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12 **ATTORNEYS FOR PLAINTIFFS**
13 **SZ HUA HUANG, INDIVIDUALLY AND AS**
14 **SUCCESSOR IN INTEREST TO WEI LUN**
15 **HUANG, DECEASED; TRINITY HUANG, A**
16 **MINOR; TRISTAN HUANG, A MINOR; HSI**
17 **KENG HUANG; AND CHING FEN HUANG**

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

SZ HUA HUANG, Individually and as
successor in interest to WEI LUN
HUANG, deceased; TRINITY HUANG,
a minor; TRISTAN HUANG, a minor;
HSI KENG HUANG; and CHING FEN
HUANG,

Plaintiffs,

v.

TESLA INC. dba TESLA MOTORS,
INC., THE STATE OF CALIFORNIA,
and DOES 1 through 100,

Defendants.

Case No. 19CV346663

COMPLAINT FOR DAMAGES

Causes of Action:

- 1. Negligence/Wrongful Death
- 2. Strict Liability
- 3. Negligence (post-sale)
- 4. Dangerous Condition of Public Property
- 5. Failure to Discharge Mandatory Duty
- 6. Survival

Action Filed: TBD
Trial Date: To Be Assigned

1 Come now Plaintiffs SZ HUA HUANG, Individually, and as successor in
2 interest to WEI LUN HUANG, deceased; TRINITY HUANG, a minor; TRISTAN
3 HUANG, a minor; HSI KENG HUANG; and CHING FEN HUANG, and allege as
4 follows:

5 **FIRST CAUSE OF ACTION**

6 **(Negligence/Wrongful Death)**

7 **(Plaintiffs against Defendants TESLA and DOES 1-30)**

8 1. Plaintiff SZ HUA (“SEVONNE”) HUANG is the wife of WEI LUN
9 (“WALTER”) HUANG, and resides in Foster City, California. On March 23, 2018,
10 WALTER HUANG died. Thereafter, plaintiff SEVONNE HUANG became the duly
11 appointed successor in interest of the estate of decedent WALTER HUANG, and files
12 this action in that capacity. The acts complained of below in the survival cause of
13 action of this complaint accrued to decedent before or at the time of his death, and
14 decedent would have been the plaintiff with respect to that cause of action had he
15 lived.

16 2. TRINITY HUANG, a minor, and TRISTAN HUANG, a minor, by and
17 through their guardian ad litem, SEVONNE HUANG, are the surviving children of
18 WALTER HUANG; they reside in Foster City, California. Their Guardian Ad Litem,
19 SEVONNE HUANG, is fully competent and qualified to understand and protect the
20 rights of TRINITY HUANG and TRISTAN HUANG, and has no interests adverse to
21 their interests. An application and order for appointment of guardian ad litem are
22 attached to this complaint.

23 3. HSI KENG HUANG and CHING FEN HUANG are the parents of
24 WALTER HUANG; they reside in Seattle, Washington.

25 4. Plaintiffs are informed and believe, and thereon allege, that Defendant
26 TESLA INC. dba TESLA MOTORS, INC. (“TESLA”) is a Delaware Corporation with
27 its principal place of business in Palo Alto, California.

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1 5. Defendant THE STATE OF CALIFORNIA is a public entity doing
2 business under the Constitution and laws of the state of California, and is
3 responsible for the operation, management and control of multiple state agencies,
4 including, without limitation, the California Highway Patrol, the California
5 Department of Transportation (“Caltrans”) and the California Transportation
6 Commission, as well as other departments and agencies responsible for operation and
7 maintenance of publicly owned property, including state highways and roads.

8 6. The events herein alleged occurred on Friday, March 23, 2018, in Santa
9 Clara County, within the city limits of Mountain View, on US 101 southbound,
10 generally referred to as the Bayshore Freeway.

11 7. This court has proper venue because the injuries giving rise to the
12 accrual of the cause of action occurred within Santa Clara County, and the fatal
13 injuries occurred within the jurisdictional limits of this court.

14 8. With reference to the causes of action herein against the State of
15 California, Plaintiffs were required to and did comply with a tort claims statute, and
16 timely claims were filed. Those claims have been rejected in writing and/or by
17 operation of law. This complaint is timely filed within the time permitted after
18 denial of the claims.

19 9. Plaintiffs are ignorant of the true names and capacities of DOES 1
20 through 100 and therefore sue such Defendants by such fictitious names. Plaintiffs
21 will amend this complaint to allege the true names and capacities of said Defendants
22 when they have been identified. On information and belief, Plaintiffs allege that
23 each of said Defendants is responsible in some manner for the occurrences herein
24 alleged, and Plaintiffs’ damages as herein alleged were proximately caused by said
25 Defendants; said Defendants' agents, servants or employees, and each of them; or
26 through said Defendants' ownership, operation, control, possession, distribution,
27 supervision, servicing, maintenance, inspection, repair, entrustment, use, furnishing,
28 design, manufacturing, or sale of the premises, products or instrumentalities which

1 proximately caused the injuries and damages alleged herein.

2 10. Plaintiffs are informed and believe and thereon allege, that at all times
3 herein mentioned, each Defendant acted as the agent, servant, partner, franchisee,
4 joint venturer and/or employee of each of the other Defendants within the course and
5 scope of such agency and authority.

6 11. At all times relevant to this action, Defendant TESLA was engaged in
7 the business of designing, testing, manufacturing, distributing, promoting,
8 maintaining, and selling motor vehicles which were used in the State of California for
9 use on public roadways. Defendant TESLA is an American corporation specializing
10 in, among other things, the design, manufacture, and sale of all-electric powered cars
11 to be used on the streets and highways of this state.

12 12. In contrast to almost all other automobiles and SUVs sold in the United
13 States, Defendant Tesla's Model X vehicles do not have an internal combustion
14 engine. All of the systems within the Tesla Model X vehicle are electrically powered,
15 and are controlled by computers and microprocessors which have been designed,
16 manufactured and programmed by Defendant's engineers. Such computers,
17 microprocessors and programs control all aspects of the vehicle's operation, including
18 the drivetrain, braking system and autopilot system, including Tesla's "traffic-aware
19 cruise control" and Tesla's "autosteer lane-keeping assistance".

20 13. Based on Tesla's advertising and promotional material, Decedent
21 WALTER HUANG believed the Tesla Model X's technology was such that the
22 autopilot features included designed-in programs, software, hardware, and systems
23 that would eliminate the risk of harm or injury to the vehicle operator caused by the
24 vehicle failing to drive at safe speeds, failing to operate only within marked travel
25 lanes, failing to avoid other vehicles or obstacles while driving on highways, or
26 accelerating into fixed objects or vehicles while in autopilot mode.

27 14. The Decedent reasonably believed the 2017 Tesla Model X vehicle was
28 safer than a human-operated vehicle because of Defendant's claimed technical

1 superiority regarding the vehicle’s autopilot system, including Tesla’s “traffic-aware
2 cruise control,” Tesla “autosteer lane-keeping assistance” and other safety related
3 components, and Defendant’s claim that all of the self-driving safety components
4 engineered into the vehicle and advertised by Defendant would prevent fatal injury
5 resulting from driving into a fixed object of any kind.

6 15. All Tesla vehicles, including the 2017 Model X which is the subject of
7 this lawsuit, relied upon a system of external sensors which, by design, should
8 prevent the vehicle from driving outside of marked travel lanes and accelerating into
9 fixed objects. The vehicle should not leave a marked travel lane and accelerate,
10 without the input of the operator, in such a way as to cause damage, harm or injury.

11 16. At the time of the design, manufacture, distribution and delivery into
12 the stream of commerce of the Tesla Model X vehicle, it lacked a properly designed
13 system for crash avoidance. As a result, it was a vehicle that could and would strike
14 and collide with ordinary and foreseeable roadway features in autopilot mode. Such
15 roadway features included median dividers, abutments, crash attenuators, gore point
16 protection devices, barriers, bollards, cones, and other standard, approved and
17 acceptable roadway improvements and safety devices.

18 17. A safe and properly functioning automatic emergency braking system
19 does not allow a crash to occur that could otherwise have been avoided or reduced in
20 severity. Further, a safe and properly functioning automatic emergency braking
21 system should prevent a vehicle from accelerating into any fixed object. Neither was
22 present on the Model X which is the subject of this lawsuit.

23 18. The 2017 Model X was designed, built, and introduced into the stream of
24 commerce without having been equipped with an effective automatic emergency
25 braking system.

26 19. Before WALTER HUANG’s death, the technology existed to design,
27 build and introduce into the stream of commerce a Tesla Model X vehicle with an
28 autopilot system and automatic emergency braking system which would reasonably

1 match the vehicle's speed to traffic conditions, keep within a lane, transition from one
2 freeway to another, exit the freeway when a destination is near, provide automatic
3 collision avoidance and automatic emergency braking which detected objects the car
4 might impact, and apply the brakes accordingly to avoid impact or injury.

5 20. Notwithstanding the fact the Tesla Model X vehicle was marketed and
6 sold as a "state-of-the-art" automobile, the vehicle was without safe and effective
7 automatic emergency braking safety features that were operable on the date of this
8 collision. By that date, multiple other manufacturers of much less expensive
9 vehicles, including Subaru, Mazda, Chrysler, Mitsubishi and Honda, all had vehicles
10 in production with automatic emergency braking safety features available no later
11 than the 2015 model year.

12 21. On information and belief, the feasibility and efficacy of the safety
13 components, systems and technology articulated in paragraph 20 are demonstrated
14 by Defendant's decision to equip Model X vehicles sold after the death of WALTER
15 HUANG with features that prevented collisions by way of an automatic emergency
16 braking system that reasonably matched the vehicles' speed to traffic conditions,
17 kept vehicles within their lane, transitioned from one freeway to another, exited the
18 freeway when a destination was near, provided active automatic collision avoidance
19 and automatic emergency braking which detected objects the car might impact, and
20 applied the brakes accordingly to avoid impact or injury.

21 22. In or about October- November 2017, WALTER HUANG purchased
22 from the Defendants TESLA and DOES 1 through 20, and each of them, a 2017 Tesla
23 Model X, bearing California license plate number 8BNA653. At no time at or after
24 the purchase of said vehicle did WALTER HUANG, or any person on his behalf,
25 alter, modify or change any aspect or component of the vehicle's design or
26 manufacture.

27 23. On Friday, March 23, 2018, at about 9:27 a.m., WALTER HUANG drove
28 the above-described 2017 Tesla Model X south on US Highway 101 (US-101) in

1 Mountain View, Santa Clara County, California.

2 24. As the vehicle approached the US-101/State Highway (SH-85)
3 interchange, it traveled in the second lane from the left, a lane for continued travel
4 on southbound US-101. WALTER HUANG used the autopilot features of the Model
5 X Tesla which had been designed, tested and incorporated by the Defendants, and
6 each of them, and which such features included “traffic-aware cruise control” and
7 “autosteer lane-keeping assistance”.

8 25. As WALTER HUANG approached the paved gore area dividing the
9 main travel lanes of US-101 from the SH-85 exit ramp, the autopilot feature of the
10 Tesla turned the vehicle left, out of the designated travel lane, and drove it straight
11 into a concrete highway median.

12 26. The above-described Tesla Model X struck and collided with the median
13 structure with sufficient force and velocity to cause fatal injuries to WALTER
14 HUANG, who was pulled from the car and pronounced dead several hours later.

15 27. At all relevant times herein, Defendants TESLA and DOES 1 through
16 20, were negligent and careless in their design, manufacture, testing, marketing,
17 sale, and maintenance of the 2017 Tesla Model X, and Defendants were negligent
18 and careless in failing and omitting to provide adequate instructions and warnings to
19 protect against injuries occurring as a result of vehicle malfunction and the absence
20 of an effective automatic emergency braking system, as occurred here.

21 28. By reason of the foregoing, and as a direct and legal result of the
22 negligence and carelessness of the Defendants, on March 23, 2018, WALTER
23 HUANG was caused to die from injuries suffered when his 2017 Tesla Model X
24 collided with the above-described highway median structure.

25 29. By reason of the foregoing, and as a direct and legal result of the
26 negligence and carelessness of the Defendants, and each of them, Plaintiffs have
27 been deprived of a kind and loving husband, father, and son, and of his care, comfort,
28 society, companionship, protection, moral and financial support (economic damages),

1 assistance in the maintenance of the family home, and all other elements of
2 compensable damage provided under California law arising from the wrongful death
3 of a person, all in an amount in excess of the minimum jurisdictional limits of this
4 court.

5 30. By reason of the foregoing, and as a direct and legal cause of the
6 negligence and carelessness of the Defendants, and each of them, Plaintiffs have
7 incurred economic damages representing funeral costs, burial costs, costs incident to
8 the disposition of the remains of the deceased, the precise amount of such expenses
9 are presently unknown to Plaintiffs. Plaintiffs pray leave to insert such expenses by
10 way of amendment when the same have been finally determined.

11 31. By reason of the foregoing, and as a direct and legal result of the
12 negligence and carelessness of Defendants, and each of them, Plaintiffs have
13 sustained noneconomic damages in a sum in excess of the minimum jurisdictional
14 limits of this court.

15 32. Wherefore, Plaintiffs pray judgment against the Defendants, and each
16 of them, as hereinafter set forth.

17 **SECOND CAUSE OF ACTION**

18 **(Strict Liability)**

19 **(Plaintiffs against Defendants TESLA and DOES 1-30)**

20 33. Plaintiffs incorporate by reference each and every preceding allegation
21 as though fully set forth herein.

22 34. At the time the above-described Tesla Model X left the possession of the
23 Defendants TESLA and DOES 1 through 30, and each of them, it was in a defective
24 condition as that term is understood under California law, and was unreasonably
25 dangerous when used in a reasonably foreseeable manner. The 2017 Tesla Model X
26 constituted a defective product rendering Defendants, and each of them, strictly
27 liable in tort.

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1 35. Prior to the date the 2017 Model X involved in this incident was
2 designed and manufactured, the Defendants and each of them, knew that occupants
3 of the Tesla Model X would not be reasonably protected against full frontal impact
4 collisions because of the absence of an effective automatic emergency braking system,
5 and further knew from their own testing and from reports available to them via the
6 National Highway Transportation Safety Administration that the Tesla Model X was
7 prone to episodes of unwanted, unwarranted, or un-commanded acceleration, and
8 had inadequate sensors and onboard systems to prevent it from leaving its
9 designated travel lane, thereby placing occupants at risk in the absence of an
10 effective automatic emergency braking system.

11 36. Defendants TESLA and DOES 1 through 30 herein failed to meet the
12 expectations of the reasonable consumer by placing on the market a Tesla Model X
13 vehicle which failed to incorporate an autopilot system that included safety
14 components which would keep the vehicle only in designated travel lanes, reasonably
15 match vehicle speed to traffic conditions, keep the vehicle within its lane, transition
16 from one freeway to another, exit the freeway when a destination was near, and
17 provide active automatic collision avoidance and automatic emergency braking in a
18 manner which detected objects the car might impact and applied the brakes so as to
19 avoid impact or injury to the vehicle's occupants.

20 37. Subsequent to the incident which killed the Decedent, Defendants
21 TESLA and DOES 1 through 30, and each of them, equipped the Tesla Model X with
22 additional technology programs and systems and safety components and passenger
23 protection components that did, in fact, keep the vehicle in its own lane, match the
24 vehicle speed to traffic conditions when in autopilot mode, provide the ability to
25 automatically change lanes without driver input, permit transition from one freeway
26 to another and exit from the freeway when a destination was near, provide active
27 automatic collision avoidance and automatic emergency braking in order to detect
28 objects the car might impact, and apply the brakes accordingly to avoid impact or

1 injury to the occupant. The inclusion of these features on the Tesla Model X after
2 WALTER HUANG's death, had they been installed on the accident vehicle, would
3 have entirely avoided and prevented the fatal injuries sustained by him.

4 38. By reason of the omission of the above described safety systems,
5 features and components from the Model X, on and prior to the date of Decedent's
6 injuries and death, the Tesla Model X was defective in its design, in that the
7 passenger protection systems of the vehicle would not, could not, and did not perform
8 in a manner as safely as an ordinary consumer would expect when the vehicle was
9 subjected to foreseeable accident or driving conditions. Further, the Tesla Model X,
10 as designed, caused fatal injury to WALTER HUANG when the vehicle failed to
11 perform as it should have.

12 39. By reason of the foregoing, and as a direct and legal result of the
13 defective state of the Tesla Model X, WALTER HUANG sustained bodily injuries
14 which caused his death.

15 40. By reason of the foregoing, Plaintiffs herein have sustained the
16 economic and non-economic damages hereinabove and hereinafter set forth.

17 41. Wherefore, Plaintiffs pray judgment against the Defendants, and each
18 of them, as hereinafter set forth.

19 **THIRD CAUSE OF ACTION**

20 **(Negligence (post-sale))**

21 **(Plaintiffs against Defendants TESLA and DOES 1-30)**

22 As and for a third, separate and distinct cause of action, Plaintiffs complain of
23 Defendants TESLA and DOES 1 through 30, and allege as follows:

24 42. Plaintiffs hereby refer to, reallege and incorporate by reference as
25 though set forth in full, each and every allegation of the first and second causes of
26 action herein, and make them a part of this, the third cause of action, as though set
27 forth in full.

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1 43. For the reasons set forth above, and as a result of information acquired
2 after the design and marketing of the 2017 Tesla Model X, which such information
3 was acquired through lawsuits, claims, information available from the U.S.
4 Department of Transportation and the National Highway Transportation Safety
5 Administration, as well as other sources, the Defendants herein knew or should have
6 known that the Tesla Model X was likely to cause injury to its occupants by leaving
7 travel lanes and striking fixed objects when used in a reasonably foreseeable manner.

8 44. At all times relevant herein, Defendants TESLA and DOES 10 through
9 30 herein, had the technical ability and knowledge to identify purchasers, owners
10 and/or users of the 2017 Tesla Model X of the type being driven by Decedent.

11 45. At all times herein mentioned, Defendants TESLA and DOES 1 through
12 30, and each of them, knew or should have known that purchasers, owners and/or
13 users of Tesla Model X such as the 2017 Model X used by Decedent were unaware of
14 defects in the vehicle.

15 46. At all times herein mentioned, a reasonable and truthful notification,
16 notice, advisory and/or warning could have been effectively communicated to, and
17 acted on, by purchasers, owners and/or users of the 2017 Model X so as to avoid
18 injury from vehicles failing to keep within travel lanes and acceleration into fixed
19 objects, without the availability of an effective automatic emergency braking system.

20 47. At all times herein mentioned, the risk of harm to people traveling in
21 the defective and unreasonably dangerous 2017 Tesla Model X was sufficiently great
22 to justify the burden of providing a post-marketing warning and advisory.

23 48. At all times herein mentioned, a reasonable manufacturer, supplier or
24 seller in the same or similar position as Defendant TESLA and DOES 1 through 30,
25 and each of them, would have issued a recall, instituted a product exchange program,
26 and/or provided a warning to the public, purchasers, users and consumers of the 2017
27 Tesla Model X of the product's affected condition, in light of the risk of harm and
28 despite any burden imposed by providing a warning.

1 49. By reason of the foregoing, and as a direct and legal result of the
2 negligent failure of Defendants TESLA and DOES 1 through 30, and each of them, to
3 issue a recall, institute a product exchange program, and/or provide an adequate
4 warning, notice, notification, or any warning or at all, to the public, purchasers,
5 users, and consumers of the 2017 Tesla Model X vehicle after the original
6 introduction of the vehicle to the U.S. market, Decedent WALTER HUANG was
7 caused to suffer the fatal injuries hereinabove described, and Plaintiffs were caused
8 to suffer the injuries, harms and losses hereinabove and hereinafter set forth.

9 50. Wherefore, Plaintiffs pray judgment against the Defendants, and each
10 of them, hereinafter set forth.

11 **FOURTH CAUSE OF ACTION**

12 **(Dangerous Condition of Public Property)**

13 **(Plaintiffs against Defendants STATE OF CALIFORNIA and DOES 31-60)**

14 As and for a fourth, separate and distinct cause of action, Plaintiffs complain of
15 Defendants STATE OF CALIFORNIA and DOES 31 through 50, and each of them,
16 and allege as follows:

17 51. Plaintiffs hereby refer to, reallege and incorporate by this reference as
18 though set forth in full each and every allegation of the first, second and third causes
19 of action herein, and make them a part of this, the fourth cause of action, as though
20 set forth in full.

21 52. Defendant STATE OF CALIFORNIA is, and at all relevant times
22 mentioned herein was, a public entity with the responsibility for activities and
23 operations of the California Department of Transportation and the California
24 Highway Patrol. The California Department of Transportation is, and at all times
25 herein mentioned was, an agency of the Defendant State of California responsible for
26 operating, maintaining, controlling, and supervising US Highway 101 southbound
27 (Bayshore Freeway) at or near 0.2 miles south of N. Shoreline Blvd., together with
28 the associated freeway and highway appurtenances. The California Highway Patrol

1 is a law enforcement agency owned, operated, controlled, and supervised by the
2 Defendant State of California, which was created in 1929 to provide uniform traffic
3 law enforcement throughout the state. Assuring the safe, convenient and efficient
4 transportation of people and goods on our highway system is the primary purpose of
5 the agency, as per its mission statement.

6 53. Plaintiffs are informed and believe that Defendants STATE OF
7 CALIFORNIA and DOES 31 through 50 owned, operated, maintained, inspected,
8 repaired, and controlled US Highway 101 southbound at or near 0.2 miles south of N.
9 Shoreline Blvd., including the roadway location where this single vehicle collision
10 occurred, as well as the adjacent roadway features, structures, dividers and other
11 man-made safety equipment permanently affixed to the roadway.

12 54. Defendants STATE OF CALIFORNIA and DOES 31 through 50 were
13 negligent and careless in the ownership, maintenance, inspection, repair, and control
14 of State Highway 101 southbound at or near 0.2 miles south of N. Shoreline Blvd.
15 including the roadway location where this single vehicle collision occurred, as well as
16 the adjacent roadway features, structures, dividers and other man-made safety
17 equipment permanently affixed to the roadway. By reason of such negligence and
18 carelessness, at the time of the decedent's fatal injuries, this location of state
19 property constituted a dangerous, defective and hazardous condition of public
20 property as that term is used in the California Government Code.

21 55. As originally designed, approved, and constructed, the median structure
22 which was struck by WALTER HUANG and resulted in his fatal injuries, was
23 designed, built, and intended to be equipped with a safety device generally referred
24 to as a "crash attenuator guard".

25 56. The purpose of a crash attenuator guard is, in the event of a vehicle
26 striking the concrete gore point, to dissipate crash energy, reduce Delta V and impact
27 forces, lengthen the crash pulse, and protect vehicle occupants from serious injury as
28 a result of striking the concrete median for any reason whatsoever.

1 57. On information and belief, the crash attenuator guard with which the
2 subject gore point should have been installed was either altered, modified or
3 damaged in a prior collision more than one week before the incident involving
4 WALTER HUANG, of which crash Defendants STATE OF CALIFORNIA and DOES
5 31 through 50, and each of them, had notice for a sufficient time within which to
6 make necessary repairs and restore this critical and lifesaving safety feature prior to
7 the crash which killed WALTER HUANG.

8 58. Defendants STATE OF CALIFORNIA and DOES 31 through 50, acting
9 by and through its agents, employees, agencies and departments, failed and omitted
10 to act reasonably within the 11 days preceding WALTER HUANG's fatal injuries to
11 replace, repair, or restore the functionality of the crash attenuator guard in a timely
12 manner, in violation of good and reasonable prudent maintenance policies, standard
13 operating procedures, and internal guidelines and requirements of the Defendant
14 THE STATE OF CALIFORNIA.

15 59. At no time prior to the fatal injuries sustained by WALTER HUANG,
16 did the Defendants STATE OF CALIFORNIA and DOES 31 through 50, their agents,
17 servants, employees, departments, agencies, or commissions, take any action to
18 comply with the state Highway Maintenance Manual and highway maintenance
19 policies and procedures to warn motorists or guard against the risk of a crash such as
20 the one which WALTER HUANG experienced, with the result that the failure of a
21 crash attenuator guard to be in place exacerbated, heightened, increased, and caused
22 serious and fatal injuries to a motorist.

23 60. By reason of the failure of the Defendants, and each of them, to act
24 reasonably with respect to the maintenance of the highway, median safety,
25 functionality of the crash attenuator guard, and associated structures, features and
26 roadway safety devices, WALTER HUANG's Tesla struck the unprotected concrete
27 median gore point at a speed of approximately 70 miles an hour.

28 61. By reason of the Defendants STATE OF CALIFORNIA and DOES 31

1 through 60's failure to remedy the dangerous and defective condition of public
2 property at any time prior to the decedent's fatal injuries, the dangerous condition
3 was a substantial factor in causing WALTER HUANG's death, and the damages,
4 injuries, losses and harms sustained by Plaintiffs herein.

5 62. The fatal injuries sustained by Decedent WALTER HUANG were the
6 concurrent legal result of the dangerous condition described herein, acting jointly and
7 in concert with the negligence of other persons.

8 63. The fatal injuries sustained by Decedent, WALTER HUANG, were
9 directly and legally caused by acts and/or omissions of Defendants STATE OF
10 CALIFORNIA and DOES 31 through 60 and the agents, employees, servants or
11 authorized contractors of these public entities within the scope of their employment.
12 Such culpable conduct included, by way of illustration and not by way of exhaustion:

13 a. Failure to warn of, prevent, and/or correct a "dangerous
14 condition" (a condition of property that creates a substantial [as distinguished from a
15 minor, trivial, or insignificant] risk of injury when such property or adjacent property
16 is used with due care in a manner in which it is reasonably foreseeable that it would
17 be used) on or immediately adjacent to, public property;

18 b. Failure to provide and/or maintain adequate traffic crash
19 protection devices and warning signs, including, but not limited to, a properly
20 functioning crash attenuator guard and/or channelization to channel traffic away
21 from the median divider for as long a period as required to prevent collision with the
22 unprotected concrete gore point;

23 c. Failure to provide clear roadway instructions, markings,
24 warnings markings and signage, in light of the known dangerous condition of the
25 previously damaged attenuator guard so as to advise motorists of its presence and
26 potential fatal dangers:

27 d. Creation of a trap for motorists traveling south on State Highway
28 101;

1 e. Creation of a roadway configuration that was unsafe and
2 dangerous;

3 f. Maintaining a confusing roadway area in terms of the
4 unprotected concrete gore point without any speed advisories, signage, striping or
5 pavement markings to establish a zone of safety so that motorists would not
6 inadvertently become impaled on the unprotected concrete median; and

7 g. Failing to properly respond to the accident history in this area,
8 including prior accidents and collisions which had damaged the crash attenuator
9 guard and required its immediate repair or replacement.

10 64. The above factors, both individually and in combination, created a
11 dangerous condition of public property and presented a substantial risk of injury to
12 members of the general public, including Decedent, who used the property and
13 adjacent property in a reasonably foreseeable manner.

14 65. Additionally, the above factors, both individually, and in combination,
15 created a dangerous condition of public property which increased the risk of injury to
16 motorists by the acts or omissions of third parties.

17 66. The abovementioned dangerous conditions increased the risk of injury to
18 motorists due to the acts or omissions of other drivers, vehicle defects, highway
19 imperfections, or other causes of loss of control, because the conditions created a
20 substantial risk of heightened, elevated, exacerbated and worsening injury due to the
21 absence of a functioning crash attenuator guard.

22 67. Defendants STATE OF CALIFORNIA and DOES 31 through 60
23 negligently created the condition and/or possessed knowledge, actual or constructive,
24 of the above-described dangerous conditions, as well as the hazards and defects
25 present in said roadway, and the surrounding area a sufficient time prior to the
26 injury to have taken measures to protect against the dangerous conditions.

27 68. As a direct, legal and concurrent result of the above-described
28 dangerous condition caused by the negligence and carelessness of Defendants STATE

1 OF CALIFORNIA and DOES 31 through 60, WALTER HUANG was caused to suffer
2 fatal injuries as above described on March 23, 2018.

3 69. As a direct, legal and concurrent result of the above-described
4 dangerous condition caused by the negligence and carelessness of STATE OF
5 CALIFORNIA and DOES 31 through 60, and each of them, Plaintiffs herein have
6 been caused to suffer and sustain the economic and noneconomic damages
7 hereinabove set forth.

8 70. WHEREFORE, Plaintiffs pray judgment against Defendants, and each
9 of them, hereinafter set forth.

10 **FIFTH CAUSE OF ACTION**

11 **(Failure to Discharge Mandatory Duty)**

12 **(Plaintiffs against Defendants STATE OF CALIFORNIA and DOES 31-60)**

13 As and for a fifth, separate and distinct cause of action, Plaintiffs complain of
14 Defendants THE STATE OF CALIFORNIA and DOES 31 through 60, and each of
15 them, and allege as follows:

16 71. Plaintiffs hereby refer to, reallege, and incorporate by reference as
17 though set forth in full, each and every allegation of the first, second, third and
18 fourth causes of action herein, and make them a part of this, the fifth cause of action,
19 as though set forth in full.

20 72. By enacting California Government Code Section 14000, the legislature
21 determined that Defendant STATE OF CALIFORNIA should manage transportation
22 needs via Caltrans. The legislature further announced that a goal of the state is to
23 provide adequate safe and efficient transportation facilities and services.
24 Specifically, the legislature declared it “is the desire of the state to provide a system
25 that significantly reduces hazards to human life...” (California Government Code
26 section 14000(c)).

27 73. In failing to promptly and properly repair the crash attenuator guard
28 located at the scene of the incident, defendant STATE OF CALIFORNIA and DOES

1 31 through 60, and each of them, violated various statutes, laws, regulations and
2 ordinances, and otherwise failed to discharge mandatory duties pertaining to the
3 ownership maintenance, inspection, and repairing of the incident scene.

4 74. California Streets and Highways Code § 91 provides that the STATE OF
5 CALIFORNIA shall improve and maintain the state highways, including all
6 traversable highways which have been adopted or designed as state highways.
7 Section 27 of the Streets and Highways code defines “maintenance” as (a) The
8 preservation and keeping of rights-of-way, and each type of roadway, structure,
9 safety convenience or device.

10 75. Section 27 of the Streets and Highways Code further requires
11 appropriate maintenance be performed on special safety conveniences and devices.
12 Further, it requires that the special or emergency maintenance or repair necessitated
13 by accidents or other unusual or unexpected damage to a roadway, structure or
14 facility be carried out.

15 All relevant times herein, the defendant STATE OF CALIFORNIA and DOES 31
16 through 60, and each of them, were required by virtue of their mandatory duty to
17 make certain that the crash attenuator guard at the location of this collision was
18 promptly and properly repaired after a prior collision. As previously alleged herein,
19 such prior collision occurred more than 10 days prior to the WALTER HUANG’s fatal
20 injuries. By reason of Defendant’s failure and omission to comply with their
21 mandatory duties as required by state law, Defendants neglected to make certain
22 Highway 101 was in a safe condition and, more importantly, that appropriate safety
23 repairs were undertaken and completed within the required amount of time, so as to
24 avoid the dangerous condition which existed at the time of WALTER HUANG’s
25 crash. By reason of the premises, defendant STATE OF CALIFORNIA is legally
26 liable for the injuries, damages, and losses sustained by the Plaintiffs.

27 76. By reason of the foregoing, and as a direct and legal result thereof,
28 defendant THE STATE OF CALIFORNIA and DOES 31 through 60’s failure to

1 comply with their mandatory duties, Plaintiffs herein suffered the injuries, damages,
2 harms and losses hereinabove set forth.

3 77. WHEREFORE, Plaintiffs pray judgment against Defendants, and each
4 of them, hereinafter set forth.

5 **SIXTH CAUSE OF ACTION**

6 **(Survival Action)**

7 **(Plaintiffs against All Defendants)**

8 As and for a sixth, separate and distinct cause of action, Plaintiffs complain of
9 Defendants TESLA, THE STATE OF CALIFORNIA, DOES 1 through 60, and each of
10 them, and allege as follows:

11 78. Plaintiffs hereby refer to, reallege, and incorporate by reference as
12 though set forth in full, each and every allegation of the first, second, third, fourth,
13 and fifth causes of action herein, and make them a part of this, the sixth cause of
14 action, as though set forth in full.

15 79. As a direct and legal result of the negligence, strict liability, and other
16 wrongful and culpable conduct of the Defendants TESLA, THE STATE OF
17 CALIFORNIA, DOES 1 through 60, and each of them, Plaintiffs were caused to incur
18 economic damages for medical, hospital, ambulance, attendant, emergency and other
19 healthcare expenses to treat Decedent, WALTER HUANG, before he died.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. For special damages (economic) according to proof;
- b. For general damages (noneconomic) according to proof;
- c. For prejudgment interest as permitted by law;
- d. For costs of suit; and
- e. For such other and further relief as the Court may deem proper.

Dated: April 26, 2019

MINAMI TAMAKI LLP

By: _____



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Dated: April 26, 2019

WALKUP, MELODIA, KELLY & SCHOENBERGER

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