

1 NAKASE LAW CORP.
2 Brad Nakase, Esq. (SBN: 236226)
3 2221 Camino Del Rio South, Suite 300
4 San Diego, California 92108
5 T | (619) 550-1321
6 brad@NakaseLawFirm.com
7 Attorney for Plaintiffs
8 Dustin McGee and Katherina P. Bastista

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11
12 DUSTIN McGEE, an individual,
13 KATHERINA POKORNY BATISTA, an
14 individual,

15 Plaintiffs,

16 v.

17 ANDREW MICHAEL STANDRIDGE, an
18 individual; KEITH A. STANDRIDGE, an
19 individual; RITA L. STANDRIDGE, an
20 individual; and DOES 1 through 5,

21 Defendants.
22
23

UNLIMITED CIVIL CASE

Case No.: 37-2019-00024720-CU-PA-CTL

THIRD AMENDED COMPLAINT FOR DAMAGES:

- 1) NEGLIGENCE COUNT 1
- 2) NEGLIGENCE PER SE
- 3) NEGLIGENCE COUNT 2
- 4) VIOLATION OF VEHICLE CODE SECTION 17115(a)

24
25 //././.

26
27 //././.

1 Plaintiffs Dustin McGee and Katherina Pokorny Batista allege as follows:

2 **INTRODUCTION**

3 1. This is an action for personal injuries arising from an auto collision on the
4 freeway. The plaintiffs were occupants in a car which was rear-ended by Defendant Andrew
5 Michael Standridge, who was operating his car while under the influence of alcohol or drugs and
6 fled the scene. Due to the negligence of the Defendants, and each of them, the Plaintiffs suffered
7 physical injuries.

8 2. All allegations in this complaint are based upon information and belief, except for
9 those allegations which pertain to the Plaintiffs. Each allegation in this complaint either has
10 evidentiary support or is likely to have evidentiary support after a reasonable opportunity for
11 further investigation and discovery.

12 **VENUE**

13 3. This venue is proper because the place of collision resulting in injuries occurred
14 in San Diego County.

15 **PLAINTIFFS**

16 4. Dustin McGee is a natural person who resides in San Diego, California. McGee
17 was injured in the collision.

18 5. Katherina Pokorny-Batista is a natural person who resides in San Diego,
19 California. Pokorny-Batista was injured in the collision.

20 **DEFENDANTS**

21 6. Andrew Michael Standridge resides in San Clemente, California.

22 7. Keith A. Standridge resides in San Clemente, California.

23 8. Rita L. Standridge resides in San Clemente, California.

24 9. Plaintiffs are ignorant of the true names and capacities of defendants sued herein
25 as DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
26 will amend this complaint to allege their true names and capacities when ascertained.
27
28

1 **FIRST CAUSE OF ACTION**

2 NEGLIGENCE

3 (By all Plaintiffs against all Defendants)

4 17. All preceding paragraphs are incorporated hereunder.

5 18. Defendants, and each of them, owed the Plaintiffs the duties of care.

6 19. Defendants, and each of them, breached their duties of care that were owed to the
7 Plaintiffs.

8 20. That Plaintiffs Dustin McGee and Katherina Pokorny Batista were harmed.
9 Plaintiffs each sustained general and special damages.

10 21. Each Defendant’s negligence was a substantial factor in causing the Plaintiffs’
11 harm.

12 22. Andrew Michael Standridge with knowledge that probable serious injury would
13 result to persons on the freeway, Andrew Standridge consumed drugs or alcohol, drove
14 intoxicated, speeding in excess of 65 miles per hour and rear-ended plaintiff’s vehicle.

15 23. Plaintiffs Dustin McGee and Katherina Pokorny had to retain their attorney Brad
16 Nakase, and the Nakase Law Firm, Inc., to prosecute their civil claim; attorney's fees had been,
17 or would be, incurred to bring this action for negligence and personal injury.

18 24. Plaintiffs seeks attorney’s fee under the “tort of another doctrine.” Specifically,
19 when a plaintiff must bring an action against a third party as “the natural and probable
20 consequence” of the defendant’s negligence, the plaintiff is entitled to recover compensation for
21 the reasonably necessary loss of time, attorney’s fees, and other expenditures thereby suffered or
22 incurred. (*Prentice v. North Am. Title Guaranty Corp., Alameda Division* (1963) 59 Cal.2d 618,
23 620.) Unless the parties have stipulated otherwise, a claim for attorney’s fees and costs under the
24 “tort of another” doctrine cannot be asserted by a post-trial motion or memorandum of costs, but
25 must be pleaded and proved to the trier of fact. (*Gorman v. Tassajara Dev. Corp.* (2009) 178
26 Cal.App.4th 44, 79.)

27 25. The Tort of Another doctrine, however, is not limited to real estate transactions.
28 In (*Vanguard Recording Society, Inc. v. Fantasy Records, Inc.* (1972) 24 Cal.App.3d 410) a

1 record company recovered attorney's fees from a defendant who was marketing unlicensed and
2 unauthorized recordings of one of its artists.

3 26. The test for the adequacy of an allegation of malice in a vehicular accident case
4 involving driving while intoxicated, so as to support a claim for punitive damages based on
5 assertions of conscious disregard, is set out in the seminal case of *Taylor v. Superior Court*
6 (1979) 24 Cal.3d 890, 892: "...the act of operating a motor vehicle while intoxicated may
7 constitute an act of "malice" under [Civil Code] section 3294 if performed under circumstances
8 which disclose a conscious disregard of the probable dangerous consequences."

9 27. *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 88 also illustrates the
10 applicable standard. As in this case, the issue in *Dawes* was the adequacy of the Complaint's
11 pleading for punitive damages against an intoxicated driver after a vehicle collision. The *Dawes*
12 plaintiff alleged that: "...with knowledge that probable serious injury would result to persons in
13 the area, Mardian ran a stop sign, and was zigzagging in and out of traffic at a speed in excess of
14 65 miles per hour in a 35 mile per hour zone...." The court held that these allegations were
15 sufficient, under *Taylor*, to set forth a claim for punitive damages. The opinion specifically held
16 that plaintiff: "...pleaded specific facts from which the conscious disregard of probable injury to
17 others may reasonably be inferred." (*Id.*, at 90.)

18
19 **SECOND CAUSE OF ACTION**

20 **NEGLIGENCE PER SE**

21 (By all Plaintiffs against Defendant Andrew Michael Standridge)

22 28. All preceding paragraphs are incorporated hereunder.

23 29. Defendant Andrew Michael Standridge had a duty to care while operating a motor
24 vehicle.

25 30. Defendant Andrew Michael Standridge breached his duty of care because he
26 violated several laws, including but not limited to, Vehicle Code sections 22350 (speeding),
27 21703 (tailgating), and 23152 (driving while under the influence of drug or alcohol).

1 Nakase, and the Nakase Law Firm, Inc., to prosecute their civil claim; attorney's fees had been,
2 or would be, incurred to bring this action for negligence and personal injury.

3
4
5 **PRAYER**

6 All preceding paragraphs are incorporated in this prayer.

7 Plaintiffs pray for judgement against Defendants, and each of them, as follows:

- 8 1. General damages in an amount to be proven at trial;
9 2. Special damages in an amount to be proven at trial;
10 3. Punitive damages in an amount to be proven at trial and award by the jury or the
11 court;
12 4. Interest according to law;
13 5. Plaintiffs seeks attorney's fee under "tort of another" doctrine.
14 6. For costs of suit incurred herein; and
15 7. For such other and further relief as this Court deems just and proper.

16
17 Dated: December 18, 2019

18 Respectfully submitted,
19 **NAKASE LAW CORPORATION**

20 By:  _____

21 Brad Nakase, Esq., Attorney for
22 Plaintiffs DUSTIN MCGEE and
23 KATHERINA POKORNY BATISTA
24
25
26
27
28