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11  
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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT**  
15

16 REBECCA SMITHLING, a wrongful death  
beneficiary of Decedent Chad Smithling;  
17 HOPE SMITHLING, a minor, by and through  
her guardian ad litem, Rebecca Smithling, as  
18 wrongful death beneficiary of Decedent Chad  
Smithling; ANGEL SMITHLING, a wrongful  
19 death beneficiary of Decedent Chad Smithling,

20 Plaintiffs,

21 v.

22 STATE OF CALIFORNIA, acting by and  
through the DEPARTMENT OF  
23 TRANSPORTATION ("CALTRANS"), a  
government entity; TOWN OF YUCCA  
24 VALLEY, a government entity; TAUSIF B.  
BILLAH, an individual; CRYSTAL  
25 SMITHLING, a nominal defendant; and  
DOES 1 through 50, Inclusive ,

26 Defendant.  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

DEC 17 2019

BY   
GABRIELA JAMISON, DEPUTY

BY FAX

Case No. CIVDS1900606

SECOND AMENDED COMPLAINT FOR  
DAMAGES

1. DANGEROUS CONDITION OF  
PUBLIC PROPERTY
2. NEGLIGENCE – WRONGFUL DEATH  
DEMAND FOR JURY TRIAL

1 COME NOW, Plaintiffs REBECCA SMITHLING, a wrongful death beneficiary of  
2 Decedent CHAD SMITHLING; HOPE SMITHLING, a minor, by and through her guardian ad  
3 litem, Rebecca Smithling, as wrongful death beneficiary of Decedent CHAD SMITHLING;  
4 ANGEL SMITHLING, a wrongful death beneficiary of Decedent CHAD SMITHLING, for  
5 Causes of Action against Defendants, STATE OF CALIFORNIA, acting by and through the  
6 DEPARTMENT OF TRANSPORTATION ("CALTRANS"), TOWN OF YUCCA, TAUSIF B.  
7 BILLAH and DOES 1 through 50, Inclusive, and each of them, complain and allege as follows:  
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9 **GENERAL ALLEGATIONS**

10 1. The claims set forth herein arise from a motorcycle versus motor vehicle collision  
11 that occurred on March 24, 2018, in the town of Yucca Valley, County of San Bernardino, State of  
12 California (hereinafter "SUBJECT INCIDENT"), which caused the wrongful death of Decedent  
13 CHAD SMITHLING, who is survived by Plaintiffs REBECCA SMITHLING, HOPE  
14 SMITHLING, and ANGEL SMITHLING.

15 2. On March 24, 2018 at approximately 8:18 pm, Decedent CHAD SMITHLING was  
16 heading eastbound on the two lane Highway 62 (also known as the Twentynine Palms Highway).  
17 At the time, he was operating a MOTORCYCLE bearing California license plate No. 18V8031  
18 (hereinafter "PLAINTIFF'S MOTORCYCLE"). At the same time, Defendant TAUSIF B.  
19 BILLAH (hereinafter "BILLAH"), was operating a Hyundai Santa Fe, bearing New Mexico  
20 license plate No. 129TXC (hereinafter "SUBJECT VEHICLE") traveling eastbound. Defendant  
21 BILLAH'S VEHICLE unsafely and negligently attempted to make a left turn to the westbound  
22 lanes across double yellow lines and struck PLAINTIFF'S MOTORCYCLE, causing the death of  
23 Decedent CHAD SMITHLING. The eastbound and westbound lanes of Twentynine Palms  
24 Highway, where the subject incident occurred, were not separated by any type of physical barrier  
25 that would prevent motorists from the eastbound lanes from entering into the westbound lanes, for  
26 purposes including but not limited to, entering commercial businesses adjacent to the westbound  
27 lanes of Twentynine Palms Highway (hereinafter "SUBJECT ROAD").

28 3. At all relevant times herein, Decedent CHAD SMITHLING was a resident of the

1 City of Twentynine Palms, County of San Bernardino, State of California.

2 4. At all relevant times herein, Plaintiff REBECCA SMITHLING is and was a  
3 resident of the City of Twentynine Palms, County of San Bernardino, State of California. She is  
4 the surviving spouse of Decedent CHAD SMITHLING.

5 5. At all times herein relevant, HOPE SMITHLING is and was a minor, and was a  
6 resident of the City of Twentynine Palms, County of San Bernardino, State of California. She is  
7 the daughter of Decedent CHAD SMITHLING.

8 6. At all times herein relevant, ANGEL SMITHLING, is and was a resident of the  
9 State of South Dakota. She is the daughter of Decedent CHAD SMITHLING.

10 7. Plaintiffs REBECCA SMITHLING, HOPE SMITHLING, and ANGEL  
11 SMITHLING have standing to bring a wrongful death cause of action as wrongful death  
12 beneficiaries under CCP §377.60.

13 8. Plaintiffs are informed and believe that CRYSTAL SMITHLING is an adult  
14 daughter of Decedent CHAD SMITHLING, is a potential wrongful death heir of Decedent CHAD  
15 SMITHLING, and is a resident of the State of Arizona. Plaintiff therefore identifies this party as a  
16 nominal defendant pursuant to California Code of Civil Procedure §382.

17 9. Plaintiffs are informed and believe, and thereon allege, that Defendant TAUSIF B.  
18 BILLAH, is, and at all time mentioned herein was, a resident of the City of New York, state of  
19 New York.

20 10. Plaintiffs are informed and believe, and thereon allege, that Defendant STATE OF  
21 CALIFORNIA, by and through the DEPARTMENT OF TRANSPORTATION (hereinafter  
22 "CALTRANS"), is, and at all times herein mentioned was, a government entity organized and  
23 existing under and by virtue of the laws of the State of California and authorized to do, and doing,  
24 business in the State of California, County of Los Angeles.

25 11. Defendant CALTRANS is a "government entity," upon which Plaintiffs  
26 REBECCA SMITHLING, HOPE SMITHLING, and ANGEL SMITHLING, have, pursuant to  
27 California Government Code section 945.4, timely served written government claims. By the time  
28 of serving this Complaint on the government entity defendants, the written government claims

1 have been rejected and/or may be deemed to have been rejected. Consequently, Plaintiffs  
2 REBECCA SMITHLING, HOPE SMITHLING, and ANGEL SMITHLING have standing to  
3 bring suit for monetary damages against the aforementioned government entity Defendants.

4 12. Defendant TOWN OF YUCCA VALLEY is, and at all times herein mentioned  
5 was, a government entity duly organized and existing under and by virtue of the laws of the State  
6 of California and authorized to do, and is doing, business in the State of California with its  
7 principal place of business in the County of San Bernardino, State of California.

8 13. Defendant TOWN OF YUCCA VALLEY (hereinafter "YUCCA VALLEY") is a  
9 "government," upon which Plaintiffs REBECCA SMITHLING, HOPE SMITHLING, and  
10 ANGEL SMITHLING, have, pursuant to California Government Code section 945.4, timely  
11 served written government claims. By the time of serving this Complaint on the government  
12 entity defendants, the written government claims have been rejected and/or may be deemed to  
13 have been rejected. Consequently, Plaintiffs REBECCA SMITHLING, HOPE SMITHLING, and  
14 ANGEL SMITHLING have standing to bring suit for monetary damages against the  
15 aforementioned government entity Defendants.

16 14. The true names and capacities, whether individual, plural, corporate, partnership,  
17 associate, or otherwise, of DOES 1 through 50 inclusive, are unknown to the plaintiffs who  
18 therefore sue said defendants by such fictitious names. The full extent of the facts linking such  
19 fictitiously sued defendants is unknown to plaintiffs. The plaintiffs are informed, believe and  
20 thereupon allege that each of the defendants designated herein as a DOE was and is negligent, or  
21 in some other actionable manner, responsible for the events and happenings hereinafter referred to,  
22 and thereby negligently, wrongfully, recklessly or in some other actionable manner, legally and  
23 proximately caused the hereinafter described injuries and damages to the plaintiffs. The plaintiffs  
24 will hereafter seek leave of Court to amend this complaint to show the defendants' true names and  
25 capacities after the same have been ascertained.

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**FIRST CAUSE OF ACTION**

**Dangerous Condition Of Public Property -by Plaintiffs REBECCA SMITHLING,  
HOPE SMITHLING, and ANGEL SMITHLING against Defendants CALTRANS,  
TOWN OF YUCCA VALLEY and DOES 1 through 50)  
(Pursuant to Government Code § 835, et seq.)**

15. Plaintiffs incorporate by reference as though fully set forth herein each and every fact, claim and allegation contained in the prior paragraphs.

16. At the time of the SUBJECT INCIDENT, and prior thereto, Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, are, and at all times relevant herein were, the entities who owned, controlled, operated, managed, designed, evaluated, constructed, maintained, built, oversaw, repaired, patrolled, and supervised said SUBJECT ROAD.

17. On March 24, 2018, and prior thereto, Defendant YUCCA and DOES 1 through 50, inclusive, had control over the SUBJECT ROAD based on the following:

- a. The stretch of highway where the SUBJECT INCIDENT occurred is within the city of limits of the Town of Yucca Valley,
- b. The Town of Yucca Valley accepted the SUBJECT ROAD into their city street system, and approved and participated in street improvement plans to the SUBJECT ROAD when a commercial development was constructed on adjacent city property, as recorded in contracts between Defendant YUCCA and Defendant CALTRANS.
- c. The Town of Yucca Valley engaged in prior conduct with Defendant CALTRANS, establishing control of the SUBJECT ROAD, including but not limited to inspections and maintenance of the SUBJECT ROAD,
- d. The Town of Yucca Valley had control of the SUBJECT ROAD and the power to prevent, remedy, or guard against the dangerous condition of the SUBJECT ROAD based on the following:
  - i. Defendant YUCCA approved and contributed to the design,

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construction, traffic plan, grading, signing and striping, paving and engineering of the SUBJECT ROAD when changes were made to the road for a commercial development on the Town's adjacent property.

- ii. The changes made to the SUBJECT ROAD resulted in the SUBJECT ROAD constituting a dangerous condition of public property, set forth more fully below.
- iii. After changes were made to the SUBJECT ROAD Defendant YUCCA had personal knowledge of the dangerous condition of the SUBJECT ROAD, including but not limited to, illegal and unsafe turning movements on the SUBJECT ROAD resulting in near head-on collisions, yet they did not prevent, remedy or guard against the dangerous condition. Defendant YUCCA had personal knowledge of the dangerous condition of the SUBJECT ROAD a minimum of four-years prior to the SUBJECT INCIDENT, as recorded in official letters from Town officials, concerned citizens and Town city council meeting minutes.

18. At the time of the SUBJECT INCIDENT, at the location of the public property located on, at, or near the SUBJECT ROAD, there existed various dangerous condition(s) on said property that created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it is and was reasonably foreseeable that it would be and was used, including but not limited to, in the following respects:

- a. The SUBJECT ROAD is improperly and dangerously delineated, placed, angled, and designed;
- b. The SUBJECT ROAD lacked a reasonable line of sight. Specifically, drivers approaching the SUBJECT ROAD where the SUBJECT INCIDENT occurred do not have a reasonable line of sight to see other foreseeable users of the SUBJECT ROAD, which include the DECEDENT

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- and ERIKA FERNANDEZ,
- c. The SUBJECT ROAD'S line of sight is insufficient for foreseeable users, which include Decedent CHAD SMITHLING, to see oncoming traffic in a reasonable time to react and avoid a collision.
  - d. The SUBJECT ROAD lacks any median or highway delineators to prevent drivers from making a left turn to the westbound lanes on the Highway 62 (also known as the Twentynine Palms Highway).
  - e. The SUBJECT ROAD lacks any or has insufficient warnings signs, signals and any other form of warning to alert drivers of the lack of a reasonable line of sight and/or the dangerous design of the SUBJECT ROAD and high risk of vehicle collisions that it creates.
  - f. Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, failed to maintain the SUBJECT ROAD and related signage, striping, road markings and devices so as to create a trap.
  - g. The SUBJECT ROAD lacks any, or has insufficient and/or defective, barriers, warning signs or signals, or other forms of warning to protect persons, such as Decedent CHAD SMITHLING from the unreasonable risk of harm posed by the SUBJECT ROAD.
  - h. The SUBJECT ROADWAY constituted a dangerous condition, which was created by Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive. Said Defendants had actual and constructive notice of the dangerous condition on the SUBJECT ROAD;
  - i. The SUBJECT ROAD lacked appropriate signs to adequately warn motorists not to cross over the double yellow line and further warning of potential fines if a motorist did cross over the double yellow line;
  - j. The posted speed limit on the SUBJECT ROAD is excessive, thereby creating a hazard to motorist;
  - k. The SUBJECT ROAD surface was in a deteriorated condition, including,

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but not limited to, its striping, markings and controls;

- l. The SUBJECT ROAD and adjacent property were designed, constructed, and maintained in such a manner as to obstruct and interfere with the vision and perception of drivers, thereby interfering with the normal flow of traffic and with the safe operation of vehicles;
- m. The SUBJECT ROADWAY was dangerously and unreasonably, designed, constructed, and maintained so as to increase the likelihood that vehicles would leave the traveled portion of the highway;
- n. The absence of any protective device, barrier, road markings and/or striping to prevent vehicles from crossing the double yellow lines; and  
Such other conditions unknown to Plaintiff at this time, but which may be established through discovery.

19. The SUBJECT ROAD lacks any, or has insufficient, warning signs, either temporary or permanent, that would provide warning to persons using the SUBJECT ROAD about the dangerous conditions described herein.

20. Any existing warning signs, either temporary or permanent, that would provide warning to persons encountering the dangerous conditions of the SUBJECT ROAD and adjacent property, were defective, inadequate, and/or not properly functioning.

23. Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, failed to maintain the SUBJECT ROADWAY and related signage and devices, so as to create a concealed trap.

24. Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, were responsible for the planning, design, supervision, control, construction, servicing, management, inspection, operation, signing, striping, maintenance, repair, refurbishment, traffic control, and other activities related to the SUBJECT ROAD where the SUBJECT INCIDENT occurred, including, but not limited to, property adjacent to the SUBJECT ROAD.

25. Plaintiffs are further informed and believe, and thereon allege that Defendants



1 CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, caused,  
2 created, and/or allowed to exist, and allowed to continue to exist, said dangerous condition(s) with  
3 respect to the SUBJECT ROADWAY and its adjacent property. Plaintiffs are further informed  
4 and believe, and thereon allege, that Defendants CALTRANS, YUCCA VALLEY and DOES 1  
5 through 50, inclusive, and each of them, misconduct in causing, creating, allowing to exist, and  
6 allowed to exist said dangerous conditions(s) with respect to the SUBJECT ROAD and its  
7 adjacent property, created a reasonably foreseeable risk of injury to persons using the SUBJECT  
8 ROAD in a reasonable manner, such as Decedent CHAD SMITHLING. At all times mentioned,  
9 Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of  
10 them, were responsible for the planning, design, supervision, control, construction, servicing,  
11 management, inspection, operation, signing, striping, maintenance, repair, refurbishment, traffic  
12 control, any other activities related to the SUBJECT ROAD where the SUBJECT INCIDENT  
13 occurred, including but not limited to, property adjacent to the SUBJECT ROAD.

14 26. At said time and place, Defendants CALTRANS, YUCCA VALLEY and DOES 1  
15 through 50, inclusive, and each of them, by and through their employees, agents, servants, and  
16 independent contractors, proximately caused the injuries and damages as hereafter mentioned by  
17 wantonly, recklessly, tortuously, wrongfully, unreasonably, and unlawfully:

- 18 a. Planning, designing, constructing, owning, possessing, controlling,  
19 operating, maintaining, servicing, inspecting, repairing, and monitoring the  
20 SUBJECT ROAD and adjacent property.
- 21 b. Supervising, controlling, contracting, inspecting, repairing, maintaining,  
22 monitoring, and working on or at the SUBJECT ROAD with regard to  
23 design configurations, geometrics, sight distances, absence of traffic control  
24 devices, and warning devices on or adjacent to the SUBJECT ROAD,  
25 which created a dangerous condition that was not reasonably apparent to  
26 prudent motorists and pedestrians.
- 27 c. Failing to guard, warn, and protect motorists from hazards, which  
28 Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50,

- 1 inclusive, and each of them, knew about, or in the exercise of reasonable  
2 diligence should have known about;
- 3 d. Designing, constructing, owning, supervising, controlling, testing,  
4 entrusting, permitting, managing, maintaining, servicing, repairing,  
5 inspecting, and operating with regard to the SUBJECT ROAD so as to  
6 cause, permit, and allow dangerous, defective, and unsafe conditions at the  
7 accident site to exist;
- 8 e. Failing to install appropriate traffic control devices, including signs, signals,  
9 lights, road markers, striping, road barriers and the like; failure to install  
10 warning signs, signals or devices to warn and/or apprise motorists of the  
11 presence of the dangerous condition of the SUBJECT ROAD, which was  
12 not reasonably apparent at or near the SUBJECT ROAD and where the  
13 SUBJECT INCIDENT occurred.
- 14 f. Failing to install appropriate areas for travel, including signs, shoulder  
15 areas, road markers, striping, and the like; failure to install warning signs,  
16 signals or devices to warn and/or apprise motorists on the SUBJECT ROAD  
17 and failing to otherwise advise or control traffic at or near the SUBJECT  
18 ROAD of danger.

19 27. Plaintiffs are informed and believe, and thereon allege that the aforementioned  
20 conditions constituted dangerous condition(s) of public property as set forth under *Government*  
21 *Code* section 835, *et seq.* Plaintiffs are informed and believe, and thereon allege, that Defendants  
22 CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, had,  
23 within the meaning of *Government Code* section 835.2, actual and constructive knowledge of the  
24 said dangerous and defective conditions of the SUBJECT ROAD and adjacent property for a  
25 sufficient period of time prior to the SUBJECT INCIDENT to have taken measures to prevent  
26 such incidents due to the longstanding condition(s) of the SUBJECT ROAD and adjacent  
27 property. Plaintiffs are informed and believe, and thereon allege, that Defendants CALTRANS,  
28 YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them also had actual

1 knowledge of a number of prior vehicle collisions of a similar nature to the SUBJECT INCIDENT  
2 at the same, or nearby, location for sufficient period of time prior to the SUBJECT INCIDENT to  
3 have taken measures to prevent further such incidents.

4 28. Plaintiffs are informed and believe, and thereon allege, that Defendants  
5 CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, caused,  
6 created, and/or allowed to exist, and allowed to continue to exist, said dangerous condition(s) with  
7 respect to the SUBJECT ROAD and its adjacent property. Plaintiffs are further informed and  
8 believe, and thereon allege, that Defendants CALTRANS, YUCCA VALLEY and DOES 1  
9 through 50, inclusive, misconduct in causing, creating, allowing to exist, and allowed to continue  
10 to exist, said dangerous condition(s) with respect to the SUBJECT ROAD and its adjacent  
11 property, created a reasonably foreseeable risk of injury to persons using the SUBJECT ROAD in  
12 a reasonable manner, such as Decedent CHAD SMITHLING.

13 29. Based upon the aforementioned facts, the SUBJECT ROAD and adjacent property  
14 thereto, constituted a dangerous condition of public property at the time of the SUBJECT  
15 INCIDENT for many reasons, including, but not limited to, the following:

- 16 a. The SUBJECT ROAD and adjacent property, was dangerous and  
17 defectively planned, designed, drafted, engineered, constructed, and  
18 positioned, and was either not approved in accordance with standard  
19 procedure, regulations, and statutes (thereby violating same) or could not  
20 reasonably have been approved by any appropriate and responsible  
21 governmental entity or any delegates and agents thereof;
- 22 g. To the extent the design of the SUBJECT ROAD and adjacent property,  
23 was approved, if any approval was requested and given, the requesting and  
24 responding authority(ies)/delegate(s) and agent(s) were incompetent or  
25 failed to possess the requisite skills and expertise to render a reasonable  
26 evaluation of the benefits, risks, and dangers of the plan as submitted or  
27 amended and approved;
- 28 h. To the extent the design of the SUBJECT ROAD was approved, said

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approval was unreasonable and constituted a manifest abuse of discretion, or otherwise was wrongful, reckless and careless by failing to address the applicable engineering standards and conditions then existing or reasonably contemplated to exist in the future, once said design was implemented;

- i. The SUBJECT ROAD and adjacent property, were, at all relevant times, dangerous, improperly and defectively maintained, managed, inspected, installed, repaired, modified, reviewed, and evaluated, if in fact they were maintained, managed, inspected, reviewed, and evaluated. To the extent such functions were not performed, they should have been, and, to the extent they were performed, they were done improperly, wrongfully, recklessly and carelessly, and in violation of applicable engineering standards and regulations pertaining to similarly situated public property;
- j. The SUBJECT ROAD and its adjacent property, was at all relevant times, in a dangerous condition due to the lack of appropriate barriers, signage, markings, striping, warnings, or other measures necessary to prevent incidents of the type that occurred in this case;
- k. There was wrongful conduct, recklessness and carelessness in the ownership, control, construction, maintenance, inspection, placement, supervision, repairs, design, and modifications of the SUBJECT ROAD and adjacent property, including creating and failing to warn against non-obvious and concealed traps. There was further wrongful, reckless and careless conduct in the failure to properly supervise, educate, train, monitor, and test workers, including employees and independent contractors who were responsible for doing the acts and tasks noted above. There was further wrongful, reckless and careless conduct in the failure to warn of these known risks and hazards, some of which were created by Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, and some of which existed for a sufficient period of time to

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provide warnings and/or remove the risk or hazard and failure to warn of previous similar incidents;

l. The area of the SUBJECT ROAD was in a dangerous condition because of the failure to exercise due care in the ownership or control of the SUBJECT ROAD and adjacent property, in that the lack of line of sight, safety devices, signage, road markings, barriers as well as the other dangers noted previously, created a concealed trap. Said property further was unsafe because of improper materials used, as well as the failure to properly supervise, educate, train, monitor, and test workers, including employees and independent contractors who were responsible for doing the acts and tasks noted above. There was a failure to warn of these known risks and hazards, some of which were created by Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, and some of which existed for a sufficient period of time to provide warnings and/or remove the risk or hazard;

m. Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, failed to properly plan, modify, alter, construct, monitor, improve, repair, refurbish, manage, design, control, maintain, and service said property after changes in the condition of the SUBJECT ROAD, and changes in traffic patterns and usage of the property since its original design and construction

30. Plaintiffs are informed and believe, and thereon allege, that Defendants CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, and each of them, had, within the meaning of *Government Code* section 835.2, actual and constructive knowledge of the said dangerous and defective conditions of the SUBJECT ROAD and adjacent property, for a sufficient period of time prior to the SUBJECT INCIDENT to have taken measures to prevent such incidents due to the longstanding condition(s) of the SUBJECT ROAD and adjacent property.

1           31.     Plaintiffs are informed and believe, and thereon allege, that Defendants  
2 CALTRANS, YUCCA VALLEY and DOES 1 through 50, inclusive, had actual knowledge of a  
3 number of prior incidents of a similar nature to the SUBJECT INCIDENT at the same location for  
4 sufficient period of time prior to the SUBJECT INCIDENT to have taken measures to prevent  
5 further such incidents.

6           32.     Plaintiffs are informed and believe, and thereon allege, that said dangerous  
7 condition(s) were not, nor would not have been, reasonably apparent to, and were not, nor would  
8 not have been anticipated by, persons exercising due care, such as Decedent CHAD SMITHLING.  
9 For those reasons and others stated above, the SUBJECT ROAD and adjacent property,  
10 constituted a concealed trap for those exercising due care and acting in a foreseeable manner,  
11 including as Decedent CHAD SMITHLING.

12           33.     Plaintiffs further allege that Defendants CALTRANS, YUCCA VALLEY and  
13 DOES 1 through 50, inclusive, and each of them, and their employees, agents, servants, and  
14 independent contractors are liable for Plaintiffs' damages pursuant to *Government Code* sections  
15 815.2, 815.4, 820, subdivision (a), *et seq.*, for wrongfully, carelessly, and/or recklessly owning,  
16 designing, maintaining, allowing, permitting, regulating, controlling, servicing, inspecting,  
17 repairing, modifying, altering, monitoring, improving, constructing, warning or failing to warn,  
18 and/or supervising the SUBJECT ROAD and adjacent property, and said wrongful, unreasonable,  
19 careless, and reckless acts, or failure to act, created said dangerous and defective condition(s) of  
20 said property, which legally caused the SUBJECT INCIDENT and the injuries and damages of  
21 Plaintiffs, as herein alleged.

22           34.     Plaintiffs are further informed and believe, and thereon allege, that said dangerous  
23 condition(s) were the legal, direct, and proximate cause of the injury and damages suffered by  
24 Plaintiffs.

25           35.     As a direct, actual, legal, and proximate result of the wrongful, unreasonable  
26 conduct, acts, and/or omissions of defendants, as well as the conduct of defendants, and each of  
27 them, including DOES 1 through 50, inclusive, Plaintiffs REBECCA SMITHLING, HOPE  
28 SMITHLING, and ANGEL SMITHLING will be deprived of the financial support and assistance

1 of the Decedent, the exact amount of such losses to be stated according to proof, pursuant to  
2 Section 425.10 of the California Code of Civil Procedure.

3 36. As a direct, actual, legal, and proximate result of the wrongful, unreasonable  
4 conduct, acts, and/or omissions of defendants, as well as the conduct of defendants, and each of  
5 them, including DOES 1 through 50, inclusive, REBECCA SMITHLING, HOPE SMITHLING,  
6 and ANGEL SMITHLING, have incurred funeral and burial expenses in an amount to be stated  
7 according to proof, pursuant to Section 425.10 of the California Code of Civil Procedure.

8 37. As a direct, actual, legal, and proximate result of the wrongful, unreasonable  
9 conduct, acts, and/or omissions of defendants, as well as the conduct of defendants, and each of  
10 them, including DOES 1 through 50, inclusive, Plaintiffs REBECCA SMITHLING, HOPE  
11 SMITHLING, and ANGEL SMITHLING have sustained damages resulting from the loss of love,  
12 affection, society, service, comfort, support, right of support, expectations of future support, and  
13 counseling, companionship, solace and mental support, as well as other benefits and assistance, of  
14 the Decedent, all to their general damage in a sum in excess of the jurisdictional limits of this  
15 Court, which will be stated according to proof, in accordance with Section 425.10 of the  
16 California Code of Civil Procedure.

17 **SECOND CAUSE OF ACTION**

18 **(NEGLIGENCE - Wrongful Death-by Plaintiffs REBECCA SMITHLING, HOPE**  
19 **SMITHLING, and ANGEL SMITHLING against Defendant TAUSIF BILLAH and**  
20 **DOES 1 through 50)**

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

23 39. Decedent CHAD SMITHLING suffered catastrophic personal injuries and died  
24 wrongfully as a result of each defendants' wrongful and negligent actions and omissions.

25 40. As alleged above, Plaintiff REBECCA SMITHLING is the surviving spouse of  
26 Decedent CHAD SMITHLING.

27 41. As alleged above, Plaintiff HOPE SMITHLING is a minor and the daughter of  
28 Decedent CHAD SMITHLING.

1           42.     As alleged above, Plaintiff ANGEL SMITHLING is the daughter of Decedent  
2 CHAD SMITHLING.

3           43.     Plaintiffs are informed and believe, and thereon allege, that at all material times  
4 herein, Defendant TAUSIF B. BILLAH and DOES 1 through 50, inclusive, and each of them,  
5 owed a duty of care to all reasonably foreseeable people, including the decedent, in the  
6 management, maintenance, control, entrustment, and operation of the SUBJECT VEHICLE in a  
7 reasonable manner.

8           44.     Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
9 herein, Defendant TAUSIF B. BILLAH and DOES 1 through 50, inclusive, and each of them,  
10 breached these duties and negligently, recklessly, and unlawfully owned, controlled, managed,  
11 maintained, and/or operated the SUBJECT VEHICLE. This conduct was a legal and proximate  
12 cause of the SUBJECT INCIDENT.

13           45.     Plaintiff is informed and believes, and thereon alleges, that Defendants TAUSIF B.  
14 BILLAH and DOES 1 through 50, inclusive, and each of them, were also *per se* negligent for  
15 driving in violation of, including but not limited to, California Vehicle Code §21801 (a) which  
16 requires, “the driver of a vehicle intending to turn left or to complete a U-turn upon a highway, or  
17 to turn left into public or private property, or an alley, shall yield the right-of-way to all vehicles  
18 approaching from the opposite direction which are close enough to constitute a hazard at any time  
19 during the turning movement, and shall continue to yield the right-of-way to the approaching  
20 vehicles until the left turn or U-turn can be made with reasonable safety.” Plaintiff is further  
21 informed and believes, and thereon alleges, that at all times herein mentioned, Decedent was in the  
22 class of people the aforementioned vehicle code section was meant to protect, and Decedent  
23 suffered the types of injuries the aforementioned vehicle code section was meant to prevent.  
24 Plaintiff is further informed and believes, and thereon alleges, that said violation of Vehicle Code  
25 §21801(a) was a legal and proximate cause of the injuries and damages complained herein.

26           46.     As a legal, direct and proximate result of the conduct of the Defendants, and each  
27 of them, including DOES 1 through 50, inclusive, Plaintiffs REBECCA SMITHLING, HOPE  
28 SMITHLING, and ANGEL SMITHLING will be deprived of the financial support and assistance



1 of the Decedent, the exact amount of such losses to be stated according to proof, pursuant to  
2 Section 425.10 of the California Code of Civil Procedure.

3 47. As a legal, direct and proximate result of the conduct of the Defendants, and each  
4 of them, including DOES 1 through 50, inclusive, Plaintiffs REBECCA SMITHLING, HOPE  
5 SMITHLING, and ANGEL SMITHLING, have incurred funeral and burial expenses in an amount  
6 to be stated according to proof, pursuant to Section 425.10 of the California Code of Civil  
7 Procedure.

8 48. As a legal, direct and proximate result of the negligence, carelessness, and/or  
9 violation of the law, by the Defendants, and each of them, including DOES 1 through 50,  
10 inclusive, Plaintiffs REBECCA SMITHLING, HOPE SMITHLING, and ANGEL SMITHLING  
11 have sustained damages resulting from the loss of love, affection, society, service, comfort,  
12 support, right of support, expectations of future support, and counseling, companionship, solace  
13 and mental support, as well as other benefits and assistance, of the Decedent, all to their general  
14 damage in a sum in excess of the jurisdictional limits of this Court, which will be stated according  
15 to proof, in accordance with Section 425.10 of the California Code of Civil Procedure.

16 **PRAYER FOR DAMAGES**

17 WHEREFORE, Plaintiffs REBECCA SMITHLING, HOPE SMITHLING, and ANGEL  
18 SMITHLING pray judgment against Defendants, STATE OF CALIFORNIA by and through the  
19 DEPARTMENT OF TRANSPORTATION ("CALTRANS"), TOWN OF YUCCA VALLEY,  
20 TAUSIF B. BILLAH and DOES 1 through 50, inclusive, and each of them, as follows:

21 WHEREFORE, each plaintiff hereby prays for judgment against each defendant as  
22 follows:

- 23 1. For past and future general damages (also known as non-economic damages);
- 24 2. For past and future special damages (also known as economic damages);
- 25 3. For funeral and burial expenses, according to proof;
- 26 4. For loss of personal property and income according to proof;
- 27 5. For loss of inheritance;
- 28 6. For prejudgment interest, according to proof;


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- 7. For damages for each plaintiff's other economic losses, according to proof;
- 8. For pre-trial interest, according to proof; and
- 9. For such other and further relief as this Court may deem just and proper.

DATED: December 17, 2019

PANISH SHEA & BOYLE LLP

By:   
Spencer R. Lucas  
Marguerite S. Sanvictores  
Attorneys for Plaintiffs


**DEMAND FOR JURY TRIAL**

Plaintiffs REBECCA SMITHLING, HOPE SMITHLING, and ANGEL SMITHLING

hereby demand a trial by jury as to all causes of action.

DATED: December 17, 2019

PANISH SHEA & BOYLE LLP

By:   
Spencer R. Lucas  
Marguerite S. Sanvictores  
Attorneys for Plaintiffs

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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and not a party to this action. I am  
4 employed in the County of Los Angeles, State of California. My business address is 11111 Santa  
5 Monica Boulevard, Suite 700, Los Angeles, CA 90025.

6 On December 17, 2019, I served true copies of the following document(s) described as  
7 **SECOND AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action  
8 as follows:

9 JACOBY & MEYERS ATTORNEYS LLP  
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12 Los Angeles, California 90024

13 Tel.: 310.312.3300  
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TAUSIF B. BILLAH

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TRANSPORTATION

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Panish Shea & Boyle LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

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

Executed on December 17, 2019, at Los Angeles, California.



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Natalie Castañeda