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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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N. MIYATA
CLERK

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID BUENO, individually and as
personal representative of the estate of
KASANDRA MEDINA KIM, deceased,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,
HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION, ANGELA S.
TUAZON, as personal representative of the
estate of RYAN S. TUAZON, deceased, and
DOE DEFENDANTS 1-100,

Defendants.

CIVIL NO. 19-1-1094-07 11th Div.
(Motor Vehicle Tort)

COMPLAINT; SUMMONS

COMPLAINT

Plaintiff DAVID BUENO, individually and as personal representative of the estate of KASANDRA MEDINA KIM, deceased, by and through their attorneys, the Law Offices of Joseph PH Ahuna Jr., and for causes of action against Defendants CITY AND COUNTY OF HONOLULU, HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, ANGELA S. TUAZON, as personal representative of the estate of RYAN S. TUAZON, deceased, and DOE DEFENDANTS 1-100, allege and aver as follows:

X COPY

1. Plaintiff DAVID BUENO (hereinafter “Plaintiff BUENO”) is, and at all times mentioned herein, was a resident of the City and County of Honolulu, State of Hawaii. Plaintiff BUENO is the natural father of KASANDRA MEDINA KIM (“Plaintiff KASANDRA”) and has been appointed the Personal Representative of the Estate of KASANDRA MEDINA KIM, deceased.

2. Defendant CITY AND COUNTY OF HONOLULU (hereinafter “Defendant City”) is a municipal corporation organized and existing under the laws of the State of Hawaii with its principle place of business in the City and County of Honolulu, State of Hawaii. Defendant City owns, maintains, and controls the roadway along a certain section of Farrington Highway, just west of Old Fort Weaver Road.

3. Defendant HONOLULU AUTHORITY FOR RAPID TRANSPORTATION (hereinafter “Defendant HART”) is a semi-autonomous agency of the City and County of Honolulu, formed on July 1, 2011. HART is responsible for completing a 20-mile fixed rail system from Kapolei to Ala Moana Shopping Center.

4. Plaintiff is informed and believes that Defendant ANGELA S. TUAZON (hereinafter “Defendant ANGELA”) is, and at all times mentioned herein, was a resident of the City and County of Honolulu, State of Hawaii. Plaintiff is informed and believes that Defendant ANGELA is the natural mother of RYAN S. TUAZON (“Defendant TUAZON”) and has been appointed the personal representative of the estate of RYAN S. TUAZON, deceased.

5. All events described herein occurred in the City and County of Honolulu, State of Hawaii.

6. DOE DEFENDANTS 1-100 are sued herein under fictitious names for the reason that their true names and identities are presently unknown to the Plaintiffs except that they are

connected in some manner with the named Defendants and/or the parents, guardians, agents, servants, employees, employers, representatives, co-venturers, associates, vendors, suppliers, manufacturers, subcontractors or contractors, and/or owners, lessees, assignees, licensees, designers and architects of the named Defendants and/or in some manner presently unknown to the Plaintiffs, engaged in activities alleged herein and/or were in some manner responsible for the injuries or damages to Plaintiffs and/or manufactures and/or design and/or placed on the market a product which was defective; which defect was a proximate cause of injuries or damages to Plaintiffs and/or inspected and/or maintained and/or controlled some object or product in a negligent manner, which negligence was a proximate cause of injuries or damages to Plaintiffs and/or conducted some activity in a negligent or dangerous manner; which negligent or dangerous conduct was a proximate cause of injuries or damages to Plaintiffs and/or where in some manner related to the named Defendants and Plaintiffs prays for leave to insert herein their true names, identities, capacities, activities and/or responsibility when the same are ascertained. Plaintiffs has made a diligent and good faith effort to ascertain the full names and identities of all potential Defendants herein by examining all documents available to them in this matter.

7. Prior to and/or on July 20, 2017, Defendant City and/or Defendant HART erected concrete bridge piers (“bridge piers”) to support the infrastructure of their fixed rail system.

8. Prior to and/or on July 20, 2017, Defendant City and/or Defendant HART designed, located, and constructed several bridge piers along Farrington Highway, just west of Old Fort Weaver Road.

9. On July 20, 2017, Plaintiff KASANDRA was a passenger in a car being driven by Defendant TUAZON. JOSHUA I. DE GUZMAN (“DE GUZMAN”) was also a passenger in the vehicle.

10. While driving westbound along Farrington Highway, Defendant TUAZON lost

control of his vehicle and crashed into one of the bridge piers erected by Defendant HART and/or Defendant City. As a result of this crash, Plaintiff KASANDRA, DE GUZMAN, AND Defendant TUAZON were killed.

11. This crash occurred in the City and County of Honolulu, State of Hawaii, along a section of Farrington Highway that is owned by Defendant City, and all actions and damages described herein occurred in the City and County of Honolulu.

COUNT I

(Negligence against Defendants City and/or HART)

12. Plaintiff incorporates by reference the allegations contained in paragraphs 1-11 above as if fully set forth herein.

13. In the design, location, and construction of these bridge piers, Defendant City and/or Defendant HART created an unreasonable risk of harm for all drivers using this section of Farrington Highway.

14. Defendant City's and/or Defendant HART's bridge piers located along this section of Farrington Highway were roadside hazards.

15. Defendant City's and/or Defendant HART's bridge piers were a dangerous public nuisance.

16. Defendant City's and/or Defendant HART's bridge piers were not properly located and guarded so as to prevent errant vehicles from crashing into them.

17. Defendant City's and/or Defendant HART's bridge piers were not properly located, guarded, and protected so as to minimize the risk and extent of injury to the occupants of an errant vehicle that should crash into them.

18. Due to their location and lack of proper guarding, Defendant City's and/or Defendant HART's bridge piers actually increased the risk of injury and death to the occupants

of an errant vehicle that should crash into them.

19. Defendant City and/or Defendant HART were negligent in the design, location, construction, maintenance and/or guarding of their bridge piers along this section of Farrington Highway.

20. Defendant City and/or Defendant HART owed, at a minimum the following legal duties and standards of care:

- (a) Defendant City and/or Defendant HART must not create or allow to exist an unreasonable risk of harm along Farrington Highway;
- (b) Defendant City and/or Defendant HART must not create or allow to exist roadside hazards along Farrington Highway;
- (c) Defendant City and/or Defendant HART must provide a safe roadway and roadside along Farrington Highway;
- (d) Defendant City and/or Defendant HART must provide a safe useable shoulder for drivers to drive onto in the event of an emergency in order to regain control of their vehicle;
- (e) Defendant City and/or Defendant HART must locate structures and fixed objects, such as bridge piers, far enough back of the travelled roadway to provide a clear area for an errant vehicle to use without crashing into them;
- (f) Defendant City and/or Defendant HART must place bridge piers and similar unforgiving roadside hazards an adequate distance from the main lanes of travel or shield them from errant vehicles;
- (g) Defendant City and/or Defendant HART must not use barrier curbs on rural highways when other alternatives such as median barriers and guardrails are more suitable;

- (h) Defendant City and/or Defendant HART must not use barrier curbs on rural highways to guard bridge piers;
- (i) Defendant City and/or Defendant HART must not use a barrier curb if it could cause an errant vehicle to vault the barrier or strike it so that the vehicle overturns;
- (j) Defendant City and/or Defendant HART must install appropriate traffic barriers which are designed to deflect vehicles away from dangerous roadside hazards such as bridge piers;
- (k) Defendant City and/or Defendant HART must install appropriate traffic barriers which are designed to decrease the severity of a crash and/or to minimize the risk of a fatality should a vehicle crash into one of their bridge piers.
- (l) Defendant City and/or Defendant HART must comply with applicable traffic barrier installation warrants for bridge piers;
- (m) Defendant City and/or Defendant HART must use longitudinal barriers to shield vehicles from hazards such as bridge piers which are located too close to the travelled roadway;
- (n) Defendant City and/or Defendant HART must use crash cushions at bridge pier locations where a head-on crash is foreseeable in order to minimize the risk of a fatality;
- (o) Defendant City and/or Defendant HART must warrant a safe roadway, a safe shoulder, and a safe roadside which is clear of roadside hazards;
- (p) Defendant City and/or Defendant HART must not create a public nuisance by installing unguarded and unshielded bridge piers in close proximity to the travelled roadway where an errant vehicle could easily crash into them;

- (q) Defendant City and/or Defendant HART must anticipate that vehicles may leave the travelled roadway for one reason or another and must protect the vehicle's occupants from needless harm;
- (r) Defendant City and/or Defendant HART must take all appropriate traffic safety measures to lessen the extent and severity of an injury and/or death to occupants of an errant vehicle;
- (s) Defendant City and/or Defendant HART, must take all appropriate traffic safety measures to keep vehicles on the travelled roadway and shielded from unforgiving roadside hazards such as bridge piers;
- (t) Defendant City and/or Defendant HART must provide adequate and appropriate illumination for vehicles travelling under and alongside bridge piers;
- (u) Defendant City and/or Defendant HART must provide adequate and appropriate lane markings, edge markings, and shoulder delineators alongside bridge piers;
- (v) Defendant City and/or Defendant HART must use all appropriate speed lowering and speed calming measures for vehicles travelling under and alongside bridge piers;
- (w) Defendant and City and/or Defendant HART must comply with all state, city, and national traffic safety and safe roadside standards, guidelines and rules of the road;
- (x) Defendant City and/or Defendant HART must comply with the Statewide Uniform Design Manual for Streets and Highways; and
- (y) All other negligent acts yet to be determined.

21. Defendant City and/or Defendant HART and other Defendants, if identified, breached legal duties and standards of care, and were negligent and/or grossly negligent, and thereby caused Plaintiffs to suffer damages under Hawaii law.

22. Defendant City and/or Defendant HART also breached common law duties, statutory duties, warranties, and nuisance law, and thereby caused Plaintiffs to suffer damages under Hawaii law.

23. Defendant City and/or Defendant HART and other Defendants, if identified, are vicariously liable for the negligent acts of its employees, agents and/or contractors on the basis of respondeat superior.

24. The negligent acts and/or omissions of Defendant City and/or Defendant HART and other Defendants, if identified, were a factual cause of this crash and a legal (more than a trivial) cause of Plaintiff KASANDRA's death, and the cause of all damages suffered by Plaintiffs, and each of them, allowed under Hawaii law.

25. Defendant City and/or Defendant HART and other Defendants, if identified, as a result of their negligent acts and/or omissions, are jointly and/or severally liable for all the injuries, harms, losses, and damages suffered by all Plaintiffs.

COUNT II
(Negligence against Defendant TUAZON)

26. Plaintiff incorporates by reference the allegations contained in paragraphs 1-25 above as if fully set forth herein.

27. The collision described above was directly and proximately caused by the negligent acts and/or omissions of Defendant TUAZON, which include, but are not limited to, the following:

- a. Failing to maintain proper lookout;

- b. Failing to maintain proper control of the vehicle;
- c. Failing to pay attention to the conditions of traffic;
- d. Operating the vehicle in a reckless and careless manner;
- e. Driving too fast for the conditions presented;
- f. Inattentiveness to driving; and
- g. Such other acts of negligence to be disclosed during discovery and/or shown at trial.

28. Defendant TUAZON owed a duty of care to Plaintiffs. Defendant TUAZON breached that duty of care in the manner described above. As a direct and proximate result of Defendant TUAZON's negligence described above, Plaintiffs sustained severe bodily injuries, suffered severe emotional and mental distress, great bodily pains, death, and other damages to be shown at trial.

29. As a further direct and proximate result of Defendant TUAZON's negligence described above, Plaintiffs incurred medical expenses, loss wages and miscellaneous expenses in an amount in excess of the minimum established by Chapter 431 of the Hawaii Revised Statutes, as amended, and will incur such expenses in the future and asks leave of this Court to amend this Complaint to show the same at trial.

30. As a further direct and proximate result of Defendant TUAZON's negligence described above, Plaintiffs sustained injuries as follows:

- a. Injuries which resulted in, in whole or in part in a significant loss of use of a part or function of their body; and/or
- b. Injuries which consist of a permanent and serious disfigurement which has resulted in mental or emotional suffering; and/or

- c. Injuries for which the amount paid for medical-rehabilitative expenses exceeds the medical-rehabilitative limit established under the Motor Vehicle Accident Reparation Act (Chapter 431, Hawaii Revised Statutes, as amended); and/or
- d. Injuries for which the aggregate limit of no-fault benefits outlined in Chapter 431 of the Hawaii Revised Statutes, as amended, are exhausted.

31. Plaintiff BUENO has incurred medical, funeral, and burial expenses, have suffered mental and emotional distress and anguish, and has lost the consortium, love, support, companionship, society, and affection of his daughter, Plaintiff KASANDRA, and has further sustained other statutory (HRS § 663-3) wrongful death claims, general and special damages, economic and non-economic damages, and other common law damages in an amount to be shown at the time of trial, which amount exceeds the minimal jurisdictional limits of the Circuit Court of the State of Hawaii.

32. Plaintiff BUENO, individually and as Personal Representatives of the Estate of Plaintiff KASANDRA, claims on behalf of the estate, all statutory damages, including but not limited to HRS § 663-7 (survivorship damages), and HRS § 663-8 (future earnings damages), and all common law damages, including but not limited to hedonic damages, loss of enjoyment of life damages, and conscious pain and suffering damages.

33. Defendant TUAZON and/or all non-governmental Defendants, jointly and/or severally, were grossly negligent and/or acted in a willful, wanton, or reckless disregard of the rights, feelings, and safety of others, and for that reason Plaintiffs claim punitive damages against all non-governmental Defendants, jointly and/or severally, in an amount to be determined by trial.

WHEREFORE, Plaintiffs pray for judgement against Defendant City, Defendant HART, Defendant ANGELA, as personal representative of the estate of Defendant TUAZON, and other Defendants, if identified, jointly and severally as follows:

1. Plaintiff BUENO, individually, claims statutory (HRS § 663-3) wrongful death claims, special and general damages, economic and non-economic damages, common law damages, and all other damages as allowed by law.

2. Plaintiff BUENO, individually and as Personal Representatives of the Estate of KASANDRA MEDINA KIM, deceased, claims all statutory (including HRS § 663-7 and § 663-8) damages, all common law damages, including but not limited to, hedonic, loss of enjoyment of life and conscious pain and suffering damages.

3. All Plaintiffs claim punitive damages against all Defendant ANGELA, as personal representative of the estate of Defendant TUAZON, and all non-government Defendants.

4. Special damages, including but not limited to, Plaintiff's medical expenses (past and future), lost wages (past and future), loss of earning and/or working capacity, and funeral expenses in an amount according to proof at trial but in excess of the minimum jurisdiction of this Court;

5. General damages in an amount according to proof at trial but in excess of the minimum jurisdiction of this Court;

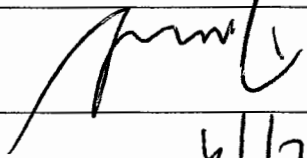
6. All Plaintiffs claim interest and prejudgment interest from the date of this occurrence.

7. All Plaintiffs claim reasonable attorneys' fees and costs.

8. All Plaintiffs claim such other relief as may be deemed meet and just.

Attorneys for Plaintiff

JOSEPH P.H. AHUNA, JR.
DAVID K. AHUNA



7/12/14

DATED: Honolulu, Hawaii,
