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22 WAINSCOTT

23 SUPERIOR COURT OF THE STATE OF CALIFORNIA
24 COUNTY OF KERN, METROPOLITAN DIVISION

25 JONATHAN HUNTER WAINSCOTT,)
26)
27 Plaintiffs,)
28)
29)
30 vs.)
31)
32 KRISTOPHER DEAN MARCHANT,)
33 MARCHANT SITE DEVELOPMENT,)
34 INC., GABRIEL ARMENTA GARCIA,)
35 JUAN JARAMILLO DIAZ, JESUS M.)
36 PERALTA and RANCHO BUILDING)
37 MATERIALS, INC., and DOES 1)
38 through 100, inclusive,)
39)
40 Defendants.)

Case No.: BCV-18-100410

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL

- 1. NEGLIGENCE
- 2. NEGLIGENCE PER SE
- 3. VICARIOUS LIABILITY
- 4. NEGLIGENT HIRING,
RETENTION, TRAINING,
SUPERVISION AND
ENTRUSTMENT

Assigned to:
Dept:
Complaint Filed:
Trial Date:

UNLIMITED JURISDICTION

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

6 **INTRODUCTION**

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**

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

20 3. At all times relevant, Defendant GABRIEL ARMENTA GARCIA ("GARCIA") was and
21 is a competent adult and an individual residing in Bakersfield, Kern County, California. Plaintiff is
22 informed and believes, and herein alleges, that defendant GARCIA was, at all times herein relevant, an
23 employee of Defendant MARCHANT SITE DEVELOPMENT, INC. At all times relevant GARCIA was
24 the driver, operator and controller of the Truck and Trailer, assisted in connecting the Truck to the Trailer
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1 and supervised the loading of the Trailer. GARCIA can be served by delivering a copy of the Summons
2 and Complaint to him at his residence at 1010 L. Street, Apt. D, Bakersfield, California 93306.
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4 4. At all times relevant, Defendant Juan Jaramillo Diaz a/k/a Juan Antonio Jaramillo
5 (“DIAZ”) was and is a competent adult and an individual residing in the Bakersfield, Kern County,
6 California. Plaintiff is informed and believes, and herein alleges, that defendant DIAZ was, at all times
7 herein relevant, an employee of MERCHANT SITE DEVELOPMENT, INC. At all times relevant, DIAZ
8 was a passenger in the Truck, assisted in connecting the Truck to the Trailer and supervised the loading of
9 the Trailer. DIAZ can be served by delivering a copy of the Summons and Complaint to him at his
10 residence at 4308 Isla Verde Street, Apt. 6, Bakersfield, California 93301 or, in the alternative, at 248
11 Simpson Road, Apt. A1, Bakersfield, California.
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13 5. At all times relevant, Defendant KRISTOPHER DEAN MERCHANT (“MERCHANT”),
14 was and is a competent adult and an individual residing in Bakersfield, Kern County, California. Plaintiff
15 is informed and believes, and herein alleges that defendant MERCHANT was, at all times herein relevant,
16 the owner and operator of MERCHANT SITE DEVELOPMENT, INC. At all times relevant,
17 MERCHANT SITE DEVELOPMENT was the owner of the Truck, possessor of the trailer, and inspected
18 the connection of the Truck to the Trailer on August 2, 2017 before it left MERCHANT SITE
19 DEVELOPMENT, INC. At all times relevant MERCHANT hired, trained and supervised Defendants
20 GARCIA and DIAZ. MERCHANT can be served by delivering a copy of the Summons and Complaint to
21 him at his residence at 14408 Via Contento, Bakersfield, California 93314.
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23 6. Defendant MERCHANT SITE DEVELOPMENT, INC. is a corporation organized under
24 the laws of the State of California and authorized to do and doing business within the State of California,
25 including Kern County, with its principal place of business in Bakersfield, California. MERCHANT SITE
26 DEVELOPMENT, INC. may be served through its registered agent Kristopher Dean Marchant at 9316
27 Shellabarger Road, Unit D, Bakersfield, California 93312.
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1 participated in, or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged,
2 with full knowledge of all the facts and circumstances, including but not limited to, full knowledge of each
3 and all of the violations of WAINSCOTT's rights and the damages to WAINSCOTT proximately caused
4 thereby.

5 17. WAINSCOTT is informed and believes and thereon alleges, that at all times relevant
6 hereto, MERCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40, were the agents, affiliates,
7 officers, directors, managers, principals, alter-egos, or employees of MERCHANT 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
10 ratified 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 and all of the violations of WAINSCOTT's rights and the damages to WAINSCOTT proximately caused
20 thereby.

21 19. WAINSCOTT is informed and believes and thereon alleges, that at all times relevant
22 hereto, RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60, were the agents, affiliates,
23 officers, directors, managers, principals, alter-egos, or employees of RANCHO BUILDING MATERIALS
24 and DOES 51 through 60, and were at all times acting within the scope of such agency, affiliation, alter-
25 ego 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. MERCHANT SITE DEVELOPMENT, INC. is a closely-held corporation, which is
6 owned and operated by Defendant MERCHANT.

7 21. Defendant MERCHANT owned and/or furnished to MERCHANT 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 MERCHANT SITE
10 DEVELOPMENT, INC., having been hired less than three weeks before the incident that is the subject of
11 this Complaint.

12 23. At all times relevant hereto, Defendants DIAZ was employed by MERCHANT SITE
13 DEVELOPMENT, INC.

14 24. At all times relevant hereto, Defendant MERCHANT SITE DEVELOPMENT, INC. was
15 engaged in the masonry and landscape contracting business and was acting by and through its
16 employees/agents DIAZ and GARCIA and is responsible for the acts of those employees and agents
17 pursuant to *respondeat superior*, agency, or a similar theory of law.

18 25. RANCHO BUILDING MATERIALS, INC. is a closely held corporation, which sells
19 building materials, including masonry products.

20 26. At all times relevant Defendant PERALTA was a forklift driver employed by RANCHO
21 BUILDING MATERIALS, INC.

22 27. At all times relevant hereto, Defendant RANCHO BUILDING MATERIALS, INC. was
23 acting by and through its employee/agent PERALTA and is responsible for the acts of its employee/agent
24 PERALTA pursuant to *respondeat superior*, agency, or a similar theory of law.
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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 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.

13 62. The direct and proximate cause of the Trailer disconnecting from the Truck and striking
14 and injuring WAINSCOTT was the negligence of the Defendants, as more specifically articulated below.

15 63. By reason of the foregoing and as more fully articulated below, WAINSCOTT is entitled
16 to recover punitive damages from the Defendants in such an amount as may be shown by the evidence and
17 as may be determined by the enlightened conscience of the jury.

18
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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- 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
- 3 highway; and
- 4 f. Paying attention that the Trailer was safely secured to the Truck while traveling on the
- 5 highway.

6 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 DOES 1 through 10, WAINSCOTT suffered and continues to suffer the damages described more
22 specifically above.

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

3 **SECOND CAUSE OF ACTION - NEGLIGENCE PER SE AGAINST DEFENDANT**
4 **GARCIA**

5 75. Allegations 1 through 74 of Plaintiff's Complaint are hereby incorporated by reference
6 and made a part hereof, as if each such allegation was set forth herein.

7 76. Defendant GARCIA and DOES 1 through 10's negligence, which constituted a direct and
8 proximate cause of the injuries to Plaintiff, consisted of, but was not limited to, violations of the following
9 laws and ordinances, constituting, in each instance, negligence per se:

- 10 a. Violation of California Penal Code 192(c)(1) – Vehicular Manslaughter with Gross
11 Negligence;
- 12 b. Violations of California Vehicle Code 29004(a)(1)/(b) – Towed Vehicle (requiring safety
13 connections and attachments of sufficient strength to control the towed vehicle in the
14 event of failure of the regular hitch, coupling device, drawbar, tongue or other
15 connection);
- 16 c. Violation of California Vehicle Code 23123.5(a) – Text Messaging (prohibiting text
17 messaging while driving);
- 18 d. Violation of California Vehicle Code 24603(b) – Stoplamps (requiring a motor vehicle to
19 be equipped with operative tail lights);
- 20 e. Violation of California Vehicle Code 26453 – Condition of Brakes (prohibiting the use of
21 a motor vehicle without operative emergency brakes);
- 22 f. Violation of California Vehicle Code § 23103 - Reckless driving (prohibiting a person
23 from driving a vehicle upon a highway in willful or wanton disregard for the safety of
24 persons or property);
- 25 g. Failing to remain alert and vigilant and keep a proper lookout while driving;
- 26 h. Failing to operate his vehicle in a manner that was reasonable and proper under the
27 prevailing type of conditions; and
- 28 i. Failing to observe that degree of caution, prudence and care which is reasonable and
proper under the controlling circumstances.

77. The foregoing California Vehicle Code and California Penal Code violations were laws
implemented by the State of California to protect individuals from injury or death. PLAINTIFF was of the

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

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

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

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

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

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

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

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19 **THIRD CAUSE OF ACTION – NEGLIGENCE AGAINST DEFENDANT DIAZ**

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

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

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

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- 4. Confirming that the CMUs were safely loaded before the Truck and Trailer were driven on the highway; and
- 5. Paying attention that the Trailer was safely secured to the Truck while traveling on the highway.

86. Defendant DIAZ and DOES 11 through 20 breached his duty owed to WAINSCOTT by failing to safely and securely connect the Trailer to the Truck.

87. Defendant DIAZ and DOES 11 through 20 breached his duty owed to WAINSCOTT by operating the Trailer without proper equipment.

88. Defendant DIAZ and DOES 11 through 20 breached his duty owed to WAINSCOTT by failing to properly supervise the safe loading of the CMUs onto the Trailer.

89. Defendant DIAZ and DOES 11 through 20 breached his duty owed to WAINSCOTT by failing to confirm that the CMUs were safely loaded before taking the Truck and Trailer on the highway.

90. Defendant DIAZ and DOES 11 through 20 breached his duty owed to WAINSCOTT failing to pay attention that the Trailer was safely secured to the Truck while traveling on the highway.

91. The foregoing actions of Defendant DIAZ and DOES 11 through 20 directly and proximately caused the incident involved herein.

92. As a direct and proximate result of the aforesaid conduct of Defendant DIAZ and DOES 11 through 20, WAINSCOTT suffered and continues to suffer the damages describe more specifically above.

93. Defendant DIAZ and DOES 11 through 20 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 DIAZ and DOES 11 through 20'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 DIAZ and DOES 11 through 20 in an amount appropriate to punish or set an example, pursuant to Cal. Civ. Code § 3294.

1 the assessment of punitive damages against Defendant MERCHANT 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 MERCHANT SITE**
4 **DEVELOPMENT, INC.**

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 MERCHANT 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 MERCHANT SITE
11 DEVELOPMENT, INC. and DOES 31 through 40 and were Defendant MERCHANT SITE
12 DEVELOPMENT, INC. and DOES 31 through 40's agents, under the control of Defendant MERCHANT
13 SITE DEVELOPMENT, INC. and DOES 31 through 40 and operating the Truck and Trailer with
14 MERCHANT 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 MERCHANT SITE DEVELOPMEN, INC. and DOES 31 through 40's
17 business.

18 106. At all times material to this action, Defendant MERCHANT SITE DEVELOPMENT,
19 INC. and DOES 31 through 40 had the right to control the actions of Defendants GARCIA and DIAZ and
20 Defendants GARCIA and DIAZ were under the control and direction of Defendant MERCHANT SITE
21 DEVELOPMENT, INC and DOES 31 through 40.

22 107. Defendant MERCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 is
23 vicariously liable for the negligence per se of Defendant GARCIA and the negligence of GARCIA and
24 DIAZ under the doctrine of *respondeat superior*.

25 108. WAINSCOTT is entitled to recover general, special and punitive damages from
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1 Defendant MERCHANT, INC. and DOES 31 through 40 under the doctrine of *respondeat superior*.

2 **SIXTH CAUSE OF ACTION – NEGLIGENT HIRING, RETENTION, TRAINING,**
3 **SUPERVISION AND ENTRUSTMENT AGAINST DEFENDANT MERCHANT, INC.**

4 109. Allegations 1 through 108 of Plaintiff's Complaint are hereby incorporated by reference
5 and made a part hereof as if each such allegation were fully set forth herein.

6 110. Defendant MERCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 owed
7 the general public a duty of reasonable care in the hiring, training and supervision of its employees,
8 including its delivery driver Defendant GARCIA and assistant, DIAZ.

9 111. Defendant MERCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40
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 MERCHANT 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 MERCHANT 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 MERCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 owed a
19 duty to WAINSCOTT to properly supervise its employees, including Defendants GARCIA and DIAZ,
20 before entrusting them to pick up materials for delivery in the Truck and Trailer.

21 115. Defendant MERCHANT 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.

24 116. Defendant MERCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 owed a
25 duty to WAINSCOTT to discharge employees that did not exhibit the proper credentials or abilities to
26 perform the duties entrusted to them.
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1 with a despicable conduct which was carried on with a willful and wanton conscious disregard for the
2 rights and safety of WAINSCOTT, who would reasonably be expected to be effected by MERCHANT
3 SITE DEVELOPMENT, INC.'s actions and conduct, and was the direct, legal and proximate cause of
4 WAINSCOTT's injuries, so as to impose the assessment of punitive damages against Defendant
5 MERCHANT SITE DEVELOPMENT, INC. and DOES 31 through 40 in an amount appropriate to punish
6 or set an example, pursuant to Cal. Civ. Code § 3294.

7 **SEVENTH CAUSE OF ACTION – NEGLIGENCE AGAINST DEFENDANT PERALTA**

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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.

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

23 128. Defendant PERALTA and DOES 41 through 50 acted with a despicable conduct which
24 was carried on with a willful and wanton conscious disregard for the rights and safety of WAINSCOTT,
25 who would reasonably be expected to be effected by PERALTA and DOES 41 through 50's actions and
26 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 DOES 51 through 60, and was Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51
12 through 60's agent, under the control of Defendant RANCHO BUILDING MATERIALS, INC. and
13 DOES 51 through 60, and loading CMUs in the Trailer with RANCHO BUILDING MATERIALS, INC.
14 and DOES 51 through 60's permission.

15 132. In the course of loading the CMUs into the Trailer on August 2, 2017, Defendant
16 PERALTA was acting in furtherance of Defendant RANCHO BUILDING MATERIALS, INC. and
17 DOES 51 through 60's business.

18 133. At all times material to this action, Defendant RANCHO BUILDING MATERIALS, INC.
19 and DOES 51 through 60 had the right to control the actions of Defendant PERALTA and Defendant
20 PERALTA was under the control and direction of Defendant RANCHO BUILDING MATERIALS, INC
21 and DOES 51 through 60.

22 134. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 is
23 vicariously liable for the negligence of Defendant PERALTA under the doctrine of *respondeat superior*.

24 135. WAINSCOTT is entitled to recover general, special and punitive damages from
25 Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 under the doctrine of
26

1 *respondeat superior.*

2 **NINTH CASE OF ACTION – NEGLIGENT HIRING, RETENTION, TRAINING, SUPERVISION**
3 **AND ENTRUSTMENT AGAINST DEFENDANT RANCHO BUILDING MATERIALS, INC.**

4 136. Allegations 1 through 135 of Plaintiff's Complaint are hereby incorporated by reference
5 and made a part hereof as if each such allegation were fully set forth herein.

6 137. 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 owed 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 breached its duty owed to WAINSCOTT by negligently entrusting to PERALTA the proper and safe
22 loading of its materials onto customers' vehicles on August 2, 2017, the day of the incident.

23 142. Defendant RANCHO BUILDING MATERIALS, INC. and DOES 51 through 60 owed a
24 duty to WAINSCOTT to discharge employees that did not exhibit the proper credentials or abilities to
25 properly and safely load material purchased from RANCHO BUILDING MATERIALS, INC. and DOES
26 51 through 60 onto its customers' vehicles.
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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 MATERIALS, INC. onto its customers' vehicles;

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 (d) Failing to timely discharge Defendant PERALTA for his lack of ability to perform as
16 forklift driver, whose duties included loading materials purchased from RANCHO BUILDING
17 MATERIALS, INC. onto its customers' vehicles.

18 145. The foregoing actions of Defendant RANCHO BUILDING MATERIALS, INC. and
19 DOES 51 through 60 directly and proximately caused the incident involved herein.

20 146. As a direct and proximate result of the aforesaid conduct of Defendant RANCHO
21 BUILDING MATERIALS, INC. and DOES 51 through 60, WAINSCOTT suffered and continues to
22 suffer the damages described more specifically above.

23 147. An officer, direct, or managing agent of Defendant RANCHO BUILDING MATERIALS,
24 INC. and DOES 51 through 60 had advance knowledge of PERALTA's unfitness and employed him with
25 a conscious disregard of the rights of safety of others and authorized or ratified the wrongful conduct for
26

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 1. For general damages according to proof;
- 13 2. For special damages according to proof;
- 14 3. For punitive damages pursuant to Cal. Civ. Code §3294;
- 15 4. For pre-judgment and post-judgment interest as allowed by law;
- 16 5. For costs of suit incurred herein; and
- 17 6. For such other and further relief as this Court may deem just and proper.

18 Dated: February 20, 2018

KLEIN, DENATALE, GOLDNER
COOPER, ROSENLIB & KIMBALL, LLP

19 
20 _____
21 ANTHONY J. KLEIN
22 RYAN D. BRIGHT
23 Attorneys for Plaintiff JONATHAN
24 WAINSCOTT

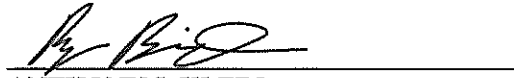
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FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues and causes of action.

Dated: February 20, 2018

KLEIN, DENATALE, GOLDNER
COOPER, ROSENLIB & KIMBALL, LLP



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WAINSCOTT