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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Jamien Rae Jensen, individually and as  
parent and next friend of D.J.J.,  
Chavis Johnson, as Personal  
Representative of the Wrongful Death  
Estate of Butch Corey Johnson,

Plaintiffs,

vs.

EXC, Inc., a Nevada corporation, d/b/a  
Express Charters and D.I.A. Express, Inc.,  
Conlon Garage, Inc., a Colorado  
corporation, Go Ahead Vacations, Inc., a  
Massachusetts corporation, Russell J.  
Conlon, individually,

Defendants.

No. 3:15-cv-08019-SPL

**FIRST AMENDED COMPLAINT  
FOR PERSONAL INJURY  
AND WRONGFUL DEATH AND  
DEMAND FOR JURY**

1           **COME NOW** the Plaintiffs, by and through their counsel of record, and for their  
2 causes of action state as follows:

3                                   **JURISDICTIONAL ALLEGATIONS**

4           1.       At all times material, Plaintiff Jamien Rae Jensen was and continues to be  
5 domiciled in Kayenta, Arizona, on the Navajo Nation, although she currently works and  
6 resides in Phoenix, Arizona.

7           2.       Plaintiff Jamien Rae Jensen brings claims on her own behalf, individually,  
8 and as parent and next friend of minor child D.J.J.

9           3.       Plaintiff Jamien Rae Jensen and minor child D.J.J. are enrolled members of  
10 the Navajo Nation.

11          4.       At all times material, Plaintiff Chavis Johnson was and continues to be  
12 domiciled in Shonto, Arizona, on the Navajo Nation.

13          5.       Chavis Johnson is an enrolled member of the Navajo Nation.

14          6.       At all times material, decedent Butch Corey Johnson was domiciled in  
15 Kayenta, Arizona, on the Navajo Nation.

16          7.       Decedent Butch Corey Johnson, while he lived, was an enrolled member of  
17 the Navajo Nation.

18          8.       The Wrongful Death Estate of Butch Corey Johnson, to which Chavis  
19 Johnson was appointed Personal Representative on March 10, 2005, was opened by the  
20 Navajo Nation Family Court, Kayenta Judicial District, No. KY-FC-104-05 CV, under  
21 the laws of the Navajo Nation.

22          9.       The Estate, through Chavis Johnson as personal representative of the  
23 deceased person, brings the wrongful death act claim for and on behalf of the surviving  
24 beneficiaries (spouse, child, parents) as set forth under Arizona state law, A.R.S. § 12-  
25 612.

26          10.      At all times material, Defendant EXC, Inc. was and continues to be a for-  
27 profit corporation organized under the laws of the State of Nevada, doing business under  
28

1 the names of Express Charters and D.I.A. Express, Inc., and conducting commercial  
2 activities and packaging tours, and arranging lodging and transportation, on the Navajo  
3 Nation and within the state of Arizona.

4 11. At all times material, Defendant Conlon Garage, Inc. was and continues to  
5 be a for-profit corporation, organized under the laws of the state of Colorado, conducting  
6 commercial activities and operating motor vehicles for profit on the Navajo Nation and  
7 within the state of Arizona.

8 12. At all times material, Go Ahead Vacations, Inc. was and continues to be a  
9 for-profit corporation, organized under the laws of the state of Massachusetts, conducting  
10 commercial activities and packaging tours, and arranging lodging and transportation, for  
11 tours on the Navajo Nation and within the state of Arizona.

12 13. At all times material, Defendant Russell J. Conlon was and continues to be  
13 a resident of the state of Colorado conducting commercial activities such as guided tours  
14 and operating motor vehicles for profit on the Navajo Nation and within the state of  
15 Arizona.

16 14. The motor vehicle collision which is the subject of this action (the  
17 “collision”) occurred on September 21, 2004 on U.S. Highway 160 at M.P. 393, in  
18 Kayenta Township, Arizona, on the Navajo Nation.

19 15. This matter is timely filed, Defendants herein having entered into a  
20 stipulation as Plaintiffs-Appellees in *EXC. Inc. et al. v. Jamien Rae Jensen, et al.*, No. 12-  
21 16958, in the United States Court of Appeals for the Ninth Circuit, by which they agreed  
22 “that if the Jensen/Johnson family file[d] a tort claim arising out of the September 21,  
23 2004 highway accident in state or federal court within 60 days of any dismissal for lack  
24 of jurisdiction in tribal court, [they would] not raise a statute of limitations [nor] statute  
25 of repose defense” and “that no statute of limitations (or statute of repose) would prevent  
26 the Jensen/Johnson family from pursuing that tort claim.”

27 16. Accordingly, this Court has jurisdiction of this civil action pursuant to 28  
28

1 U.S.C. §1332 and venue is proper in this District.

2 **THE PARTIES**

3 17. At all times material, Plaintiff Jamien Rae Jensen was the wife of decedent  
4 Butch Corey Johnson, their common-law marriage having commenced May 30, 2002,  
5 according to an Order Validating Marriage of Jamien Jensen and Butch Corey Johnson,  
6 decedent, entered by the Navajo Nation Family Court, Kayenta Judicial District, No. KY-  
7 FC-105-05.

8 18. Plaintiff Jamien Rae Jensen and decedent Butch Corey Johnson are the  
9 biological parents of minor child D.J.J.

10 19. Defendant EXC, Inc., d/b/a Express Charters and/or D.I.A. Express, Inc.,  
11 provided transportation under contract with, and as an agent of, Defendant Go Ahead  
12 Vacations, Inc. on the day of the collision.

13 20. Defendant Conlon Garage, Inc. was the owner of the 2004 Van Hool tour  
14 bus involved in the collision.

15 21. Defendant Go Ahead Vacations, Inc. organized the U.S. National Parks  
16 Tour, provided a Go Ahead Tour Director, and chartered the 2004 Van Hool tour bus  
17 owned by Conlon Garage, Inc. that was involved in the collision.

18 22. Defendant Russell J. Conlon was an employee of EXC, Inc. on the day of  
19 the collision.

20 23. Defendant Russell J. Conlon was an agent of Go Ahead Vacations on the  
21 day of the collision.

22 **THE COLLISION**

23 24. On September 21, 2004, at approximately 7:10 a.m., decedent Butch Corey  
24 Johnson, Plaintiff Jamien Rae Jensen, and their minor child D.J.J. were traveling  
25 eastbound on U.S. Highway 160 outside Kayenta, Arizona, within the boundaries of the  
26 Navajo Nation, in a 1997 Pontiac Grand Am sedan driven by decedent Butch Corey  
27 Johnson.  
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1           25.     On the same day, and at the same time, Defendant Russell J. Conlon, while  
2 in the course of, and within the scope of, his employment with Defendant EXC, Inc., was  
3 driving the 2004 Van Hool tour bus, owned by Conlon Garage, Inc. and chartered by Go  
4 Ahead Vacations, Inc., westbound on U.S. Highway 160 outside of Kayenta, Arizona.

5           26.     Defendant Russell J. Conlon, driving the tour bus, exited a private driveway  
6 to proceed westbound on U.S. Highway 160.

7           27.     At the point where the bus entered the roadway there are two lanes of travel  
8 for westbound traffic.

9           28.     When Russell Conlon entered the roadway, he pulled into the left lane  
10 (median lane) designated for passing or for faster traffic.

11          29.     When Russell Conlon entered the roadway, he did not drive into the right  
12 lane (curb lane) designated for slower traffic.

13          30.     When Russell Conlon pulled onto U.S. Highway 160, he did not yield to  
14 approaching traffic, driving the bus into the oncoming path of a vehicle driven by Burt  
15 Wisner.

16          31.     Burt Wisner was required to make an evasive maneuver by moving from  
17 the westbound left lane into the right lane to avoid a collision with the bus driven by  
18 Russell Conlon.

19          32.     As Wisner and Conlon proceeded west, they were quickly approaching a  
20 choke point where the two westbound lanes would become a single lane.

21          33.     Upon information and belief, Conlon created a dangerous condition by  
22 which he cut off Wisner and then began competing to get to the single lane choke point  
23 before Wisner.

24          34.     Within seconds of exiting the private driveway and obstructing the travel  
25 of Wisner, as Wisner sought to overtake the bus on the right side, Defendant Russell J.  
26 Conlon negligently, recklessly, and with wanton and reckless disregard for the rights and  
27 safety of others, knowing or having reason to know that his conduct created a substantial  
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1 risk of significant harm to others, drove the bus over the centerline of the highway, causing  
2 a head-on collision between the tour bus and the sedan driven by decedent Butch Corey  
3 Johnson, in which Plaintiff Jamien Rae Jensen and their minor child D.J.J. were  
4 passengers.

5 35. The accident resulted in the death of Butch Corey Johnson, and injuries and  
6 damages to Jamien Rae Jensen and D.J.J.

7 **COUNT I**

8  
9 **NEGLIGENCE, NEGLIGENCE PER SE, AND AGGRAVATED**  
10 **NEGLIGENCE, RESULTING IN PERSONAL INJURY**

11 36. Plaintiffs re-allege the preceding paragraphs as though fully set forth  
12 herein.

13 37. At the time and place aforesaid, Defendant Russell J. Conlon was negligent,  
14 negligent per se, and committed aggravated negligence, including because of the  
15 following acts and omissions:

- 16 a) failing to yield the right of way;
- 17 b) failing to keep a proper lookout and/or pay due attention to the roadway and  
18 traffic thereon;
- 19 c) failing to exercise due care in the operation of a motor vehicle;
- 20 d) operating the tour bus recklessly, and with wanton and reckless disregard for  
21 the rights and safety of others, including Plaintiffs, knowing or having reason to know  
22 that his conduct created a substantial risk of significant harm to others, including  
23 Plaintiffs;
- 24 e) crossing the centerline of the highway;
- 25 f) operating a commercial vehicle negligently, carelessly, recklessly, and with  
26 wanton and reckless disregard for the rights and safety of others, knowing or having  
27 reason to know that his conduct created a substantial risk of significant harm to others;
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1 g) violating pertinent traffic laws; and

2 h) other acts and/or omissions to be discovered pursuant to the Federal Rules of  
3 Civil Procedure.

4 38. By virtue of the contractual relationship and common purpose existing  
5 between and among them, Defendants EXC, Inc., Conlon Garage, Inc., and Go Ahead  
6 Vacations, Inc., and Russell J. Conlon were engaged in a joint enterprise, employer-  
7 employee relationship, agency relationship, and/or partnership that rendered them  
8 vicariously liable or jointly and severally liable for death and harm resulting from their  
9 respective negligent acts and omissions.

10 39. As a direct and proximate result of Defendants' negligence, negligence  
11 per se, and aggravated negligence, Plaintiff Jamien Rae Jensen and her minor child D.J.J.  
12 sustained serious physical injuries, resulting in damages in an amount to be proven at trial.

13 40. As a direct and proximate result of Defendants' negligence, negligence  
14 per se, and aggravated negligence, Plaintiff Jamien Rae Jensen and her minor child D.J.J.  
15 incurred medical expenses for treatment, therapy, and medicine for injuries that they  
16 sustained in the accident, which expenses may continue in the future, resulting in damages  
17 in an amount to be proven at trial.

18 41. As a direct and proximate result of Defendants' negligence, negligence  
19 per se, and aggravated negligence, Plaintiff Jamien Rae Jensen and her minor child D.J.J.  
20 endured pain and suffering, and may continue to endure pain and suffering in the future,  
21 from their injuries, resulting in damages in an amount to be proven at trial.

22 42. As a direct and proximate result of Defendants' negligence, negligence  
23 per se, and aggravated negligence, Plaintiff Jamien Rae Jensen sustained loss of income  
24 and lost earning capacity.

25 43. As a direct and proximate result of Defendants' negligence, negligence  
26 per se, and aggravated negligence, D.J.J. suffered and will continue to suffer a loss of the  
27 society, guidance, and companionship of his mother, Plaintiff Jamien Rae Jensen.  
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1           44.     The conduct of Defendant Russell Conlon was reckless, careless, and done  
2 with reckless disregard for the rights and safety of others, knowing or having reason to  
3 know that his conduct created a substantial risk of harm to others, warranting an  
4 imposition of punitive damages as permitted by law.

5           45.     Defendants EXC, Inc., Conlon Garage, Inc., and Go Ahead Vacations, Inc.  
6 are vicariously liable for the negligence, negligence per se, and aggravated negligence of  
7 Defendant Russell J. Conlon, described herein, and the damages caused as described  
8 herein.

9           **WHEREFORE** Plaintiffs respectfully demand judgment against Defendants and  
10 request an Order from this Court awarding compensatory damages, to Jamien Rae Jensen,  
11 individually, and to Jamien Rae Jensen, on behalf of the minor child D.J.J., and imposing  
12 punitive damages in an amount sufficient to punish defendants for reckless and careless  
13 conduct and sufficient to deter others from similar conduct in the future, resulting from  
14 Defendants' wrongful acts and omissions as stated in this Complaint, for the following:

- 15           a)       personal injuries;  
16           b)       past and future pain and suffering;  
17           c)       medical expenses and future medical expenses;  
18           d)       lost income and lost earning capacity with respect to Plaintiff Jamien  
19 Rae Jensen, individually;  
20           e)       loss of consortium with respect to, and on behalf of, minor child D.J.J.;  
21           f)       punitive damages;  
22           g)       interest as allowed by law; and  
23           h)       any and all further relief that this Court deems just and proper.  
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**COUNT II**

**NEGLIGENCE, NEGLIGENCE PER SE, AND AGGRAVATED  
NEGLIGENCE RESULTING IN WRONGFUL DEATH**

46. Plaintiffs re-allege the preceding paragraphs as though fully set forth herein.

47. Defendant Russell J. Conlon's conduct that constituted negligence, negligence per se, and aggravated negligence is set forth in prior paragraphs.

48. As a direct and proximate result of Defendant Russell J. Conlon's negligence, negligence per se, and aggravated negligence, decedent Butch Corey Johnson died from injuries he sustained in the collision.

49. As a direct and proximate result of Defendant Russell J. Conlon's negligence, negligence per se, and aggravated negligence, decedent Butch Corey Johnson suffered the loss of the inherent value of life, guidance, and the loss of earnings, future earnings, and earning capacity.

50. As a direct and proximate result of Defendant Russell J. Conlon's negligence, negligence per se, and aggravated negligence, Plaintiff Jamien Rae Jensen has suffered and will continue to suffer the loss of society, guidance, companionship, and sexual relations, and the loss of support and the value of household services, of and with her husband, decedent Butch Corey Johnson.

51. As a direct and proximate result of Defendant Russell J. Conlon's negligence, negligence per se, and aggravated negligence, minor child D.J.J. has suffered and will continue to suffer the loss of society, guidance, and counseling, and the loss of support and the value of household services, of his father, decedent Butch Corey Johnson.

52. As a direct and proximate result of Defendant Russell J. Conlon's negligence, negligence per se, and aggravated negligence, the parents of decedent Butch Corey Johnson, Margaret and Frank Johnson, have suffered and will continue to suffer

1 the loss of society and companionship.

2 53. The conduct of Defendant Russell J. Conlon was reckless, careless, and  
3 done with reckless disregard for the rights and safety of others, knowing or having reason  
4 to know that his conduct created a substantial risk of harm to others, warranting an  
5 imposition of punitive damages as permitted by law.

6 54. Defendants EXC, Inc., Conlon Garage, Inc., and Go Ahead Vacations, Inc.  
7 are vicariously liable for the negligence, negligence per se, and aggravated negligence of  
8 Defendant Russell J. Conlon, described herein, and the damages caused as described  
9 herein.

10 **WHEREFORE** Plaintiffs respectfully demand judgment against Defendants  
11 Russell J. Conlon, EXC, Inc., Conlon Garage, Inc., and Go Ahead Vacations, Inc. in an  
12 amount to be proven at trial which is reasonable to compensate them for their injuries and  
13 losses related to the death of decedent Butch Corey Johnson, and imposing punitive  
14 damages in an amount sufficient to punish defendants for reckless and careless conduct  
15 and sufficient to deter others from similar conduct in the future, along with the costs of  
16 this action, interest as allowed by law, costs, and any and all further relief that this Court  
17 deems just and proper.

18  
19 DATED this 16<sup>th</sup> day of October, 2017.  
20

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial by jury of all issues so triable.

DATED this 16<sup>th</sup> day of October, 2017.

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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 16, 2017, the foregoing FIRST AMENDED COMPLAINT FOR PERSONAL INJURY AND WRONGFUL DEATH AND DEMAND FOR JURY was electronically transmitted to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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