	SI	ECOND CAUSE OF ACTION - NEGLIGENCE PER SE AGAINST DEFENDANT GARCIA
4	75.	Allegations 1 through 74 of Plaintiff's Complaint are hereby incorporated by reference
5		rt hereof, as if each such allegation was set forth herein.
6	76.	-
7		Defendant GARCIA and DOES 1 through 10's negligence, which constituted a direct and
8	-	se of the injuries to Plaintiff, consisted of, but was not limited to, violations of the following
9	laws and ordin	ances, constituting, in each instance, negligence per se:
10	a.	Violation of California Penal Code 192(c)(1) – Vehicular Manslaughter with Gross Negligence;
11	b.	Violations of California Vehicle Code 29004(a)(1)/(b) – Towed Vehicle (requiring safety
12 13		connections and attachments of sufficient strength to control the towed vehicle in the event of failure of the regular hitch, coupling device, drawbar, tongue or other connection);
14		Violation of California Vehicle Code 23123.5(a) – Text Messaging (prohibiting text
15		messaging while driving);
16	d.	Violation of California Vehicle Code 24603(b) – Stoplamps (requiring a motor vehicle to be equipped with operative tail lights);
17 18	e.	Violation of California Vehicle Code 26453 – Condition of Brakes (prohibiting the use of a motor vehicle without operative emergency brakes);
19 20	f.	Violation of California Vehicle Code § 23103 - Reckless driving (prohibiting a person from driving a vehicle upon a highway in willful or wanton disregard for the safety of persons or property);
21	g.	Failing to remain alert and vigilant and keep a proper lookout while driving;
22	h.	Failing to operate his vehicle in a manner that was reasonable and proper under the prevailing type of conditions; and
23 24	i.	Failing to observe that degree of caution, prudence and care which is reasonable and proper under the controlling circumstances.
25	77.	The foregoing California Vehicle Code and California Penal Code violations were laws
26 27	implemented b	y the State of California to protect individuals from injury or death. PLAINTIFF was of the
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		-14-

1 class of persons intended to be protected by these laws.

78. The foregoing California Vehicle Code and California Penal Code violations proximately
 caused PLAINTIFF's injuries.

79. PLAINTIFF's injuries resulted from an occurrence that the foregoing California Vehicle
Codes and California Penal Code were designed to prevent.

80. PLAINTIFF is one of the class of persons for whose protection the foregoing California
Vehicle Codes and California Penal Code were adopted.

8 9 81. The foregoing violations of California Vehicle Codes and California Penal Code constitute *negligence per se*.

As a direct and proximate result of the aforesaid conduct of Defendant GARCIA and
 DOES 1 through 10, WAINSCOTT suffered and continues to suffer the damages.

83. Defendant GARCIA and DOES 1 through 10 acted with a despicable conduct which was
carried on with a willful and wanton conscious disregard for the rights and safety of WAINSCOTT, who
would reasonably be expected to be effected by GARCIA and DOES 1 through 10's actions and conduct,
and was the direct, legal and proximate cause of WAINSCOTT's injuries, so as to impose the assessment
of punitive damages against Defendant GARCIA and DOES 1 through 10 in an amount appropriate to
punish or set an example, pursuant to Cal. Civ. Code § 3294

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THIRD CAUSE OF ACTION - NEGLIGENCE AGAINST DEFENDANT DIAZ

84. Allegations 1 through 83 of Plaintiff's Complaint are hereby incorporated by reference and
 made a part hereof as if each such allegation were fully set forth herein.

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 85. At all times relevant, Defendant DIAZ and DOES 11 through 20 had a duty to use ordinary care with respect to:

- 1. Connecting the Trailer to the Truck;
 - 2. Operating the Trailer with proper equipment;
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3. Supervising the safe loading of the CMUs onto the Trailer;

1	FOURTH CAUSE OF ACTION – NEGLIGENCE AGAINST DEFENDANT MARCHANT
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3	94. Allegations 1 through 93 of Plaintiff's Complaint are hereby incorporated by reference and
4	made a part hereof as if each such allegation were fully set forth herein.
5	95. At all times relevant, Defendant MARCHANT and DOES 21 through 30, the possessor
6	and controller of the Trailer, had a duty to use ordinary care with respect to maintaining the Trailer and
7	furnishing it to MARCHANT SITE DEVELOPMENT, INC. with proper safety equipment.
8	96. Having undertaken to inspect the manner in which GARCIA and DIAZ connected the
9	Trailer to the Truck, MARCHANT and DOES 21 through 30 had a duty to confirm that the Trailer and
10	Truck were safely connected with chains/cables and a functioning emergency braking system.
11	97. Defendant MARCHANT and DOES 21 through 30 breached his duty owed to
12	WAINSCOTT by maintaining the Trailer and furnishing it to MARCHANT SITE DEVELOPMENT,
13	INC. without proper safety equipment.
14	98. Defendant MARCHANT and DOES 21 through 30 breached his duty owed to
15	WAINSCOTT by failing to confirm that the Trailer and Truck were safely connected with chains/cables
16	and a functioning emergency braking system before allowing GARCIA and DIAZ to take them on the
17	highway.
18	99. The foregoing actions of Defendant MARCHANT and DOES 21 through 30 directly and
19	proximately caused the incident involved herein.
20	100. As a direct and proximate result of the aforesaid conduct of Defendant MARCHANT and
21 22	DOES 21 through 30, WAINSCOTT suffered and continues to suffer the damages describe more
22	specifically above.
24	101. Defendant MARCHANT and DOES 21 through 30 acted with a despicable conduct which
25	was carried on with a willful and wanton conscious disregard for the rights and safety of WAINSCOTT,
26	who would reasonably be expected to be effected by MARCHANTS and DOES 21 through 30's actions
27	and conduct, and was the direct, legal and proximate cause of WAINSCOTT's injuries, so as to impose
28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -17-

1 the assessment of punitive damages against Defendant MARCHANT and DOES 21 through 30 in an 2 amount appropriate to punish or set an example, pursuant to Cal. Civ. Code § 3294. 3 FIFTH CAUSE OF ACTION - VICARIOUS LIABILITY OF DEFENDANT MARCHANT SITE DEVELOPMENT, INC. 4 5 102. Allegations 1 through 101 of Plaintiff's Complaint are hereby incorporated by reference 6 and made a part hereof as if each such allegation were fully set forth herein. 7 103. At the time of the incident on August 2, 2017, Defendants GARCIA and DIAZ were 8 employees of Defendant MARCHANT SITE DEVELOPMENT, INC and DOES 31 through 40. 9 104. At the time of the incident on August 2, 2017, Defendants GARCIA and DIAZ were 10 acting in the course and scope of their employment with Defendant MARCHANT SITE 11 DEVELOPMENT, INC. and DOES 31 through 40 and were Defendant MARCHANT SITE 12 DEVELOPMENT, INC. and DOES 31 through 40's agents, under the control of Defendant MARCHANT 13 SITE DEVELOPMENT, INC. and DOES 31 through 40 and operating the Truck and Trailer with 14 MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40's permission. 15 105. At the time of the collision on August 2, 2017, Defendants GARCIA and DIAZ were 16 acting in furtherance of Defendant MARCHANT SITE DEVELOPMEN, INC. and DOES 31 through 40's 17 business. 18 At all times material to this action, Defendant MARCHANT SITE DEVELOPMENT, 106. 19 20INC. and DOES 31 through 40 had the right to control the actions of Defendants GARCIA and DIAZ and 21 Defendants GARCIA and DIAZ were under the control and direction of Defendant MARCHANT SITE 22 DEVELOPMENT, INC and DOES 31 through 40. 23 107. Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 is 24 vicariously liable for the negligence per se of Defendant GARCIA and the negligence of GARCIA and 25 DIAZ under the doctrine of respondeat superior. 26 108. WAINSCOTT is entitled to recover general, special and punitive damages from 27 28 COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -18-

1 Defendant MARCHANT, INC. and DOES 31 through 40 under the doctrine of respondeat superior. 2 SIXTH CAUSE OF ACTION - NEGLIGENT HIRING, RETENTION, TRAINING, SUPERVISION AND ENTRUSTMENT AGAINST DEFENDANT MARCHANT, INC. 3 109. Allegations 1 through 108 of Plaintiff's Complaint are hereby incorporated by reference 4 and made a part hereof as if each such allegation were fully set forth herein. 5 110. Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 owed 6 the general public a duty of reasonable care in the hiring, training and supervision of its employees, 7 including its delivery driver Defendant GARCIA and assistant, DIAZ. 8 Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 111. 9 10 breached its duty owed to WAINSCOTT by failing to properly and thoroughly evaluate, test and research 11 GARCIA's and DIAZ's credentials before hiring them. 12 112. Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 13 breached its duty owed to WAINSCOTT by failing to properly and thoroughly train and educate 14 Defendants GARCIA and DIAZ to operate the Truck and Trailer and load the Trailer. 15 113. Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 16 breached its duty owed to WAINSCOTT by failing to properly and thoroughly train and educate 17 Defendants GARCIA and DIAZ to supervise the loading of materials onto the Trailer. 18 114. Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 owed a 19 duty to WAINSCOTT to properly supervise its employees, including Defendants GARCIA and DIAZ, 20before entrusting them to pick up materials for delivery in the Truck and Trailer. 21 115. Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 22 breached its duty owed to WAINSCOTT by negligently entrusting the Truck and Trailer and the delivery 23 of materials to Defendants GARCIA and DIAZ on August 2, 2017, the day of the incident. 24 Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 owed a 116. 25 duty to WAINSCOTT to discharge employees that did not exhibit the proper credentials or abilities to 26 perform the duties entrusted to them. 2728 COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -19-

1 117. Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 2 breached its duty owed to WAINSCOTT by failing to timely discharge Defendants GARCIA and DIAZ 3 for their inability to perform to duties entrusted to them. 4 Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40's 118. 5 negligence, which constituted a direct and proximate cause of the injuries to WAINSCOTT, consisted of, 6 but was not limited to the following: 7 (a) Failing to properly and thoroughly evaluate, test and research Defendants GARCIA's and 8 DIAZ's credentials, 9 Failing to properly and thoroughly train and educate Defendants GARCIA and DIAZ for (b) 10 the positions entrusted to them; 11 Failing to properly supervise Defendants GARCIA and DIAZ and negligently entrusting (c) 12 the Truck and Trailer and delivery of materials to Defendants GARCIA and DIAZ on the day of the 13 incident; and 14 (d) Failing to timely discharge Defendants GARCIA and DIAZ for their inability to perform 15 to duties assigned and entrusted to them. 16 The foregoing actions of Defendant MARCHANT SITE DEVELOPMENT, INC. and 119. 17 DOES 31 through 40 directly and proximately caused the incident involved herein. 18 120. As a direct and proximate result of the aforesaid conduct of Defendant MARCHANT 19 20SITE DEVELOPMENT, INC. and DOES 31 through 40, WAINSCOTT suffered and continues to suffer 21 the damages described more specifically above. 22 121. An officer, director, or managing agent of Defendant MARCHANT SITE 23 DEVELOPMENT, INC. and DOES 31 through 40 had advance knowledge of GARCIA's and DIAZ's 24 unfitness and employed them with a conscious disregard of the rights or safety of others and authorized or 25 ratified the wrongful conduct for which WAINSCOTT seeks damages. 26 122. Defendant MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 acted 27 28 COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -20with a despicable conduct which was carried on with a willful and wanton conscious disregard for the
rights and safety of WAINSCOTT, who would reasonably be expected to be effected by MARCHANT
SITE DEVELOPMENT, INC.'s actions and conduct, and was the direct, legal and proximate cause of
WAINSCOTT's injuries, so as to impose the assessment of punitive damages against Defendant
MARCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 in an amount appropriate to punish
or set an example, pursuant to Cal. Civ. Code § 3294.

SEVENTH CAUSE OF ACTION – NEGLIGENCE AGAINST DEFENDANT PERALTA

9 123. Allegations 1 through 122 of Plaintiff's Complaint are hereby incorporated by reference
10 and made a part hereof as if each such allegation were fully set forth herein.

11 124. At all times relevant, Defendant PERALTA and DOES 41 through 50 had a duty to use
12 ordinary care with respect to loading the Trailer with materials in a manner so as not to cause a safety
13 hazard.

14 125. Defendant PERALTA and DOES 41 through 50 breached his duty owed to WAINSCOTT
 15 by loading the CMUs too close to the rear of the Trailer, causing the undue stress on the ball and tongue
 16 connection that ultimately led to the Trailer becoming disconnected from the Truck, striking
 17 WAINSCOTT.

18
 126. The foregoing actions of Defendant PERALTA and DOES 41 through 50 directly and
 19
 proximately caused the incident involved herein.

127. As a direct and proximate result of the aforesaid conduct of Defendant PERALTA and
 DOES 41 through 50, WAINSCOTT suffered and continues to suffer the damages described more
 specifically above.

128. Defendant PERALTA and DOES 41 through 50 acted with a despicable conduct which
was carried on with a willful and wanton conscious disregard for the rights and safety of WAINSCOTT,
who would reasonably be expected to be effected by PERALTA and DOES 41 through 50's actions and
conduct, and was the direct, legal and proximate cause of WAINSCOTT's injuries, so as to impose the

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1	assessment of punitive damages against Defendant PERALTA and DOES 41 through 50 in an amount		
2	appropriate to punish or set an example, pursuant to Cal. Civ. Code § 3294.		
3	EIGHTH CAUSE OF ACTION - VICARIOUS LIABILITY AGAINST DEFENDANT		
4	RANCHO BUILDING MATERIALS, INC.		
5	129. Allegations 1 through 128 of Plaintiff's Complaint are hereby incorporated by reference		
6	and made a part hereof as if each such allegation were fully set forth herein.		
7	130. At the time of the incident on August 2, 2017, Defendant PERALTA was an employee of		
8	Defendant RANCHO BUILDING MATERIALS, INC and DOES 51 through 60.		
9	131. At the time of the incident on August 2, 2017, Defendant PERALTA was acting in the		
10	course and scope of his employment with Defendant RANCHO BUILDING MATERIALS, INC. and		
11 12	DOES 51 through 60, and was Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51		
13	through 60's agent, under the control of Defendant RANCHO BUILDING MATERIALS, INC. and		
14	DOES 51 through 60, and loading CMUs in the Trailer with RANCHO BUILDING MATERIALS, INC.		
15	and DOES 51 through 60's permission.		
16	132. In the course of loading the CMUs into the Trailer on August 2, 2017, Defendant		
17	PERALTA was acting in furtherance of Defendant RANCHO BUILDING MATERIALS, INC. and		
18	DOES 51 through 60's business.		
19	133. At all times material to this action, Defendant RANCHO BUILDING MATERIALS, INC.		
20	and DOES 51 through 60 had the right to control the actions of Defendant PERALTA and Defendant		
21	PERALTA was under the control and direction of Defendant RANCHO BUILDING MATERIALS, INC		
22	and DOES 51 through 60.		
23	134. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 is		
24	vicariously liable for the negligence of Defendant PERALTA under the doctrine of respondeat superior.		
25	135. WAINSCOTT is entitled to recover general, special and punitive damages from		
26	Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 under the doctrine of		
27			
28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -22-		

1 || respondeat superior.

2	NINTH CASE OF ACTION – NEGLIGENT HIRING, RETENTION, TRAINING, SUPERVISION AND ENTRUSTMENT AGAINST DEFENDANT RANCHO BUILDING MATERIALS, INC.		
3	136. Allegations 1 through 135 of Plaintiff's Complaint are hereby incorporated by reference		
4	and made a part hereof as if each such allegation were fully set forth herein.		
5	137. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 owed		
7	the general public a duty of responsible care in the hiring, training and supervision of its employees,		
8	including defendant PERALTA.		
9	138. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60		
10	breached its duty owed to WAINSCOTT by failing to properly and thoroughly evaluate, test and research		
11	Defendant PERALTA's credentials before hiring him.		
12	139. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60		
13	breached its duty owned to PLAINTIFF by failing to properly and thoroughly train and educated		
14	Defendant PERALTA to properly and safely load material purchased from RANCHO BUILDING		
15	MATERIALS, INC. and DOES 51 through 60 onto its customers' vehicles.		
16	140. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 owed a		
17	duty to WAINSCOTT to properly supervise its employees, including Defendant PERALTA, before		
18	entrusting them to properly and safely load materials purchased from RANCHO BUILDING		
19	MATERIALS, INC. and DOES 51 through 60 onto its customer's vehicles.		
20	141. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60		
21 22	breached its duty owed to WAINSCOTT by negligently entrusting to PERALTA the proper and safe		
23	loading of its materials onto customers' vehicles on August 2, 2017, the day of the incident.		
24	142. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 owed a		
25	duty to WAINSCOTT to discharge employees that did not exhibit the proper credentials or abilities to		
26	properly and safely load material purchased from RANCHO BUILDING MATERIALS, INC. and DOES		
27	51 through 60 onto its customers' vehicles.		
28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -23-		

1	143. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60		
2	breached its duty owed to WAINSCOTT by failing to timely discharge Defendant PERALTA for his lack		
3	of ability to perform the duties entrusted to him.		
4	144. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60		
5	negligence, which constituted a direct and proximate cause of the injuries to WAINSCOTT, consisted of,		
6	but was not limited to the following:		
7	(a) Failing to properly and thoroughly evaluate, test and research Defendant PERALTA's		
8	credentials;		
9	(b) Failing to properly and thoroughly train and educate Defendant PERALTA for the		
10	position of forklift driver, whose duties included loading materials purchased from RANCHO BUILDING		
11			
12	(c) Failing to properly supervise Defendant PERALTA and negligently entrusting the loading		
13	of materials purchased from RANCHO BUILDING MATERIALS, INC. onto its customers' vehicles on		
14	the day of the incident; and		
15 16	(d) Failing to timely discharge Defendant PERALTA for his lack of ability to perform as		
17	forklift driver, whose duties included loading materials purchased from RANCHO BUILDING		
18	MATERIALS, INC. onto its customers' vehicles.		
19	145. The foregoing actions of Defendant RANCHO BUILDING MATERIALS, INC. and		
20	DOES 51 through 60 directly and proximately caused the incident involved herein.		
21	146. As a direct and proximate result of the aforesaid conduct of Defendant RANCHO		
22	BUILDING MATERIALS, INC. and DOES 51 through 60, WAINSCOTT suffered and continues to		
23	suffer the damages described more specifically above.		
24	147. An officer, direct, or managing agent of Defendant RANCHO BUILDING MATERIALS,		
25	INC. and DOES 51 through 60 had advance knowledge of PERALTA's unfitness and employed him with		
26	a conscious disregard of the rights of safety of others and authorized or ratified the wrongful conduct for		
27			
28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL		
	-24-		

1	which WAINSCOTT seeks damages.

2	148.	Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 acted		
3	with a despicable conduct which was carried on with a willful and wanton conscious disregard for the			
4	rights and safety of PLAINTIFF, who would reasonably be expected to be effected by RANCHO			
5	BUILDING MATERIALS, INC. and DOES 51 through 60 actions and conduct, and was the direct, legal			
6	and proximate cause of WAINSCOTT's injuries, so as to impose the assessment of punitive damages			
7	against Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 in an amount			
8	appropriate to punish or set an example, pursuant to Cal. Civ. Code § 3294.			
9	PRAYER FOR RELIEF			
10	WHEREFORE Plaintiff prays for judgment against Defendants, and each of them, on all causes of			
11	action as follows:			
12 13	1.	For general damages according to proof;		
13	2.	For special damages according to proof;		
15	3.	For punitive damages pursuant to Cal. Civ. Code §3294;		
16	4.	For pre-judgment and post-judgment interest as allowed by law;		
17	5.	For costs of suit incurred herein; and		
18	6.	For such other and further relief as this Court may deem just and proper.		
19	Dated: Febru	ary <u>20</u> , 2018 Klein, DeNatale, Goldner Cooper, Rosenlieb & Kimball, LLP		
20				
21	ANTHONY J. KLEIN			
22	RYAN D. BRIGHT Attorneys for Plaintiff JONATHAN			
23		WAINSCOTT		
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27				
28		COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL -25-		

1	FOR JURY TRIAL
2	Plaintiff hereby demands a trial by jury as to all issues and causes of action.
3	
4	Dated: February 20, 2018 KLEIN, DENATALE, GOLDNER COOPER, ROSENLIEB & KIMBALL, LLP
5	h n.o
6	ANTHONY J. KLEIN
7	RYAN D. BRIGHT Attorneys for Plaintiff JONATHAN WAINSCOTT
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28	COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL
	-26-