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Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

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8 ANGELA MCGAFF, individually, and as the Successor-in-Interest to
9 THE ESTATE OF ANTHONY MCGAFF, AND JAMES SMITH

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

13 ANGELA MCGAFF, individually, and) CASE NO. 37-2022-00049144-CU-PO-CTL
14 as the Successor-in-Interest to THE) Dept.:
15 ESTATE OF ANTHONY MCGAFF, AND)
16 JAMES SMITH,) **COMPLAINT FOR DAMAGES:**
17 Plaintiffs,) **1. WRONGFUL DEATH**
18 v.) **2. SURVIVAL ACTION DAMAGES**
19 SAN DIEGO METROPOLITAN)
20 TRANSIT SYSTEM, a public entity;)
21 CITY OF SAN DIEGO, a public entity;)
22 and, DOES 1-50, inclusive,)
23 Defendants.)

24 COMES NOW the Plaintiffs ANGELA MCGAFF, individually, and as the Successor-in-
25 Interest to THE ESTATE OF ANTHONY MCGAFF, JAMES SMITH, ("Plaintiffs"), for causes
26 of action against Defendants, SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a public
27 entity ("MTS"); CITY OF SAN DIEGO, ("CITY"), and DOES 1 through 50, inclusive, who
28 complain and allege as follows:

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NATURE OF THE ACTION

1. This action arises from an altercation on METROPOLITAN TRANSIT SYSTEM Bus # 235 (“MTS Bus #235”), between Plaintiffs’ decedent, ANTHONY MCGAFF, and another bus passenger, and the actions and inactions of Defendants SAN DIEGO METROPOLITAN TRANSIT SYSTEM and CITY OF SAN DIEGO that resulted in the death of Plaintiffs’ decedent.

JURISDICTION AND VENUE

2. Plaintiffs are informed and believe, and thereupon allege, venue lies properly with this Court, as it is the place where at least one Defendant resides, is incorporated, or has its principal place of business, a substantial amount of the events which give rise to this suit occurred and/or a cause of action arose.

3. Plaintiffs are informed and believe, and thereupon allege, jurisdiction lies properly with this Court, as the economic and non-economic damages caused to Plaintiffs exceeds Twenty-Five Thousand Dollars (\$25,000.00).

GENERAL ALLEGATIONS

4. The true names and/or capacities, whether individual, corporate, associate or otherwise, of Defendants, and each of them, and DOES 1 through 50, inclusive, are unknown to Plaintiffs who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and thereupon allege, that each Defendant fictitiously named herein as a DOE was legally responsible, negligently or in some other actionable manner, for the events and happenings, or lack thereof, hereinafter referred to, and thereby proximately caused the injuries and damages to Plaintiffs as hereinafter alleged. Plaintiffs will seek leave of court to amend this Complaint to insert the true names and/or capacities of such fictitiously named Defendants when the same have been ascertained.

5. Plaintiffs, Angela McGaff, individually, and as the successor-in-interest to Anthony McGaff and James Smith, are informed and believe and thereupon allege that at all

1 times mentioned herein, Defendants, and each of them, including DOES 1 through 50, inclusive,
2 were the agents, servants, employees, successors in interest and/or joint venturers of their co-
3 defendants, and were as such acting within the course and scope and authority of said agency,
4 employment and/or venture, and that each and every Defendant, as aforesaid, when acting as a
5 principal, was negligent in the selection and hiring of each and every other Defendant as an
6 agent, employee and/or joint venture, and that each and every Defendant ratified and approved
7 the acts of his or her agents employees and/or joint venturers by and through its officers,
8 directors and/or managing agents.

9 6. Plaintiff, ANGELA MCGAFF, at all times herein mentioned, is a resident of the
10 City of Tustin, County of Orange, State of California, and is the surviving biological mother of
11 the Decedent, ANTHONY MCGAFF. As a surviving parent, Plaintiff, Angela McGaff has
12 standing to bring a wrongful death cause of action as a wrongful death heir for decedent
13 ANTHONY, under California Code of Civil Procedure section 377.60.

14 7. Plaintiff, THE ESTATE OF ANTHONY MCGAFF is represented by and through
15 its Successor-in-Interest, ANGELA MCGAFF, pursuant to *Code of Civil Procedure* § 377.60.

16 8. Plaintiff, JAMES SMITH, at all times herein mentioned, is a resident of the City
17 of Spring Valley, County of San Diego, State of California, and is the surviving biological father
18 of the Decedent, ANTHONY MCGAFF. As a surviving parent, Plaintiff, James Smith has
19 standing to bring a wrongful death cause of action as a wrongful death heir for decedent
20 ANTHONY, under California Code of Civil Procedure section 377.60.

21 9. Anthony McGaff, decedent, would have been the Plaintiff in this action had he
22 lived. Anthony McGaff's actions are brought by his successor-in-interest Plaintiff Angela
23 McGaff on behalf of his mother pursuant to California Code of Civil Procedure sections 377.10
24 to 377.35 inclusive. As successor-in-interest for decedent Anthony McGaff, Plaintiff Angela
25 McGaff seeks survival action damages pursuant to California Code of Civil Procedure sections
26 377.30 and 377.34 which provide that the damages recoverable under the survival action include
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1 the loss or damage that the decedent sustained or incurred before death, including any penalties
2 or punitive or exemplary damages that the decedent would have been entitled to recover had the
3 decedent lived.

4 10. That at all times mentioned herein, Defendant, SAN DIEGO METROPOLITAN
5 TRANSIT SYSTEM, (“MTS” or “Defendant”) is a public entity existing and authorized to do
6 and is doing business in the State of California.

7 11. That at all times mentioned herein, Defendant, CITY OF SAN DIEGO, (“CITY”
8 or “Defendant”) is a public entity existing and authorized to do and is doing business in the State
9 of California.

10 12. At all times mentioned herein, Defendants were in ownership, possession,
11 and/or control of the MTS bus line, including, but not limited to Bus #235, in San Diego,
12 California. (hereinafter “MTS Bus #235.”)

13 13. At all times herein relevant, Defendants MTS and CITY were the employer
14 and/or principal of the employees, agents, and independent contractors on MTS Bus #235,
15 and was and is legally responsible for the acts, omissions, and conduct of said employees,
16 agents, and independent contractors, within the meaning of Civil Code §§ 1714(a), 2100,
17 2338, and 2343, Government Code §§ 815.2(a), 815.4, 815.6, 820(a), 835, 840.2 among
18 other provisions, and is liable to Plaintiffs by reason thereof.

19 14. At all times herein relevant, Defendants were common carriers operating the metro
20 bus line under Civil Code § 2168, and during which Plaintiffs’ decedent, ANTHONY MCGAFF
21 (“ANTHONY”) was a passenger for hire. Under Civil Code § 2100, Defendants were to “use the
22 utmost care and diligence” for the safe carriage of ANTHONY, “must provide everything neces-
23 sary for that purpose.” The relationship between Defendants as common carriers and its passen-
24 gers, including ANTHONY, was a special relationship in which Defendants were to provide the
25 utmost care to protect a passenger, including ANTHONY, from assaults by fellow passengers.
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1 15. At all times herein relevant, Defendant MTS contracted with CITY to provide
2 bus drivers and security to passengers for hire, including ANTHONY, on the bus line,
3 including, but not limited to, Bus #235. Specifically, Defendant CITY agreed to increase
4 law enforcement and security visibility across the Metro transit system, to deter crime, and
5 to decrease response times to emergency, priority, and routine calls for service, and to pro-
6 vide a communication system for MTS bus drivers to permit them to observe and report
7 any and all incidents, altercations, disturbances, occurring on the bus line, and then to com-
8 municate with law enforcement and security, in order to elicit a rapid response to any and
9 all emergencies, priorities and routine calls. Defendant MTA remained one of the lead
10 agencies for the services provided by Defendant CITY, and Defendant CITY reported di-
11 rectly to Defendant MTA's System Security and Law Enforcement Department. Defend-
12 ants MTA and CITY were jointly responsible for increasing law enforcement and security
13 visibility across the Metro transit system, deterring crime, and decreasing response times
14 to emergencies, priority, and routine calls for service.
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16 16. On or about April 30, 2021, Plaintiffs' decedent, ANTHONY, boarded Bus #235
17 in or around the area of 14th and "F" Street, by paying fare and entered onto the bus, where De-
18 fendants accepted ANTHONY as a fare paying passenger, and the bus proceeded on its sched-
19 uled route. While seated, another passenger began videotaping ANTHONY on her cell phone
20 without his permission. ANTHONY asked the female passenger to stop videotaping him, but she
21 refused and continued to videotape ANTHONY. This resulted in an argument between AN-
22 THONY and the female passenger. As the discussion continued, another passenger, Edward Hil-
23 bert, whose weight, and height significantly exceeded that of ANTHONY, attempted to intervene
24 into the discussion on behalf the female passenger. The argument between Hilbert and AN-
25 THONY escalated to where Hilbert grabbed ANTHONY, placed him in a choke hold and held
26 onto ANTHONY; the grasp, getting tighter and tighter, as other passengers watched in horror and
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1 disbelief. Although ANTHONY was unable to cry out for help, due to the blockage of his ai pas-
2 sage way, the other passengers were yelling and screaming on the bus, fearing for the safety and
3 wellbeing of ANTHONY, and placing the bus driver on notice of the disturbance. Based upon
4 information and belief, the bus was equipped with a communication system/device which would
5 allow the bus driver to call for assistance in such situations. The bus was also equipped with
6 rearview mirrors that allowed the bus driver to see exactly what was happening within his bus.
7 At one point during the struggle, Hilbert and ANTHONY tumbled to the floor of the bus, with
8 Hilbert's full weight pressing on top of ANTHONY, as Hilbert continued to choke ANTHONY.
9 The passengers were screaming, asking whether ANTHONY could breathe. Nevertheless, the
10 bus driver refused to stop the bus and render assistance to ANTHONY. The assailant continued
11 to choke ANTHONY, and the other passengers continued to plead with the bus driver to inter-
12 vene, and ask whether ANTHONY was able to breathe, but the bus driver refused to stop the bus
13 and call law enforcement. The assailant continued to lie on top of ANTHONY with all his
14 weight, continuing to choke ANTHONY, and the other passengers continued to plead with the
15 bus driver to help, but the bus driver refused stop the bus and call 9-1-1 for emergency assistance
16 or other assistance. The choking, the pleading, the questions of whether ANTHONY could
17 breathe, and the bus driver's refusal to stop and intervene or render assistance to ANTHONY, all
18 continued for over 8 minutes!

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20 17. The bus driver continued to ignore the altercation between Hilbert and AN-
21 THONY and the cries of the other passengers, and continued to drive his bus, without interven-
22 ing or rendering assistance to ANTHONY. Mr. Hilbert continued to maintain ANTHONY in a
23 "choke-hold" and was laying on top of ANTHONY, until after approximately 8 minutes, without
24 intervention or assistance by the bus driver, ANTHONY died of asphyxiation by manual strangu-
25 lation, by application of neck hold restraint.

26 18. Prior to April 30, 2021, Defendants, and each of them, were aware of violent and
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1 dangerous crimes being committed on the bus line, including but not limited to, Bus # 235 and
2 the area of 14th and “F” Street. Defendants failed to take the proper precautionary measures to
3 prevent violence and attacks on the bus line, or intervene and render assistance, including the act
4 of violence directed towards ANTHONY, even though Defendants had ample knowledge of prior
5 violence, attacks, and altercations on the bus line, including, but not limited to Bus #235 and no-
6 tice that violence, attacks, and altercations would ensue into the future. And even though De-
7 fendants, and each of them, in the 8 minutes it took for Hilbert to strangle ANTHONY to death,
8 had ample time to intervene in some manner, to assist ANTHONY.

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10 **FIRST CAUSE OF ACTION**

11 **(Wrongful Death Sounding in Negligence Brought by Plaintiffs Angela McGaff,**
12 **individually and as the successor-in-interest to Anthony McGaff, and James Smith**
13 **Against Defendants San Diego Metropolitan Transit System, City of San Diego and**
14 **DOES 1 Through 50, Inclusive)**

15 19. Plaintiffs re-allege and incorporate herein by reference each and every allegation
16 and statement contained in the prior paragraphs, as though fully set forth herein.

17 20. Plaintiffs, Angela McGaff, individually, and as the successor-in-interest to Anthony
18 McGaff and James Smith, bring forth their complaint for damages pursuant to the Tort Claims Act
19 under Government Code Sections 815.2 and 820 for injuries caused by the acts and omissions of
20 MTS and CITY employees acting within the scope of their employment and for injuries caused
21 by an employee of MTS and CITY for acts or omissions for acts or omissions committed within
22 the scope of the employees employment.

23 21. Plaintiffs properly filed their claim against MTS within six months of the date of
24 accident, on October 27, 2022. A true and correct copy of Plaintiffs' claim and its attachments are
25 attached hereto, collectively, as Exhibit “A”.

26 22. Thereafter, MTS rejected the claim on October 28, 2022.

1 its employees, agents, and/or independent contractors who had any form of involvement
2 with the Metro Bus Line, and such negligent and reckless conduct also legally caused or
3 contributed to causing the incident and damages to Plaintiffs as herein alleged.

4 29. At all times herein relevant, Defendants violated inter alia California Civil
5 Code §§ 1714(a), 2100, 2338, and 2343, and Government Code §§ 815.2(a), 815.4, 815.6,
6 820(a), 835, 840.2 among other provisions. These statutes were designed and enacted by
7 the legislature of the State of California in order to prevent the death of ANTHONY.

8 30. ANTHONY was lawfully present on the Metro Bus Line, placing him in the class
9 of individuals whom Defendants owes a duty pursuant to California Civil Code §§ 1714(a),
10 2100, 2338, and 2343, and Government Code §§ 815.2(a), 815.4, 815.6, 820(a), 835, 840.2
11 among other provisions, and a member of a class of persons these statutes were designed to pro-
12 tect.

13 31. Anthony McGaff endured pain and suffering caused by said defendants', including
14 DOES 1 through 50, acts and/or admissions prior to his death. Pursuant to California Code of
15 Civil Procedure sections 377.30 and 377.34, Plaintiff Angela McGaff seeks damages, as dece-
16 dent's successor in interest according to California Code of Civil Procedure section 377.11 and
17 decedent's heir at law, for ANTHONY'S pain and suffering prior to his death, including any pen-
18 alties or punitive or exemplary damages that the decedent would have been entitled to recover
19 had the decedent lived.

20 32. The aforementioned subject incident giving rise to this wrongful death and sur-
21 vival action caused decedent Anthon McGaff to suffer severe and fatal injuries. As a legal, direct
22 and proximate result of the conduct of said defendants, including DOES 1 through 50, inclusive,
23 decedent Anthony McGaff suffered pre-death physical injuries, mental anguish, terror, anxiety
24 and unconsciousness.

25 33. Plaintiffs Angela McGaff, individually, and as the successor-in-interest to Anthony
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1 McGaff and James Smith, are further informed and believe, and thereon allege, that defendants
2 Metropolitan Transit System, City of San Diego, and DOES 1 through 50, inclusive, were agents,
3 servants, employees, successors in interest, and/or joint venturers of their co-defendants, and
4 were, as such, acting within the course, scope, and authority of said agency, employment and/or
5 venture, and that each and every Defendant, as aforesaid, when acting as a principal, was negli-
6 gent in the selection of each and every other defendant as an agent, servant, employee, successor
7 in interest, and/or joint venturer.

8 34. Plaintiffs Angela McGaff, individually, and as the successor-in-interest to Anthony
9 McGaff and James Smith, are further informed and believe, and thereon allege, that Defendants
10 Metropolitan Transit System, City of San Diego, and DOES 1 through 50, inclusive, were acting
11 in concert with each other by assisting, facilitating, encouraging and otherwise condoning de-
12 fendant's employee's negligent and reckless neglect and failure and/or refusal to render assis-
13 tance or intervene in some manner, as such, are equally liable for defendants employee's negli-
14 gent and reckless behavior.

15 35. Plaintiffs Angela McGaff, individually, and as the successor-in-interest to Anthony
16 McGaff and James Smith, are informed and believe, and thereon allege, that at all times men-
17 tioned herein, Defendants Metropolitan Transit System, City of San Diego, and DOES 1 through
18 50, carelessly, negligently, recklessly and with conscious disregard for the welfare and safety of
19 others, including decedent Anthony McGaff, owned, leased, managed, maintained, controlled,
20 entrusted and operated Bus # 235 so as to legally and proximately caused the death of decedent
21 Anthony McGaff while he was legally on Bus # 235.

22 36. Anthony McGaff endured pain and suffering caused by said Defendants', includ-
23 ing DOES 1 through 50, acts and/or admissions prior to his death. Pursuant to California Code
24 of Civil Procedure sections 377.30 and 377.34, Plaintiff Angela McGaff seeks damages, as dece-
25 dent's successor in interest according to California Code of Civil Procedure section 377.11 and
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1 decedent's heir at law, for Anthony McGaff's pain and suffering prior to his death, including any
2 penalties or punitive or exemplary damages that the decedent would have been entitled to re-
3 cover had the decedent lived.

4 37. As a legal, direct and proximate result of the intentional, reckless and negligent
5 conduct of said Defendants, including DOES 1 through 50, Plaintiffs Angela McGaff, individu-
6 ally, and as the successor-in-interest to Anthony McGaff and James Smith, have sustained dam-
7 ages resulting from the loss of love, affection, society, service, comfort, support, right of support,
8 expectations of future support and counseling, companionship, solace and mental support, as
9 well as other benefits and assistance of decedent Anthony McGaff, all to their general damages
10 in a sum in excess of the jurisdictional limits of this Court, which will be stated according to
11 proof, pursuant to Section 425.10 of the California Code of Civil Procedure.

12 38. As a legal, direct and proximate result of the conduct of Defendants Metropolitan
13 Transit System, City of San Diego, and DOES 1 through 50, inclusive, Plaintiffs Angela McGaff,
14 individually, and as the successor-in-interest to Anthony McGaff and James Smith, will be de-
15 prived of the financial support and assistance of decedent Anthony McGaff, the exact amount of
16 such losses to be stated according to proof, pursuant to Section 425.10 of the California Code of
17 Civil Procedure.

18 39. As a legal, direct and proximate result of the conduct of Defendants Metropolitan
19 Transit System, City of San Diego, and DOES 1 through 50, as aforesaid, Plaintiffs Angela
20 McGaff, individually, and as the successor-in-interest to Anthony McGaff and James Smith, have
21 incurred property, medical, funeral and burial expenses in an amount to be stated according to
22 proof, pursuant to section 425.10 of the California Code of Civil Procedure.

23 40. As a legal, direct and proximate result of the conduct of Defendants, Metropolitan
24 Transit System, City of San Diego, and DOES 1 through 50, Plaintiff's Decedent, Anthony
25 McGaff suffered lost earnings, the exact amount to be stated according to proof, pursuant to
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1 Section 425.10 of the California Code of Civil Procedure.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs, Angela McGaff, individually, and as the successor-in-interest
4 to Anthony McGaff and James Smith, pray for judgment against Defendants, and each of them,
5 as follows:

6 1. For non-economic damages suffered by Plaintiffs, Angela McGaff and James
7 Smith, including, but not limited to, loss of loss, affection, society, service, comfort, support,
8 right of support, expectations of future support and counseling, companionship, solace or moral
9 support, expectations of future support and counseling, other benefits and assistance of Plaintiff's
10 decedent, Anthony McGaff, in an amount in excess of the jurisdictional minimum, according to
11 proof;

12 2. For economic damages suffered by Plaintiffs Angela McGaff and James Smith,
13 related to loss of earnings and loss of financial support from decedent, Anthony McGaff,
14 according to proof;

15 3. For funeral and burial expenses suffered by Plaintiffs Angela McGaff and James
16 Smith, according to proof;

17 4. For hospital, medical, professional and incidental expenses suffered by Plaintiffs
18 Angela McGaff and James Smith, by and through its Successor-in-Interest Angela McGaff,
19 according to proof;

20 5. For loss of income suffered by Plaintiffs, Angela McGaff and James Smith, and
21 The Estate of Anthony McGaff, by and through its Successor-in-Interest Angela McGaffR,
22 according to proof;

23 6. For pre-judgment interest, according to proof;

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

25 8. For damages for Plaintiffs, Angela McGaff and James Smith, and The Estate of
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1 Anthony McGaff, by and through its Successor-in-Interest Angela McGaff's other economic
2 losses, according to proof;

3 9. For such other and further relief as this Court may deem just and proper.
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5 DATED: December 8, 2022

THE PIRNIA LAW GROUP

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7
8 By: 

ARDY PIRNIA, ESQ.

Attorney for Plaintiffs, ANGELA MCGAFF,
9 individually, and as the Successor-in-Interest to THE
10 ESTATE OF ANTHONY MCGAFF, AND JAMES
11 SMITH

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13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs herein demand trial by jury of all matters for which jury trial is available.
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