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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF KERN

14 **S-1500-CV 281105 LHB**

15 MISAKO RIVERA, individually and as the  
Successor-in-Interest to THE ESTATE OF  
16 FERNANDO RIVERA; MARIANA  
RIVERA; VICTORIA RIVERA; and  
17 FERNANDO RIVERA,

18 Plaintiffs,

19 v.

20 ELECTRICAL SYSTEMS AND  
INSTRUMENTATION, INC. and DOES 1  
21 through 50, inclusive.

22 Defendants.

Case No.

**COMPLAINT FOR WRONGFUL DEATH  
AND SURVIVAL ACTION DAMAGES:**

**1. NEGLIGENCE**

**DEMAND FOR JURY TRIAL**

23  
24 COMES NOW Plaintiffs, MISAKO RIVERA, individually and as the Successor-in-  
25 Interest to THE ESTATE OF FERNANDO RIVERA; MARIANA RIVERA; VICTORIA  
26 RIVERA; and FERNANDO RIVERA ("Plaintiffs"), for causes of action against Defendant  
27 ELECTRICAL SYSTEMS AND INSTRUMENTATION, INC. ("ESI") and DOES 1 through 50,  
28

FILED  
KERN COUNTY

JAN 16 2014

TERRY McNALLY, CLERK  
BY \_\_\_\_\_ DEPUTY

ENDORSED

**CASE MANAGEMENT CONFERENCE:**

Hearing Date: 7-15-14

Time: 8:15 AM

Department: 17

See CRC Rule 3.720 Et. Seq.

1 inclusive, who complain and allege as follows:

2 **GENERAL ALLEGATIONS**

3 1. On October 17, 2013, 52-year-old Fernando Rivera ("Decedent") suffered  
4 traumatic and fatal injuries while working as an electrician at the Lebec Cement Plant. While  
5 standing on a step ladder, Decedent attempted to run cable through a cable tray ("TRAY") that had  
6 been previously installed and affixed to the side of a building at the Lebec Cement Plant by ESI.  
7 The mounting brackets ("BRACKETS") fastening the TRAY to the wall, which were also  
8 installed by ESI, suddenly and without warning, broke off from the wall. The TRAY fell, striking  
9 the step ladder and causing the Decedent to fall from the ladder onto the concrete ground.  
10 Decedent's head violently struck the concrete. Decedent was transported to a hospital where he  
11 ultimately died from blunt head injuries on October 18, 2013. Decedent is survived by his wife  
12 and three children.

14 2. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
15 relevant, ESI, and DOES 1 through 50, inclusive, installed, affixed, connected, prepared, placed,  
16 owned, managed, modified, leased, set and retrofitted the TRAY located at Lebec Cement Plant  
17 that caused the Decedent to fall and suffer fatal injuries.

19 3. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
20 relevant, ESI, and DOES 1 through 50, inclusive, installed, affixed, connected, prepared, placed,  
21 owned, managed, modified, leased, set and retrofitted the BRACKETS that fastened the TRAY to  
22 the wall. The BRACKETS failed to hold the TRAY that caused Decedent to fall from the ladder  
23 and suffer fatal injuries.

25 4. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
26 relevant, Lebec Cement Plant is located in Lebec, California in Kern County.

27 5. Plaintiff MISAKO RIVERA, at all times herein relevant, is a resident of Los  
28

Angeles County, California, and is the surviving spouse of the Decedent.

6. Plaintiff THE ESTATE OF FERNANDO RIVERA is represented by and through its Successor-in-Interest MISAKO RIVERA pursuant to *Code of Civil Procedure* § 377.60.

7. Plaintiff MARIANA RIVERA, at all times herein relevant, is a resident of Los Angeles County, California, and is a surviving daughter of the Decedent.

8. Plaintiff VICTORIA RIVERA, at all times herein relevant, is a resident of Los Angeles County, California, and is a surviving daughter of the Decedent.

9. Plaintiff FERNANDO RIVERA, at all times herein relevant, is a resident of Los Angeles County, California, and is a surviving son of the Decedent

10. Defendant ELECTRICAL SYSTEMS AND INSTRUMENTATION, INC., at all times herein relevant, is a California corporation and is authorized to do business in California, with its office located at 6906 Downing Avenue, Bakersfield, California 93308.

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

12. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, ESI, and DOES 1 through 50, inclusive, were agents, servants, employees, successors in

1 interest, partners, and/or joint venturers of their co-defendants, and were, as such, acting within the  
2 course, scope, and authority of said agency, employment, and/or venture, and that each and every  
3 defendant, as aforesaid, when acting as principal, was negligent in the selection and hiring of each  
4 and every other defendant as an agent, servant, employee, successor in interest, and/or joint  
5 venturer.  
6

### 7 CAUSE OF ACTION

#### 8 **(Wrongful Death and Survival Action Sounding in Negligence Against ESI and DOES 1** 9 **Through 50, Inclusive)**

10 13. Plaintiffs re-allege and incorporate herein by reference each and every allegation  
11 and statement contained in the prior paragraphs.

12 14. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
13 herein, ESI, and DOES 1 through 50, inclusive, owed a duty of care to all reasonably foreseeable  
14 people, invitees and guests, including Decedent FERNANDO RIVERA and Plaintiffs, to own,  
15 keep safe, install, maintain, and control the TRAY and BRACKETS in a reasonable manner.  
16

17 15. Plaintiffs are informed and believe, and thereon allege, that on October 17, 2013,  
18 the prior installation of the TRAY and BRACKETS by ESI constituted an unsafe, dangerous and  
19 hazardous condition at Lebec Cement Plant.

20 16. Plaintiffs are informed and believe, and thereon allege, that ESI, and DOES 1  
21 through 50, inclusive, improperly installed the TRAY and BRACKETS in an unsecure, unsafe and  
22 negligent manner.  
23

24 17. Plaintiffs are informed and believe, and thereon allege, that ESI, and DOES 1  
25 through 50, inclusive, improperly and negligently installed the TRAY and BRACKETS in a  
26 manner that had a propensity to fail, fall down and easily become unaffixed from the wall.

27 18. Plaintiffs are informed and believe, and thereon allege, that ESI, and DOES 1  
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through 50, inclusive, used improper screws to secure the TRAY and BRACKETS to the wall in that the screws were insufficiently strong and unable to hold the weight of the TRAY.

19. The aforementioned subject incident giving rise to this wrongful death and survival action proximately and legally caused Decedent FERNANDO RIVERA to suffer fatal injuries.

20. Plaintiffs are further informed and believe, and thereon allege, that ESI, including DOES 1 through 50, inclusive, were agents, servants, employees, successors in interest, and/or joint venturers of their co-defendants, and were, as such, acting within the course, scope, and authority of said agency, employment and/or venture, and that each and every defendant, as aforesaid, when acting as a principal, was negligent in the selection of each and every other defendant as an agent, servant, employee, successor in interest, and/or joint venturer.

21. As a legal, direct and proximate result of the reckless and negligent conduct of ESI, including DOES 1 through 50, Plaintiffs have sustained damages resulting from the loss of love, affection, society, service, comfort, support, right of support, expectations of future support and counseling, companionship, solace and mental support, as well as other benefits and assistance of Decedent FERNANDO RIVERA, all to their general damages in a sum in excess of the jurisdictional limits of this Court, which will be stated according to proof, pursuant to Section 425.10 of the *California Code of Civil Procedure*.

22. As a legal, direct and proximate result of the conduct of ESI, including DOES 1 through 50, inclusive, Plaintiffs will be deprived of the financial support and assistance of Decedent FERNANDO RIVERA, the exact amount of such losses to be stated according to proof, pursuant to Section 425.10 of the *California Code of Civil Procedure*.

23. As a legal, direct and proximate result of the conduct of ESI, including DOES 1 through 50, inclusive, as aforesaid, Plaintiffs have incurred property, medical, funeral and burial expenses in an amount to be stated according to proof, pursuant to Section 425.10 of the *California Code of Civil Procedure*.

24. As a legal, direct and proximate result of the conduct of ESI, including DOES 1 through 50, inclusive, Decedent FERNANDO RIVERA suffered lost earnings, the exact amount of such losses to be stated according to proof, pursuant to Section 425.10 of the California *Code of Civil Procedure*.

25. Because ESI's acts and/or omissions, including those of DOES 1 through 50, inclusive, were either committed in a deliberate, cold, callous, malicious, intentional and/or unreasonable manner, as fully set forth above, causing fatal injuries to Decedent, and done with a conscious disregard of Decedent FERNANDO RIVERA's rights and safety, Plaintiff THE ESTATE OF FERNANDO RIVERA, represented by and through its Successor-in-Interest MISAKO RIVERA, requests the assessment of punitive damages against ESI in an amount appropriate to punish or set an example of them.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs MISAKO RIVERA, individually and as the Successor-in-Interest to THE ESTATE OF FERNANDO RIVERA; MARIANA RIVERA; VICTORIA RIVERA; and FERNANDO RIVERA pray judgment against all Defendants as follows:

1. For non-economic damages suffered by Plaintiffs MISAKO RIVERA, MARIANA RIVERA, VICTORIA RIVERA, and FERNANDO RIVERA, including, but not limited to, loss of love, affection, care, society, service, comfort, support, right to support, companionship, solace or moral support, expectations of future support and counseling, other benefits and assistance of Decedent FERNANDO RIVERA, in an amount in excess of the jurisdictional minimum, according to proof;

2. For economic damages suffered by Plaintiffs MISAKO RIVERA, MARIANA RIVERA, VICTORIA RIVERA, and FERNANDO RIVERA, related to loss of earnings and loss of financial support from Decedent FERNANDO RIVERA, according to proof;

3. For funeral and burial expenses suffered by Plaintiffs MISAKO RIVERA, MARIANA RIVERA, VICTORIA RIVERA, and FERNANDO RIVERA, according to proof;

4. For hospital, medical, professional and incidental expenses suffered by Plaintiffs

MISAKO RIVERA, MARIANA RIVERA, VICTORIA RIVERA, and FERNANDO RIVERA,  
and THE ESTATE OF FERNANDO RIVERA, by and through its Successor-in-Interest MISAKO  
RIVERA, according to proof;

5. For loss of income suffered by Plaintiffs MISAKO RIVERA, MARIANA  
RIVERA, VICTORIA RIVERA, and FERNANDO RIVERA, and THE ESTATE OF  
FERNANDO RIVERA, by and through its Successor-in-Interest MISAKO RIVERA, according to  
proof;

6. For prejudgment interest, according to proof;

7. For pre-trial interest, according to proof;

8. For damages for Plaintiffs MISAKO RIVERA, MARIANA RIVERA, VICTORIA  
RIVERA, and FERNANDO RIVERA's other economic losses, according to proof;

9. Plaintiff THE ESTATE OF FERNANDO RIVERA, by and through its Successor-  
in-Interest MISAKO RIVERA, prays judgment against all Defendants for punitive damages,  
according to proof and

10. For such other and further relief as this Court may deem just and proper and

DATED: January 16, 2014

PANISH SHEA & BOYLE LLP

By:



Robert Glassman

Attorneys for Plaintiffs

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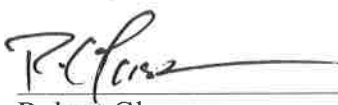
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**DEMAND FOR JURY TRIAL**

Plaintiffs MISA KO RIVERA, individually and as the Successor-in-Interest to THE ESTATE OF FERNANDO RIVERA; MARIANA RIVERA; VICTORIA RIVERA; and FERNANDO RIVERA hereby demand a trial by jury as to the cause of action.

DATED: January 16, 2014

PANISH SHEA & BOYLE LLP

By:   
Robert Glassman  
Attorneys for Plaintiffs