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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF ORANGE

9 DANIEL GONZALES, BIANCA FELIX,)
10 Plaintiffs,)

Case No. **30-2011**
00524603

11 v.)

COMPLAINT FOR WRONGFUL DEATH
DUE TO NEGLIGENCE

12)
13 MIKE BAILEY; JUDITH BAILEY;
14 WINDERMERE REAL ESTATE
SERVICES COMPANY; WINDERMERE
15 REAL ESTATE SOCIAL, INC.;
WINDERMERE REAL ESTATE
16 COACHELLA VALLEY; and DOES 1 -
50, Inclusive,)

JUDGE CHARLES MARGINES
DEPT. C19

17 Defendants.)
18

19 Come now plaintiffs, DANIEL GONZALES and BIANCA FELIX, and for cause of
20 action for wrongful death due to negligence, complain and allege as follows:

21
22 **COMMON ALLEGATIONS**

23 1. Plaintiffs DANIEL GONZALES and BIANCA FELIX are, and have been at
24 all times relevant herein, lawfully married and residing together as husband and wife
25 with their family in the State of California, County of Riverside.

26 2. Decedent ERIK GONZALES, date of birth February 25, 2008, was the
27 natural son of plaintiffs Daniel Gonzales and Bianca Felix, and lived with his parents
28 and siblings at all times prior to his death on May 25, 2011.

1 and siblings at all times prior to his death on May 25, 2011.

2 3. At all times herein relevant, defendants MIKE BAILEY, JUDITH BAILEY,
3 and Does 1-10, were the persons, corporations, partnerships, trusts, or other forms of
4 entity(ies) who owned, operated, rented, leased, managed, controlled, maintained,
5 modified, and repaired that certain residential property located at 12050 Redbud Road,
6 Desert Hot Springs, California, which was at the time of the events alleged herein
7 rented or leased by the said defendants to Daniel Gonzales, Bianca Felix, and their
8 children, including the decedent. Plaintiffs are informed and believe, and thereupon
9 allege, that defendants MIKE BAILEY and JUDITH BAILEY have been at all times
10 relevant herein residents of the County of Orange, with their principal residence in the
11 City of Huntington Beach.

12 4. Defendants WINDERMERE REAL ESTATE SERVICES COMPANY,
13 WINDERMERE REAL ESTATE SOCAL, INC., WINDERMERE REAL ESTATE
14 COACHELLA VALLEY, and Does 11-20, are now, and have been at all times relevant
15 herein, persons, corporations, partnerships, or other forms of business entity who are at
16 all times relevant to this action doing business and/or residing in the State of California,
17 including but not limited to the County of Riverside. The said defendants, at all times
18 relevant herein, were responsible for the leasing, rental, maintenance, repair, servicing
19 and control of the aforesaid residential property at 12050 Rosebud Road (hereinafter
20 simply "the subject residence"), which was at the time of the events alleged herein
21 occupied by plaintiffs and their children, including the decedent.

22 5. The true names, capacities and defendantship of defendants designated
23 herein as Does 1-50, inclusive, and each of them, are unknown to plaintiffs, who
24 therefore sue these defendants by such fictitious names, and will ask leave of this court
25 pursuant to the California Code of Civil Procedure to amend this Complaint when such
26 names, capacities and defendantship have been ascertained. Plaintiffs are informed
27 and believe, and thereupon allege, that each defendant designated herein as a "Doe"
28 was responsible, negligently or in some other legally actionable manner, for the events

1 which caused injury and damage to plaintiff, under legal theories which include, but are
2 not necessarily limited to, absolute liability, product liability, strict liability in tort, breach
3 of expressed and/or implied warranties of merchantability and/or fitness, recklessness,
4 wantonness and wilfulness, fraud and deceit, common law negligence, and dangerous
5 condition(s) of property; although the identities of said Doe defendants may be known
6 to plaintiffs at the time of the filing of this Complaint, plaintiffs are ignorant of the facts
7 constituting a cause of action against the said Doe defendants.

8 6. Plaintiffs allege upon information and belief that at all times relevant
9 herein, defendants, and each of them, were the agents, servants, employees,
10 assistants, consultants, and the like of their co-defendants, and were, as such, acting
11 within the course and scope of said agency, service and employment at all times
12 relevant herein; and, each and every defendant was negligent in the selecting, hiring,
13 monitoring, supervising, and continued employing of each and every other defendant as
14 an agent, servant, employee, assistant and consultant.

15 7. Defendants MIKE BAILEY, JUDITH BAILEY, WINDERMERE REAL
16 ESTATE SERVICES COMPANY, WINDERMERE REAL ESTATE SOCIAL, INC.,
17 WINDERMERE REAL ESTATE COACHELLA VALLEY, and Does 1-25, and each of
18 them, at all times relevant herein, were negligent, careless, and reckless in their
19 ownership, operation, management, control, modification, repair, rental, leasing, and
20 servicing of the subject residence, which was occupied at the times relevant to this
21 action by the plaintiffs and their children.

22 8. As a direct, proximate and legal result of the negligence, carelessness
23 and recklessness of the defendants, and each of them, the minor son, decedent ERIK
24 RYAN GONZALES, was caused to suffer a fatal drowning which caused his death on
25 May 25, 2011.

26 9. As a direct, proximate and legal result of the negligence, carelessness
27 and recklessness of the defendants, and each of them, as aforesaid, plaintiffs, as the
28 parents of decedent ERIK RYAN GONZALES, have been, and will forever more be,

1 deprived of Erik's care, comfort, love, society, attention, protection, support and
2 services, and have sustained and will sustain in the future non-economic and economic
3 damages in amounts which have not been ascertain, but are within the unlimited
4 jurisdiction of this court, and will be the subject of proof herein at the time of trial.

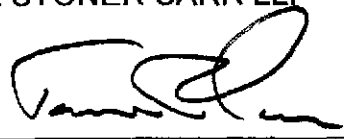
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6 10. As a further direct, proximate and legal result of the negligence,
7 carelessness and recklessness of the defendants, and each of them, and the resulting
8 wrongful death of their son, plaintiffs have incurred obligations and expenses for
9 transportation, funeral and burial, in amounts according to proof at the time of trial.

10
11 WHEREFORE, plaintiffs DANIEL GONZALES and BIANCA FELIX pray for
12 judgment against defendants, and each of them, as follows:

- 13 1. For economic and non-economic damages for the wrongful death of their
14 son, ERIK RYAN GONZALES, according to proof at the time of trial.
15 2. For economic damages for funeral, burial and related expenses,
16 according to proof at the time of trial.
17 3. For costs of suit incurred herein; and
18 4. For such other and further relief as this court may deem just and proper
19 under the laws applicable to this action.

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21 DATED: 11/21/11

YUHL STONER CARR LLP

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23 By 
24 JAMES P. CARR
Attorneys for Plaintiff

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DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand trial by jury as to all issues herein.

DATED: 11/21/11

YUHL STONER CARR LLP

By 

JAMES P. CARR
Attorneys for Plaintiff