

1 **ANGELA K. ZUGMAN**
2 California Bar No. 216374
3 LAW OFFICE OF ANGELA K. ZUGMAN
4 1010 2nd Avenue, Suite 1800
5 San Diego, California 92101
6 Phone Number: (619) 787-5334
7 Fax Number: (619) 924-2201
8 Email: akzugman@gmail.com

TIMOTHY A. SCOTT
California Bar No. 215074
NICOLAS O. JIMENEZ
California Bar No. 295057
LAW OFFICES OF
TIMOTHY A. SCOTT, APC
1350 Columbia St., Suite 600
San Diego, California 92101
Phone Number: (619) 794-0451
Fax Number: (619) 652-9964
Email: tscott@timscottlaw.com
noj@timscottlaw.com

9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 Estate of Gerardo Cruz-Sanchez, by and
13 through his successor-in-interest Paula
14 Garcia Rivera; and Paula Garcia Rivera,
15 individually and in her capacity as
16 successor-in-interest,

17 Plaintiffs,

18 v.

19 United States of America; CoreCivic,
20 Inc. formerly known as Corrections
21 Corporation of America (CCA); C.O.
22 Landin, in his individual and official
23 capacities; and Does 1-20, inclusive,

24 Defendants.
25

Civil No. 17-CV-00569-BEN-NLS

**SECOND AMENDED COMPLAINT
FOR:**

1. **FTCA: Wrongful Death;**
2. **FTCA: Negligence;**
3. **FTCA: Negligent training and supervision;**
4. **FTCA: Negligent infliction of emotional distress;**
5. **Violation of Bane Act;**
6. **Negligence;**

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- 7. **Wrongful death (CCP § 377.60);**
- 8. **Negligent training and supervision;**
- 9. **Negligent infliction of emotional distress;**
- 10. **Breach of duty owed by special relationship between Jailer and Jailee; and**

DEMAND FOR JURY TRIAL ON NON-FTCA CLAIMS

The Estate of Gerardo Cruz-Sanchez, by and through his successor-in-interest Paula Garcia Rivera and Paula Garcia Rivera, individually and in her capacity as successor-in-interest, by and through their attorneys of record, state and allege as follows:

I. INTRODUCTION

1. In early February 2016, the United States arrested and incarcerated Gerardo Cruz-Sanchez. But he was not charged with any crime. Rather, the United States arrested him because he was a witness to the crime of alien-smuggling. The government held him in order to prosecute an alien-smuggling defendant in federal court. Mr. Cruz-Sanchez cooperated with the government. He agreed to testify against the alien-smuggling defendant. But he could not afford bail. So on February 11, 2016, Mr. Cruz-Sanchez was admitted into CoreCivic, Inc.’s Otay Mesa Detention Center. 18 later, he was dead.

1 Mr. Cruz-Sanchez was a healthy man when he arrived at Otay Mesa
2 Detention Center as a government witness. On or about February 9, 2016, he
3 received a chest x-ray which confirmed no signs of tuberculosis or pneumonia. But
4 after he was incarcerated, he contracted pneumonia and was soon incapacitated to
5 the point that he could not talk or eat. He was in constant—and obvious—pain and
6 distress. He vomited blood, soaking his clothes and sheets. He pleaded for medical
7 help day after day—as did his cellmate on his behalf. But their pleas were ignored
8 and mocked by the prison staff, who instead threatened them to make them stop
9 complaining. Less than three weeks later, on February 29, 2016, Gerardo
10 Cruz-Sanchez was pronounced dead at the hospital. He would be alive today if the
11 authorities had honored their legal and moral duty to care for their own witness.
12 This lawsuit seeks justice on behalf of Mr. Cruz-Sanchez and the family that he left
13 behind.

14 **II. JURISDICTION**

15 2. This Court has jurisdiction to hear this case pursuant to Title 28 U.S.C.
16 §§ 1332(a)(2) (Diversity) and 1346(b)(1) (United States as Defendant).

17 3. With respect to the claims stated herein based upon state law, this Court
18 has supplemental jurisdiction. *See* Title 28 U.S.C. § 1367(a); *Allen v. City of Los*
19 *Angeles*, 92 F.3d 842, 945 (9th Cir. 1996).

20 4. The Southern District of California is the proper venue because the acts
21 and omissions alleged herein occurred in San Diego, California, which is located
22 within the Southern District of California. *See* Title 28 U.S.C. §§ 1391(e), 1402(b),
23 and 1346.

24 5. Plaintiffs' claims under 18 U.S.C. §§ 1345 and 2671-2680 (Federal Tort
25 Claims Act) were timely filed on August 30, 2016. Six months have elapsed; all
conditions precedent to the Federal Tort Claims Act have been met.

1 **III. PARTIES**

2 6. Before his death, Gerardo Cruz-Sanchez was, at all times relevant to
3 this lawsuit, a resident of Mexico. He was being held by the United States as a
4 material witness in Case No. 16cr405-BAS, United States v. Ortega-Gonzalez. His
5 wife, Paula Garcia Rivera, at all times relevant to this lawsuit, was a resident of
6 Mexico. She is the duly appointed successor-in-interest to the Estate of Gerardo
7 Cruz-Sanchez. *See Exhibit A* (Declaration of Paula Garcia Rivera).

8 7. At all times relevant to this complaint, the U.S. Immigration and
9 Customs Enforcement (ICE) Health Service Corps (IHSC) was a federal agency of
10 defendant United States of America (“United States”) and was operating in San
11 Diego County, California. IHSC is made up of a multi sector, multidisciplinary
12 workforce of over 1,100 personnel that include U.S. Public Health Service (PHS)
13 Commissioned Corps officers, federal civil servants and contract health
14 professionals. IHSC and PHS provide direct care to approximately 13,500
15 detainees, including material witnesses, housed at 21 designated facilities
16 throughout the Nation to include medical, dental and mental health care, and public
17 health services.

18 8. At all times relevant to this complaint, Defendant CoreCivic, Inc.
19 formerly known as Corrections Corporation of America, Inc. (herein referred to as
20 “CoreCivic”) is a for-profit Maryland corporation whose principal office is located
21 at 10 Burton Hills Boulevard, Nashville, Tennessee 37215 and whose registered
22 agent for service of process is CT Corporation System, 800 Gay Street, Suite 2021,
23 Knoxville, Tennessee 37929. As part of CoreCivic’s business, it owns/operates
24 jails, prisons and other correctional facilities throughout the United States under
25 contract with various government entities. At all times relevant to this action,

1 CoreCivic conducted business within San Diego County when operating its Otay
2 Mesa Detention Center.

3 9. Defendant C.O. Landin (“Landin”) is, and at all times herein mentioned
4 was, an agent or employee of CoreCivic who worked as a correctional officer at
5 CoreCivic’s Otay Mesa Detention Center. Defendant Landin was directly involved
6 in Mr. Cruz-Sanchez’s treatment in the jail. He is sued in his individual and official
7 capacities.

8 10. Plaintiffs are truly ignorant of the true names and capacities of Does 1
9 through 20, inclusive, and/or are truly ignorant of the facts giving rise to their
10 liability and will amend this complaint once their identities have been ascertained
11 as well as the facts giving rise to their liability.

12 11. These defendants were agents, servants and employees of each of the
13 other named defendants and were acting at all times within the full course and
14 scope of their agency and employment, with the full knowledge and consent, either
15 expressed or implied, of their principal and/or employer and each of the other
16 named defendants. Each of the defendants had approved or ratified the actions of
17 the other defendants, thereby making the currently named defendants liable for the
18 acts and/or omissions of their agents, servants and/or employees.

19 **IV. FACTS SUPPORTING CAUSES OF ACTIONS**

20 12. As described above, U.S. Immigration and Customs Enforcement
21 (ICE) Health Service Corps (IHSC), a federal agency of Defendant United States,
22 is the only entity in ICE with the responsibility of providing direct patient care.
23 IHSC is made up of a multi sector, multidisciplinary workforce of over 1,100
24 personnel that include U.S. Public Health Service (PHS) Commissioned Corps
25 officers, federal civil servants and contract health professionals. IHSC and PHS

1 provide direct care to approximately 13,500 detainees, including material
2 witnesses, housed at 21 designated facilities throughout the Nation to include
3 medical, dental and mental health care, and public health services. IHSC and PHS
4 also provide medical case management and oversight for an additional 15,000
5 detainees, including material witnesses, housed at approximately 119 non IHSC
6 staffed detention facilities across the country. In addition, IHSC oversees the
7 financial authorization and payment for offsite specialty and emergency care
8 services for detainees, including material witnesses, in ICE custody. PHS is
9 responsible for providing all health care services to detainees, including material
10 witnesses, at Otay Mesa Detention Center, a facility run by CoreCivic.

11 13. Decedent Gerardo Cruz-Sanchez was a Mexican male citizen born on
12 February 18, 1964. His native language was Spanish. He did not speak or
13 understand English.

14 14. On February 11, 2016, Mr. Cruz-Sanchez was admitted to CoreCivic's
15 Otay Mesa Detention Center ("OMDC") following his arrest by federal officers.
16 He was detained as a material witness in a case being brought by the United States;
17 no criminal charges were pending against him.

18 15. That same day, E. Ednacot, a PHS registered nurse, performed an initial
19 assessment on Mr. Cruz-Sanchez.

20 16. During the initial assessment, Mr. Cruz-Sanchez had no complaints and
21 did not require any medications.

22 17. During Mr. Cruz-Sanchez's detention, CoreCivic and PHS had a "sick
23 call" protocol at OMDC.

24 18. Pursuant to the OMDC Detainee Handbook, the detention officer was
25 obligated to announce sick call every morning between 0500-0600 hours.

1 19. If a detainee wished to sign up for medical, dental or mental health
2 services, he would sign the “Sick Call Request Log” and include his name,
3 identification number, housing pod, cell number and the service requested (e.g.
4 medical, dental, or mental health).

5 20. Under the OMDC sick call procedure, an officer was required to assist
6 any detainee who had trouble reading or writing in filling out a sick call request.

7 21. Under the OMDC sick call procedure, a registered nurse was supposed
8 to speak to the detainee the same day to assess his sick call request.

9 22. The nurse was then supposed to review the detainee’s concerns with a
10 health-care provider and schedule him for an appointment.

11 23. According to policy, all Sick Call Request Logs are supposed to be kept
12 electronically by ICE.

13 24. A few days after being admitted into CoreCivic’s OMDC, Mr. Cruz-
14 Sanchez developed flu like symptoms, including headache, sore throat, painful
15 burning sensation, a persistent cough, nasal congestion, fatigue, and loss of
16 appetite.

17 25. Mr. Cruz-Sanchez waited for an officer to circulate the “Sick Call
18 Request Log” so he could be seen by a PHS medical provider.

19 26. On February 14, 2016, Mr. Cruz-Sanchez was seen by PHS Nurse J.
20 Alix.

21 27. During this February 14, 2016 visit, Mr. Cruz-Sanchez described his flu
22 like symptoms that had been ongoing for 2 days. He also indicated that he was
23 experiencing severe pain.

24 28. Nurse J. Alix noted that his appointment was due to upper respiratory
25 infection (“URI”) during this same February 14 visit.

 29. But Nurse J. Alix did not order a chest x-ray for Mr. Cruz-Sanchez.

1 30. Nurse J. Alix did not refer Mr. Cruz-Sanchez to a licensed physician for
2 further examination.

3 31. Instead, Mr. Cruz-Sanchez was given Ibuprofen 200 MG tablets and
4 sent back to his cell.

5 32. Over the next couple of days, Mr. Cruz-Sanchez's symptoms worsened.

6 33. Mr. Cruz-Sanchez submitted another sick call request and was seen by
7 PHS Nurse V. Harris on February 16, 2016.

8 34. At this visit, he informed V. Harris that he had a productive cough,
9 body aches, and a sore throat for about a week.

10 35. At this February 16 visit, Mr. Cruz-Sanchez described his pain level as
11 severe and rated it as 9/10.

12 36. V. Harris did not order a chest x-ray either.

13 37. V. Harris did not refer Mr. Cruz-Sanchez to a licensed physician for
14 further examination.

15 38. Instead, Mr. Cruz-Sanchez was given additional Ibuprofen tablets and
16 salt packets and sent back to his cell.

17 39. Mr. Cruz-Sanchez submitted another sick call request and was seen on
18 February 17, 2016. At this visit, he was seen by PHS Physician's Assistant J.
19 Avalos.

20 40. Mr. Cruz-Sanchez reported to J. Avalos that he had flu-like symptoms
21 for several days including fever at night, chills, nausea throughout the day, lack of
22 appetite and scratchy throat.

23 41. Mr. Cruz-Sanchez told J. Avalos that he was in pain and that his body
24 ached.

25 42. J. Avalos is not a licensed physician.

1 43. J. Avalos noted in his chart that Mr. Cruz-Sanchez had a “viral etiology
2 vs. bacterial or allergy.”

3 44. But J. Avalos did not check his oxygen levels.

4 45. J. Avalos also did not order a chest x-ray.

5 46. J. Avalos did not order a blood culture either.

6 47. Despite knowing Mr. Cruz-Sanchez was displaying symptoms
7 indicative of pneumonia, J. Avalos did not refer him to a licensed physician for
8 further examination.

9 48. Instead, Mr. Cruz-Sanchez was given increased dosages of Ibuprofen
10 and Promethazine (an allergy medication) and sent back to his cell.

11 49. On February 21, 2016, Mr. Cruz-Sanchez was seen by PHS Nurse W.
12 Byington.

13 50. Nurse W. Byington did not check Mr. Cruz-Sanchez’s oxygen levels.

14 51. W. Byington did not order a chest x-ray either.

15 52. W. Byington also did not order a blood culture.

16 53. After this February 21st visit, Mr. Cruz-Sanchez’s health continued to
17 deteriorate. He began coughing up blood, saturating his clothes and bed sheets.

18 54. Mr. Cruz-Sanchez and his cellmate, Alejandro Chavez, pleaded with
19 C.O. Landin and other correctional staff to give him urgent medical treatment.

20 55. Between February 22 and February 26, Mr. Cruz-Sanchez received no
21 medical care.

22 56. Between February 22 and February 26, Mr. Cruz-Sanchez’s condition
23 deteriorated to the point where he was unable to talk and could not swallow food
24 due to swollen throat glands.

25 57. His ongoing symptoms included shortness of breath, respiratory
distress, and wheezing.

1 58. Between February 22 and February 26, Mr. Cruz-Sanchez was in
2 constant pain, which was obvious and visible to those who saw him, including his
3 cellmate, Alejandro Chavez.

4 59. On or about February 22, 2016, Daniela Leyva, a Spanish interpreter,
5 visited Mr. Cruz-Sanchez and Alejandro Chavez at CoreCivic’s OMD. Ms.
6 Leyva observed that Gerardo Cruz-Sanchez was pale, sickly, and unable to speak.
7 Alejandro Chavez told Ms. Leyva that Mr. Cruz-Sanchez was very sick.

8 60. On or about February 22, 2016, Gerardo Cruz-Sanchez told Alejandro
9 Chavez to contact his father if he does not make it out of jail. Alejandro Chavez
10 believed Mr. Cruz-Sanchez was on the brink of death.

11 61. On or about February 24, 2016, Alejandro Chavez again begged C.O.
12 Landin to get medical help for Mr. Cruz-Sanchez.

13 62. C.O. Landin was the only correctional officer Alejandro Chavez knew
14 to understand him.

15 63. C.O. Landin told Alejandro Chavez that Mr. Cruz-Sanchez “needs to be
16 nearly dead to be taken to a hospital.”

17 64. Alejandro Chavez also heard C.O. Landin mocking and intimidating
18 Mr. Cruz-Sanchez to “man up” and “stop being a chicken.”

19 65. C.O. Landin also threatened both Mr. Cruz-Sanchez and Alejandro
20 Chavez that they would regret it if they continued requesting medical care and, in
21 his words, “complaining.”

22 66. C.O. Landin also mocked Alejandro Chavez for acting like Mr. Cruz-
23 Sanchez’s “girlfriend or wife.”

24 67. Between February 22-February 25, 2016, no PHS medical provider
25 followed up on Mr. Cruz-Sanchez’s medical situation.

1 68. Between February 22-February 25, 2016, C.O. Landin refused to assist
2 Mr. Cruz-Sanchez in submitting additional sick call requests. Mr. Cruz-Sanchez
3 continued to cough up blood, soaking his clothes and bed sheets.

4 69. On February 25, 2016, Dr. E. Lederman electronically signed off on W.
5 Byington’s February 21st assessment of Mr. Cruz-Sanchez.

6 70. But E. Lederman did not review the electronic notes made by E.
7 Ednacot, J. Wu, J. Alix, V. Harris, J. Behr, and J. Avalos before signing off on the
8 February 21st assessment.

9 71. Had E. Lederman reviewed those earlier notes, she would have
10 observed that Mr. Cruz-Sanchez’s flu-like symptoms and worsening health crisis
11 suggested possible pneumonia.

12 72. On the morning of February 26, 2016, Mr. Cruz-Sanchez could not get
13 up from bed. His mattress was covered in blood. Alejandro Chavez and another
14 detainee, Carlos (last name unknown), physically picked up Mr. Cruz-Sanchez and
15 dragged him to a table in the common area to get him to eat. Mr. Cruz-Sanchez
16 coughed up blood on the table. C.O. Landin, seeing this episode, scolded and
17 intimidated Mr. Cruz-Sanchez yelling “Why are you making a mess! This is where
18 everyone eats!” C.O. Landin then ordered Mr. Cruz-Sanchez to get down on the
19 ground. The other detainees, including Alejandro Chavez and Carlos, were ordered
20 back to their cells.

21 73. Between 2:00-3:00 p.m. on February 26, 2016, a medical emergency
22 was called by CoreCivic staff and Mr. Cruz-Sanchez was brought to the OMDC
23 medical facility where he was examined by Dr. T. Propst.

24 74. Dr. Propst noted that Mr. Cruz-Sanchez had chest pain and hypoxemia.

25 75. He also noted “spit up of blood” and that Mr. Cruz-Sanchez had URI
(upper respiratory infection) symptoms most of the two weeks since intake.

1 76. Mr. Cruz-Sanchez’s oxygen levels were low and Dr. Propst diagnosed
2 Mr. Cruz-Sanchez with “acute respiratory distress w/burning chest pain, cough,
3 subcut emphysema, hypoxemia, tachypnea, tachycardia – suspect spontaneous
4 pneumothorax vs. other cardiopulmonary or GI etiology.”

5 77. Mr. Cruz-Sanchez’s condition was severe enough that a 911 call was
6 made, and Mr. Cruz-Sanchez was transported by ambulance to the emergency
7 room at Scripps Mercy Hospital in Chula Vista, California.

8 78. According to post-mortem records, “at the emergency room, the
9 medical staff intubated him and placed him on mechanical ventilation. His
10 examination and laboratory test results showed him with diagnoses of
11 pneumomediastinum with extensive subcutaneous emphysema, hypoxemia, acute
12 kidney injury, healthcare associated pneumonia, new onset of diabetes and
13 hypokalemia. They admitted him into the intensive care unit with full code status.”

14 79. On or about February 27, 2016, Alejandro Chavez saw C.O. Landin and
15 inquired about Mr. Cruz-Sanchez. C.O. Landin told him, “Oh, he’s dead. Just
16 kidding!”

17 80. On February 29, 2016, Gerardo Cruz-Sanchez was pronounced dead at
18 the hospital. His Death Diagnoses: (1) Aystyolic cardiac arrest secondary to
19 metabolic acidosis; (2) Multifocal pneumonia with acute respiratory distress
20 syndrome; (3) Hypoxic respiratory failure secondary to multifocal pneumonia and
21 acute respiratory syndrome; (4) Acute kidney injury secondary to acute tubular
22 necrosis; (5) Hyperkalemia secondary to acute kidney injury; and (6)
23 Pneumomediastinum and subcutaneous emphysema.

24 81. Defendants deliberately ignored Mr. Cruz-Sanchez’s repeated pleas for
25 help during his prolonged health crisis. Prior to February 26, 2016, Mr. Cruz-
Sanchez was never examined by a physician. Despite submitting at least 4 sick call

1 requests, Mr. Cruz-Sanchez was never referred to a licensed physician for further
2 examination. The only time he saw a physician was in the afternoon of February
3 26, 2016, right before he was rushed to the ER.

4 82. Mr. Cruz-Sanchez's death could have been prevented if defendants did
5 not deliberately, oppressively, and maliciously ignore his medical crisis.

6 83. Defendant United States had custody and control over Mr. Cruz-
7 Sanchez's body.

8 84. Mr. Cruz-Sanchez's body was not delivered to Plaintiff Paula Garcia
9 Rivera until April 1, 2016, 32 days after he died.

10 85. Mr. Cruz-Sanchez's body was delivered to his wife in a gray steel box.

11 86. When Plaintiff Paula Garcia Rivera saw her husband's dead body, his
12 face was bruised, his wrists had deep red marks and bruises, his ears were swollen
13 and distended.

14 87. Plaintiff Paula Garcia Rivera and her family members were shocked
15 and traumatized to see Mr. Cruz-Sanchez's body mistreated.

16 88. Plaintiff Paula Garcia Rivera made numerous attempts to obtain Mr.
17 Cruz-Sanchez's medical records from CoreCivic's OMDC. Her requests were
18 ignored until the Court denied the United States' motion to stay discovery on July
19 6, 2017 (Docket No. 22).

20 89. This course of action and inaction breached a host of rules and
21 standards governing the provision of health care by the United States to detainees.

22 90. Defendant United States through its agents/employees, the U.S.
23 Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC) and
24 U.S. Public Health Service (PHS), is required to provide direct patient care to the
25 federal detainees at CoreCivic's Otay Mesa Detention Center including its own
material witnesses.

1 91. The United States was well-aware of these rules and standards. A 2007
2 lawsuit by the American Civil Liberties Union against CoreCivic’s San Diego
3 immigrant detention centers, including its Otay Mesa Detention Center, prompted
4 the Department of Immigration Health Services to take over provision of medical
5 care at these facilities. The lawsuit alleged that CoreCivic squeezed profit from its
6 immigrant detention contracts by scrimping on the already minimal services it was
7 required to provide, including attempting to increase its profits by decreasing
8 medical services provided to detainees. The lawsuit also alleged that detainees had
9 to endure lengthy waits for medical treatment and did not get the medications
10 needed for chronic illnesses.

11 92. The ACLU lawsuit settled in December 2010 with an agreement that
12 the government would provide a broader range of treatment. The settlement
13 required that ICE meet or exceed specified standards of care detailed by the
14 national Commission on Correctional Health Care, specifically eliminating from its
15 written policies statements saying detainees will receive only emergency care, and
16 instead mandating detainees will receive care whenever it is necessary to address a
17 serious medical need.

18 93. Medical facilities within ICE detention facilities are required to achieve
19 and maintain current accreditation with the National Commission on Correctional
20 Health Care (NCCHC), and maintain compliance with those standards. ICE further
21 revised its detention standards in 2011, referred to as the Performance-Based
22 National Detention Standards 2011 (PBNDS 2011). These standards applied to the
23 care that Gerardo Cruz-Sanchez received and should have received.

24 94. Pursuant to NCCHC Standard J-E-07 “[I]n general, when an inmate
25 reports to sick call more than two times with the same complaint and has not seen a
physician, he or she receives an appointment to do so.”

1 95. Mr. Cruz-Sanchez submitted at least 4 sick call requests and was not
2 seen by a physician until the day he was rushed to the ER.

3 96. Pursuant to NCCHC Standard J-C-04 “[B]ecause correctional personnel
4 are often the first to respond to problems, they must be aware of the potential
5 emergencies that may arise, know the proper response to life-threatening
6 situations, and understand their part in the early detection of illness and injury.”

7 97. C.O. Landin, in contrast, deliberately ignored Mr. Cruz-Sanchez’s life-
8 threatening situation.

9 98. The ICE PBNDS, Medical Care, Section (II)(1) requires that detainees,
10 “have access to a continuum of health care services, including prevention, health
11 education, diagnosis, and treatment.”

12 99. The ICE PBNDS 2011, Medical Care, Section (II)(7), requires that, “a
13 detainee who needs health care beyond facility resources will be transferred in a
14 timely manner to an appropriate facility where care is available.”

15 100. The ICE PBNDS 2011, Medical Care, Section (II)(10), requires that
16 detainees have, “access to specified 24-hour emergency medical...services.”

17 101. Pursuant to the Defendant United States’ Contract with Defendant
18 CoreCivic, USPHS and CoreCivic were required to ensure that all employees
19 received pre-service and annual training in the “Recognition of signs and
20 symptoms, and knowledge of action required in potential emergency situations,”
21 and “Procedures for patient transfers to appropriate medical facilities or health care
22 providers.”

23 102. On July 7, 2016, the Human Rights Watch published an article, entitled
24 “US: Deaths in Immigration Detention - Newly Released Records Suggest
25 Dangerous Lapses in Medical Care.” According to the article, “[N]ewly released
United States government records summarizing investigations of the deaths of 18

1 migrants in the custody of US immigration authorities support a conclusion that
2 subpar care contributed to at least seven of the deaths.”

3 103. According to the Human Rights Watch, one of the people the two
4 medical experts identified as having received substandard care was 34-year-old
5 Manuel Cota-Domingo, who died of heart disease, untreated diabetes, and
6 pneumonia in December 2012 at St. Joseph’s Hospital and Medical Center shortly
7 after being transferred there from Eloy Detention Center, a private facility run by
8 the CoreCivic.

9 104. The death review for Manuel Cota-Domingo contained “*persuasive*
10 *evidence that correctional officers did not respond to calls for help for*
11 *approximately three hours while Cota-Domingo was having trouble breathing.*
12 *When officers finally notified medical providers of his condition, they delayed*
13 *evaluating him and finally sent him to the hospital in a van instead of an*
14 *ambulance. Both medical experts concluded that the combination of these delays*
15 *likely contributed to a potentially treatable condition becoming fatal.*”

16 105. Defendant CoreCivic also has a non-delegable duty to ensure that the
17 conditions of confinement and health and safety of persons incarcerated at
18 CoreCivic’s Otay Mesa Detention Center, including Gerardo Cruz-Sanchez, are
19 protected and in compliance with the Constitutions and laws of the United States
20 and the State of California.

21 106. Defendant CoreCivic has a widespread practice, custom, habit and
22 policy of tolerating and encouraging deliberate indifference to known serious
23 medical needs in the form of refusals of higher level care, refusing to transfer
24 inmates to the hospital even when they are complaining of serious and life
25 threatening medical needs, of treating inmates like they are faking their illnesses.

1 107. Defendant CoreCivic owns and operates many private jails around the
2 country and has been sued hundreds of times for similar patterns of reckless
3 deliberate indifference, including but not limited to the cases described in the
4 following paragraphs.

5 108. A 2001 jury verdict related to an inmate whose jaw was left wired shut
6 for 10 weeks, the jury wrote that they hoped the message sent by the verdict would
7 “echo throughout the halls of your corporate offices as well as your corporate
8 housing facilities.”

9 109. In 2004 a mother filed a lawsuit against CoreCivic for her son’s death at
10 the CoreCivic-run Kit Carson Correctional Center in Colorado. The deceased
11 inmate suffered from a hereditary condition that caused his breathing passages to
12 swell, a condition that had been easily and effectively controlled with the
13 prescription medication Winstrol. The Plaintiff mother alleged that CoreCivic
14 personnel refused to give her son his medically necessary Winstrol medication,
15 causing his death from an easily treatable condition.

16 110. CoreCivic prisons have been sued at least three times since 2004 for
17 denying needed medical care to pregnant women causing injury to the women and
18 the death of their babies. In one of these cases, an inmate who complained of
19 bleeding was returned to her cell so her bleeding could be monitored to prove she
20 wasn’t making up her complaints.

21 111. In 2010 inmate Terrell Griswold died at CoreCivic’s Bent County
22 Correctional Facility of a treatable condition. His parents sued the doctor and the
23 facility, alleging that their son’s continuous complaints and series of requests for
24 medical care were ignored. The lawsuit alleges that CoreCivic staff also refused to
25 send Mr. Griswold outside the facility for necessary higher-level care. Mr.
Griswold eventually died from easily treatable urinary blockage.

1 112. In 2013 the Texas state legislature shut down CoreCivic-run Dawson
2 State Jail following the deaths of inmates who died of treatable medical conditions.
3 One of the deceased prisoners was Pam Weatherby, who died at CoreCivic's
4 Dawson State Jail in May 2010 after not being provided with the state-mandated
5 special diet for diabetic prisoners, and after being taken off her insulin shots,
6 contrary to her well-documented treatment plan.

7 113. In July 2016, Mother Jones magazine published an article by a reporter
8 who worked for CoreCivic for four months as a private prison guard. The article
9 recounts the story of an inmate named Robert Scott who lost both legs and several
10 fingers to gangrene despite complaining over and over to staff at a CoreCivic
11 prison in Louisiana. Mr. Scott's lawsuit alleges that he complained many times,
12 like Gerardo Cruz-Sanchez, and that he was offered cheap and irrelevant
13 treatments like corn removal strips, and told that if he didn't stop complaining he
14 would get a write up for malingering.

15 114. More recently, on January 6, 2017, the Estate of Dennis Choquette sued
16 CoreCivic's Bent County Correctional Facility in Colorado for deliberate
17 indifference to Plaintiff's serious medical needs. The lawsuit alleges that
18 CoreCivic staff knew Mr. Choquette was diagnosed with left-footed Charcot
19 Syndrome, which required protective devices and offloading. CoreCivic's refusal
20 to treat his known serious medical condition resulted in Mr. Choquette's left foot
21 being damaged to the point of complete deformity and repeated infections,
22 ultimately leading to his death.

23 115. CoreCivic is responsible for the implementation of policies,
24 procedures, practices and customs, as well as the acts and omissions, challenged by
25 this lawsuit. CoreCivic is liable for its own conduct and the acts and omissions of
its servants, employees, agents and contractors pursuant to the doctrines of agency,

1 apparent agency, implied agency, employer/employee relations, joint and several
2 liability, respondeat superior, vicarious liability, contract and as a result of
3 CoreCivic's non-delegable duty to ensure the health and safety of the persons held
4 in custody at CoreCivic's OMDC.

5 **V. CAUSES OF ACTION**

6 **CLAIM 1: FTCA claim against Defendant United States for wrongful**
7 **death.**

8 116. Plaintiffs reassert and re-allege and incorporate herein by reference
9 each and every allegation contained in the preceding paragraphs.

10 117. Defendant United States had a duty to use reasonable care when
11 attending to the medical needs and health of material witnesses at CoreCivic's
12 Otay Mesa Detention Center.

13 118. Defendant United States breached its duty of care by failing to exercise
14 ordinary care and due diligence. United States' treatment of Gerardo Cruz-
15 Sanchez while he was detained at CoreCivic's Otay Mesa Detention Center
16 violated the FTCA, 28 U.S.C. § 2674.

17 119. As a direct and proximate result of Defendant United States' conduct as
18 alleged herein, the wrongful death of Gerardo Cruz-Sanchez occurred. Plaintiff
19 Paula Garcia Rivera has been, and will be, deprived of the love, care, society,
20 affection, comfort, moral support, protection, companionship, services, and support
21 of her husband.

22 120. As a further direct and proximate result of the acts and omissions of
23 Defendant United States and the wrongful death of Gerardo Cruz-Sanchez,
24 Plaintiffs have incurred monetary damages, including but not limited to loss of
25 support, services and funeral expenses.

///

1 **CLAIM 2: FTCA claim against Defendant United States for Negligence.**

2 121. Plaintiffs reassert and re-allege and incorporate herein by reference
3 each and every allegation contained in the preceding paragraphs.

4 122. Defendant United States had a duty to use reasonable care when
5 attending to the medical needs and health of immigration detainees, including
6 material witnesses, at CoreCivic's Otay Mesa Detention Center. Defendant United
7 States had a duty to avoid creating an unnecessary risk that immigration detainees,
8 including material witnesses, would suffer or die from medical conditions.

9 Defendant United States had a duty to use reasonable care in evaluating the health
10 of immigration detainees, including material witnesses, and determining the proper
11 and adequate course of treatment. Defendant United States had a duty to provide
12 proper care to Gerardo Cruz-Sanchez who contracted pneumonia while in custody.

13 123. Defendant United States carelessly and negligently treated, managed,
14 monitored, supervised or altogether ignored Gerardo Cruz-Sanchez's prolonged
15 health crisis during his detention between February 10, 2016 and February 26,
16 2016.

17 124. Defendant United States breached its duty of care and caused harm to
18 Plaintiffs, including physical pain and suffering, terror, mental anguish,
19 humiliation, degradation, and financial loss. United States' treatment of Gerardo
20 Cruz-Sanchez while he was detained at CoreCivic's Otay Mesa Detention Center
21 violated the FTCA, 28 U.S.C. § 2674.

22 125. As a direct, proximate, and foreseeable result of the negligent acts,
23 omissions and conduct of the Defendant United States and its agents, Plaintiffs
24 suffered damages in an amount according to proof at the time of trial.

25 ///

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1 **CLAIM 3: FTCA Claim against Defendant United States for negligent**
2 **training and supervision.**

3 126. Plaintiffs reassert and re-allege and incorporate herein by reference
4 each and every allegation contained in the preceding paragraphs.

5 127. Defendant United States had a duty to use reasonable care in the
6 training and supervision of its employees. Defendant United States had a duty to
7 properly train and supervise its employees to use reasonable care in evaluating the
8 health of detainees, including material witnesses, and determining the proper and
9 adequate course of treatment for a detainee suffering from pneumonia. Defendant
10 United States had a duty to properly train and supervise its employees to summon
11 medical care for detainees whom they knew, or had reason to know, required
12 medical care.

13 128. Defendant United States breached its duty of care such that Gerardo
14 Cruz-Sanchez's prolonged health crisis was deliberately ignored and Gerardo
15 Cruz-Sanchez died as a result. Defendant United States caused harm to Plaintiffs,
16 including physical pain and suffering, terror, mental anguish, humiliation,
17 degradation, and financial loss.

18 129. As a direct, proximate, and foreseeable result of Defendant United
19 States' breach of its duty of care, Plaintiffs suffered damages in an amount
20 according to proof at the time of trial.

21 **CLAIM 4: FTCA claim against Defendant United States for negligent**
22 **infliction of emotional distress.**

23 130. Plaintiffs reassert and re-allege and incorporate herein by reference
24 each and every allegation contained in the preceding paragraphs.

25 131. Defendant United States and its employees engaged in reckless and
negligent conduct causing Plaintiffs to suffer emotional distress. When Plaintiff

1 Paula Garcia Rivera received the corpse of her husband, and her family members
2 were shocked and traumatized to see his face bruised, his wrists with deep red
3 marks and bruises, and his ears swollen and distended.

4 132. As a direct, proximate and foreseeable result, Plaintiffs suffered serious
5 emotional distress and defendants' outrageous conduct was the cause of the
6 emotional distress suffered by Plaintiffs.

7 **CLAIM 5: Violation of Bane Act (California Civil Code 52.1) as to**
8 **Defendants CoreCivic, Inc.; C.O. Landin; and Does 1-20**

9 133. Plaintiffs reassert and re-allege and incorporate herein by reference
10 each and every allegation contained in the preceding paragraphs.

11 134. The California Legislature has declared that it violates the state civil
12 rights statutes for any person to interfere with the exercise or enjoyment by any
13 individual of his rights secured by the United States Constitution or state or federal
14 law. This includes any interference of these rights by threats, intimidation,
15 coercion or attempted threats, intimidation or coercion.

16 135. The defendants interfered with Gerardo Cruz-Sanchez's right to basic
17 medical care through threats and intimidation. Similarly, the defendants also
18 interfered with Gerardo Cruz-Sanchez's right to be free from torture when the
19 defendants ignored his medical crisis and threatened him to stop requesting
20 medical care.

21 136. This interference with Gerardo Cruz-Sanchez's rights was perpetrated
22 by the defendants in violation of California Civil Code Section 52.1.

23 137. Due to the violation of Plaintiffs' rights by defendants, Plaintiffs
24 suffered damages in an amount according to proof at the time of trial.

25 138. Plaintiffs are also entitled to statutory civil penalties set forth in Civil
Code § 52.1, attorney fees and costs of suit incurred herein.

1 **CLAIM 6: Negligence as to Defendants CoreCivic, Inc.; C.O. Landin;**
2 **and Does 1-20.**

3 139. Plaintiffs reassert and re-allege and incorporate herein by reference
4 each and every allegation contained in the preceding paragraphs.

5 140. As alleged herein, Gerardo Cruz-Sanchez was a material witness at
6 CoreCivic's Otay Mesa Detention Center between February 10 to February 26,
7 2016. Defendants have a special relationship with their detainees. Because
8 immigration detainees, including material witnesses, at CoreCivic's Otay Mesa
9 Detention Center are deprived of their liberty, it becomes defendants' duty to care
10 for their health, safety, and welfare. The duty owed is a special affirmative,
11 nondelegable duty to the detainees. Defendants' duties included, but were not
12 limited to: providing reasonable care in evaluating the health of detainees and
13 determining the proper and adequate course of treatment; providing proper care for
14 a detainee suffering from pneumonia; and summoning medical care for detainees
15 whom they knew, or had reason to know, required immediate medical care.
16 Defendants' conduct towards Gerardo Cruz-Sanchez constituted a want of even
17 scant care and an extreme departure from the ordinary standard of conduct in the
18 context of the situation. This grossly negligent conduct resulted in Gerardo Cruz-
19 Sanchez's death.

20 141. Defendants breached their duty of care and caused irreparable harm to
21 Plaintiffs, including physical pain and suffering, terror, mental anguish,
22 humiliation, degradation and financial loss.

23 142. As a direct and proximate result of defendants' grossly negligent
24 conduct, Gerardo Cruz-Sanchez suffered a horrible, painful death. Plaintiffs are
25 entitled to recover compensatory damages in an amount according to proof at the
time of trial.

1 143. As alleged herein, defendants were guilty of oppression, fraud, and/or
2 malice as defined in California Civil Code §3294, and Plaintiffs should recover, in
3 addition to actual damages, exemplary and punitive damages to make an example
4 of and to punish defendants, in an amount according to proof at the time of trial.

5 **CLAIM 7: Wrongful Death as to Defendants CoreCivic, Inc.;**
6 **C.O. Landin; and Does 1-20.**

7 144. Plaintiffs reassert and re-allege and incorporate herein by reference
8 each and every allegation contained in the preceding paragraphs.

9 145. Gerardo Cruz-Sanchez’s wife, Plaintiff Paula Garcia Rivera, has
10 suffered and continues to suffer loss of society, companionship, comfort, care,
11 guidance, financial support, and other spousal services as a result of her husband’s
12 preventable death.

13 146. The loss of her husband has been devastating to Paula Garcia Rivera
14 and her family.

15 **CLAIM 8: Negligent Training and Supervision as to Defendants**
16 **CoreCivic, Inc.; C.O. Landin; and Does 1-20.**

17 147. Plaintiffs reassert and re-allege and incorporate herein by reference
18 each and every allegation contained in the preceding paragraphs.

19 148. Defendants had a duty to use reasonable care in the training and
20 supervision of its employees. Defendants had a duty to properly train and supervise
21 its employees to use reasonable care in evaluating the health of detainees,
22 including material witnesses, and determining the proper and adequate course of
23 treatment for a detainee suffering from pneumonia. Defendants had a duty to
24 properly train and supervise its employees to summon medical care for detainees
25 whom they knew, or had reason to know, required medical care.

1 149. Defendants breached their duty of care such that Gerardo Cruz-
2 Sanchez's prolonged health crisis was deliberately ignored and Gerardo Cruz-
3 Sanchez died as a result. Defendants caused harm to Gerardo Cruz-Sanchez and his
4 wife, Paula Garcia Rivera, including physical pain and suffering, terror, mental
5 anguish, humiliation, degradation, and financial loss.

6 150. As a direct, proximate, and foreseeable result of defendants' breach of
7 their duty of care, Plaintiffs suffered damages in an amount according to proof at
8 the time of trial.

9 **CLAIM 9: Negligent Infliction of Emotional Distress as to Defendants**
10 **CoreCivic, Inc.; C.O. Landin; and Does 1-20.**

11 151. Plaintiffs reassert and re-allege and incorporate herein by reference
12 each and every allegation contained in the preceding paragraphs.

13 152. Defendants engaged in reckless and negligent conduct causing
14 Plaintiffs to suffer emotional distress. When Plaintiff Paula Garcia Rivera received
15 the corpse of her husband, she and her family members were shocked and
16 traumatized to see his face bruised, his wrists with deep red marks and bruises, and
17 his ears swollen and distended.

18 153. As a direct, proximate and foreseeable result, Plaintiffs suffered serious
19 emotional distress and defendants' outrageous conduct was the cause of the
20 emotional distress suffered by Plaintiffs.

21 **CLAIM 10: Breach of duty owed by special relationship between Jailer**
22 **and Jailee as to Defendants CoreCivic, Inc.; C.O. Landin;**
23 **and Does 1-20.**

24 154. Plaintiffs reassert and re-allege and incorporate herein by reference
25 each and every allegation contained in the preceding paragraphs.

 155. As alleged herein, Gerardo Cruz-Sanchez was a material witness at
CoreCivic's Otay Mesa Detention Center between February 10 to February 26,

1 2016. Defendants had undertaken by contract to provide detention facilities to the
2 United States. In so doing, Defendants assumed the United States' obligation to
3 provide adequate medical treatment. Defendants' duties included, but were not
4 limited to: providing reasonable care in evaluating the health of detainees and
5 determining the proper and adequate course of treatment; providing proper care for
6 a detainee suffering from pneumonia; and summoning medical care for detainees
7 whom they knew, or had reason to know, required immediate medical care.

8 156. Defendants were deliberately indifferent to the medical needs of
9 Gerardo Cruz-Sanchez and failed to treat his pneumonia symptoms with proper
10 medical treatment and instead let the sickness slowly and painfully kill Gerardo
11 Cruz-Sanchez over the course of weeks.

12 157. Defendants breached their duty of care and caused irreparable harm to
13 Plaintiffs, including physical pain and suffering, terror, mental anguish,
14 humiliation, degradation and financial loss.

15 158. Defendants' indifference was callous and cruel, constituting malice as
16 defined in California Civil Code § 3294. Plaintiffs should recover, in addition to
17 actual damages, exemplary and punitive damages to make an example of and to
18 punish defendants, in an amount according to proof.

19 **VI. RELIEF REQUESTED**

20 159. For general damages and compensatory damages in an amount
21 according to proof;

22 160. For punitive and exemplary damages against all defendants (except
23 governmental entities) sued in their individual capacity as permitted by law (Cal.
24 Civ. Code § 3294);

25 161. Civil penalties as provided by law;

EXHIBIT A

1 **ANGELA K. ZUGMAN**
California State Bar No. 216374
2 **LAW OFFICE OF ANGELA K. ZUGMAN**
1010 2nd Avenue, Suite 1800
3 San Diego, California 92101
Phone Number: (619) 787-5334
4 Fax Number: (619) 924-2201
Email: akzugman@gmail.com

5 Attorneys for Plaintiffs

TIMOTHY A. SCOTT
California Bar No. 215074
NICOLAS O. JIMENEZ
California Bar No. 295057
LAW OFFICES OF
TIMOTHY A. SCOTT, APC
1350 Columbia Street, Suite 600
San Diego, California 92101
Phone Number: (619) 794-0451
Fax Number: (619) 652-9964
Email: tscott@timscottlaw.com
noj@timscottlaw.com

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 Estate of Gerardo Cruz-Sanchez, by and)
12 through his successor-in-interest Paula)
13 Garcia Rivera; and Paula Garcia Rivera,)
individually and in her capacity as)
successor-in-interest,)

14 Plaintiffs,)

15 v.)

16 The United States of America;)
17 CoreCivic, Inc. formerly known as)
18 Corrections Corporation of America)
(CCA); C.O. Landin, in his official and)
individual capacity; and Does 1-30.)

19 Defendants.)

Civil Action No. 17-CV-00569-BEN-NLS

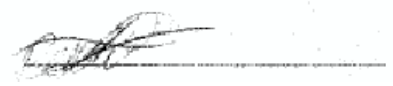
Declaration of Paula Garcia Rivera

20 I, Paula Garcia Rivera, declare under penalty of perjury as follows:

- 21 1. I am over the age of 18 and am competent to testify in this matter.
22
23 2. I am the wife of Gerardo Cruz-Sanchez, who died on February 29, 2016, in San
24 Diego, California.
25 3. No proceeding is now pending in the State of California or Mexico for the
26 administration of the Estate of Gerardo Cruz-Sanchez.
27 4. I am the successor in interest to Gerardo Cruz-Sanchez, as defined in Section
28 377.11 of the California Code of Civil Procedure, and succeed to his interest in
the above-captioned action under California Probate Code § 6402(b).

1 5. No other person has a superior right to commence the above-captioned action or to
2 be substituted for Gerardo Cruz-Sanchez in the above-captioned action.

3
4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct and that this declaration is executed on Feb 26,
6 2017 at Zitácuaro, Mexico.

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10 Paula Garcia Rivera

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Estate of Gerardo Cruz-Sanchez, by and through successor-in-interest Paula Garcia Rivera; Paula Garcia Rivera, individually and in her capacity as successor-in-interest.

(b) County of Residence of First Listed Plaintiff Mexico (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) See attachment.

DEFENDANTS

United States of America; CoreCivic Inc; C.O. Landin, individually and in his official capacity; Does 1-30, inclusive.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Federal Tort Claims Act

Brief description of cause: Wrongful death, negligence, negligent training and supervision, Bane Act, intentional infliction of emotional distress.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/03/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Timothy A. Scott

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ATTACHMENT TO CIVIL COVER SHEET

I.(c) Attorneys for Plaintiffs

ANGELA K. ZUGMAN
California Bar No. 216374
LAW OFFICE OF ANGELA K. ZUGMAN
1010 2nd Avenue, Suite 1800
San Diego, California 92101
Phone Number: (619) 787-5334
Fax Number: (619) 924-2201
Email: akzugman@gmail.com

TIMOTHY A. SCOTT
California Bar No. 215074
NICOLAS O. JIMENEZ
California Bar No. 295057
LAW OFFICES OF
TIMOTHY A. SCOTT, APC
1350 Columbia St., Suite 600
San Diego, California 92101
Phone Number: (619) 794-0451
Fax Number: (619) 652-9964
Email: tscott@timscottlaw.com
noj@timscottlaw.com