

Fill in this information to identify the case:

Debtor 1 Mario Alberto Guerra

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: Eastern District of California

Case number 17-11365

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Cal LeDuc; Tori Abby; Miley Abby; Mandy Jobe; Lukus LeDuc; and Jay LeDuc</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Cornwell & Sample, LLPC</u> Name <u>7045 N. Fruit Avenue</u> Number Street <u>Fresno</u> <u>CA</u> <u>93711</u> City State ZIP Code Contact phone <u>559-431-3142</u> Contact email <u>steve@cornwellsample.com</u>	Where should payments to the creditor be sent? (if different) _____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on <u>MM / DD / YYYY</u>	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 4,000,000.00 Does this amount include interest or other charges?
*Subject to court judgment ☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Wrongful death suit.

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date

9-21-17
MM / DD YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name Stephen R. Cornwell
First name Middle name Last name

Title Attorney for Creditor

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 7045 N. Fruit Avenue
Number Street
Fresno CA 93711
City State ZIP Code

Contact phone 559-431-3142 Email steve@cornwellsample.com

1 Stephen R. Cornwell, CA Bar #40737
2 CORNWELL & SAMPLE, LLP

3 Attorneys at Law
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5 Fresno, CA 93711-0761
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7 Facsimile: (559) 436-1135

(SPACE BELOW FOR FILING STAMP ONLY)

E-FILED

3/22/2017 10:47:40 AM

5 Richard A. Belardinelli, CA Bar #65168
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7 7060 N. Fresno Street, Suite 250
8 Fresno, CA 93720
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FRESNO COUNTY SUPERIOR COURT

By: S. Lopez, Deputy

9 Mark P. Robinson, Jr., CA Bar #54426
10 ROBINSON CALCAGNIE ROBINSON
11 SHAPIRO DAVIS, INC.
12 19 Corporate Plaza Drive
13 Newport Beach, CA 92660
14 (949) 720-1288
15 Fax: (949) 720-1292

13 Attorneys for Plaintiffs CAL LeDUC; TORI ABBY; MILEY ABBY, a minor, by and
14 through her Guardian ad Litem TORI ABBY; MANDY JOBE; LUKUS LeDUC; and JAY
15 LeDUC

16 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

17 CENTRAL DIVISION

18 CAL LeDUC; TORI ABBY; MILEY
19 ABBY, a minor, by and through her
20 Guardian ad Litem TORI ABBY;
21 MANDY JOBE; LUKUS LeDUC; and
22 JAY LeDUC

21 Plaintiffs,

22 v.

23 MARIO ALBERTO GUERRA; DANIEL
24 M. CANCHOLA; GUERRA PRODUCE;
25 and DOES 1 to 50, inclusive,

26 Defendants.

CASE NO.: 13 CE CG 03811 MWS

THIRD AMENDED
COMPLAINT FOR WRONGFUL
DEATH; PERSONAL INJURIES;
PUNITIVE DAMAGES

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THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH;
PERSONAL INJURIES; PUNITIVE DAMAGES

-I-

1 Comes now the Plaintiffs, CAL LeDUC; TORI ABBY; MILEY ABBY, a
2 minor, by and through her Guardian ad Litem TORI ABBY; MANDY JOBE; LUKUS
3 LeDUC; and JAY LeDUC and complain of the Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. The Plaintiffs are, and at all times mentioned herein were, citizens of
6 the State of California and of the County of Fresno. CAL LeDUC is the widower of
7 Marsha Kay LeDuc, deceased. TORI ABBY, MANDY JOBE, LUKUS LeDUC, and JAY
8 LeDUC are the natural children of Marsha Kay LeDuc, deceased. Each of them is entitled
9 to bring a cause of action for the wrongful death of Marsha Kay LeDuc pursuant to CCP
10 377.60.

11 2. MILEY ABBY, a minor, is the natural grandchild of Marsha Kay
12 LeDuc, deceased, and the natural child of TORI ABBY. TORI ABBY, has been duly
13 appointed as the Guardian ad Litem of MILEY ABBY for purposes of representing her
14 interests in this litigation. The order of appointment of her as Guardian ad Litem was made
15 by the above captioned court on December 11, 2013.

16 3. The death and injuries the subject of this action occurred in Fresno
17 County, California on June 12, 2013 on Alta Avenue. At the time of this incident Marsha
18 Kay LeDuc was a passenger in the right front seat of a 2003 Pontiac Vibe bearing
19 California license plate 4XDR416, TORI ABBY was the driver of the Pontiac Vibe and
20 MILEY ABBY was a passenger in the back seat behind the driver of the Pontiac Vibe.

21 4. MARIO ALBERTO GUERRA (hereinafter "GUERRA") is an
22 individual residing in the County of Fresno and was residing at all times mentioned herein
23 in the County of Fresno. MARIO ALBERTO GUERRA and DOES 1 to 10 were, at all
24 times mentioned herein, persons that owned, maintained, and controlled a 2001 Dodge
25 3500 Pickup and/or employed DANIEL M. CANCHOLA. The capacity of GUERRA
26 PRODUCE is unknown to the Plaintiffs at the present time. When the capacity of
27 GUERRA PRODUCE becomes known the Plaintiffs will amend this complaint to allege its
28 correct capacity, if necessary. On information and belief the Plaintiffs allege that

THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH;
PERSONAL INJURIES; PUNITIVE DAMAGES

1 GUERRA PRODUCE is a business owned and operated by GUERRA engaged in the
2 business of produce.

3 5. Defendant DANIEL M. CANCHOLA (hereafter "CANCHOLA") is
4 an individual who at all relevant times herein was employed by MARIO ALBERTO
5 GUERRA and/or GUERRA PRODUCE and DOES 1 to 10. On information and belief
6 Plaintiffs allege that at all times herein mentioned CANCHOLA was a resident of Fresno
7 County, California, and was operating the 2001 Dodge Pickup in the course and scope of
8 his employment with GUERRA and/or DOES 1-10 and with their permission and consent.

9 6. Plaintiffs are ignorant of the true names and capacities of those
10 Defendants sued herein as Does 1 through 50 and for that reason has sued such Defendants
11 by fictitious names. Plaintiffs will seek leave of Court to amend this Complaint to identify
12 said Defendants who were negligent or otherwise legally responsible for the injuries and
13 death alleged herein when their identities are ascertained. Plaintiffs are informed and
14 believe and thereon allege that each of the fictitiously named Defendants is legally
15 responsible in some manner for the occurrences alleged in this complaint, and for the
16 injuries and death as further alleged herein. When Plaintiff is advised of the correct names
17 of such DOES Plaintiff will join such defendants to this action.

18 7. The defendants and each of them were the agents and/or principals of
19 each other and/or the successors in interest of other companies legally responsible for the
20 injuries and death that occurred.

21 JURISDICTION

22 8. This Court has jurisdiction pursuant to Code of Civil Procedure
23 Section 410.10. Venue is proper in Fresno County Superior Court pursuant to Code Civil
24 Procedure Section 395 (a), because Plaintiffs' decedent, Marsha Kay LeDuc, was killed in
25 Fresno County, the injuries alleged herein occurred in Fresno County and the Defendants
26 or some of them were and are residents of the County of Fresno.

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THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH;
PERSONAL INJURIES; PUNITIVE DAMAGES

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1 pedestrians because of his inexperience in handling a heavy truck and his inexperience as a
2 driver and his habit of becoming distracted by constant use of his cell phone and knowing
3 his inability to pass the California driving test, and with knowledge that it was illegal for
4 CANCHOLA to drive on public streets without supervision, GUERRA instructed
5 CANCHOLA to drive the truck on a public highway to make a delivery.

6 11. Plaintiffs are informed and believe and thereon allege that GUERRA
7 consciously disregarded the risk of serious or fatal injuries to motorists by directing
8 CANCHOLA's driving of the truck knowing CANCHOLA had been tested for a license
9 and failed to qualify as a safe and competent driver and further GUERRA knew that
10 CANCHOLA was unable and incapable of safely operating the GUERRA vehicle which
11 weighed in excess of 10,000 pounds. Motorists using public roads have a reasonable
12 expectation that the use of the highway will be safe and that operators of trucks will have
13 the knowledge and ability to safely operate their vehicle to avoid serious injury or death.
14 The public using public roadways have a right to assume that the other drivers on the
15 roadway are capable and knowledgeable about the particular vehicle that they are operating
16 because the improper use of a machine weighing in excess of 10,000 pounds is likely to
17 cause injury or death and is extremely hazardous. The direction of GUERRA to
18 CANCHOLA to operate his truck on a public road subjected other motorists using the
19 public roadway to serious injury or death and in fact did cause serious injuries and the
20 death of persons in a vehicle who were law abiding citizens. GUERRA's conduct in
21 directing CANCHOLA's use of the truck knowing that CANCHOLA was unable and
22 incapable of safely operating the truck for the protection of other motorists was despicable
23 because it exposed innocent law-abiding citizens to injury or death from which motorists
24 could not protect themselves.

25 12. TORI ABBY came to a stop behind another vehicle at the intersection
26 of Alta Avenue and Manning Avenue. At that time and place the 2001 Dodge 3500 pickup
27 being operated by CANCHOLA collided with the rear end of the Vibe vehicle causing it to
28

1 be pushed forward striking the vehicle in front of it. The collision caused damage to the
2 back of the Vibe and to the interior of the Vibe vehicle and to the front of the Vibe vehicle.

3 13. At the time of the collision all occupants of the Vibe vehicle were
4 wearing their seatbelts.

5 14. At the time and place of the crash described Marsha Kay LeDuc was
6 caused to be injured causing a crushing injury to her cervical spine impairing her ability to
7 be able to breathe. She was pronounced dead at Community Regional Medical Center. The
8 death of Marsha Kay LeDuc was the direct result and caused by the impact from
9 Defendant's vehicle into Plaintiffs vehicle.

10 15. At the time and place of the crash TORI ABBY and her daughter
11 MILEY who was an occupant in the back seat of the vehicle, were injured requiring
12 medical care. MILEY and TORI's injuries were a direct result of the impact from
13 Defendant's vehicle into Plaintiffs vehicle causing TORI to be propelled into her daughter
14 in the backseat.

15 **FIRST CAUSE OF ACTION**

16 (Wrongful Death)

17 16. All of the Plaintiffs with exception of MILEY ABBY are entitled to
18 recover pursuant to California law for the wrongful death of Marsha Kay LeDuc pursuant
19 to the provisions of CCP 377.60.

20 17. These Plaintiffs refer to and incorporate by reference paragraphs 1 –
21 16 inclusive.

22 18. On June 12, 2013, at or about the hour of 9:30 a.m., Defendant
23 CANCHOLA negligently operated the above-described truck in a southerly direction on
24 Alta Avenue near the intersection thereof with Manning Avenue in Fresno County,
25 California. His negligent operation of the truck was a substantial factor in causing the
26 death of Marsha Kay LeDuc. The vehicle had been negligently entrusted to CANCHOLA
27 by GUERRA and Does 1 to 10 which negligence was a substantial factor in causing the
28 death of Marsha Kay LeDuc and injuries to TORI ABBY and to MILEY ABBY, a minor.

THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH;
PERSONAL INJURIES; PUNITIVE DAMAGES

1 19. As a legal result of the death of Marsha Kay LeDuc, the Plaintiffs
2 have been deprived of her financial support, love, society, comfort, companionship,
3 affection, and the services of decedent Marsha Kay LeDuc and are therefore entitled to
4 damages as prayed for hereafter. The absence of Marsha Kay LeDuc has significantly
5 impacted their lives.

6 **SECOND CAUSE OF ACTION**

7 (Injury – TORI ABBY)

8 20. Plaintiff TORI ABBY incorporates paragraphs 1 to 19 of the
9 complaint as though it was set forth herein.

10 21. At the said time and place TORI ABBY sustained personal injuries
11 legally caused by the fault of the vehicle operator and vehicle owner defendants and Does
12 1 to 10 as alleged herein. The actions of these Defendants were substantial factors causing
13 the injuries to her entitling her to recover economic and non-economic damages according
14 to law.

15 **THIRD CAUSE OF ACTION**

16 (Injury – MILEY ABBY)

17 22. TORI ABBY, as Guardian ad Litem of MILEY ABBY incorporates
18 paragraphs 1 to 21 of the complaint as if set forth in this cause of action.

19 23. At the said time and place MILEY ABBY sustained personal injuries
20 legally caused by the fault of the vehicle operator and vehicle owner defendants and Does
21 1 to 10 as alleged herein. The actions of these Defendants were substantial factors causing
22 the injuries to her entitling her to recover economic and non-economic damages according
23 to law.

24 24. The actions of these Defendants were substantial factors causing the
25 injuries to her entitling her Guardian ad Litem to recover economic and non-economic
26 damages on her behalf according to law.

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THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH;
PERSONAL INJURIES; PUNITIVE DAMAGES

1 **FOURTH CAUSE OF ACTION**

2 (Dillon v. Legg claims of TORI ABBY)

3 25. TORI ABBY, on behalf of herself incorporates paragraphs 1 to 24 of
4 the complaint as if set forth in this cause of action.

5 26. Marsha Kay LeDuc was the mother of TORI ABBY. TORI ABBY
6 observed the injury to Marsha Kay LeDuc which eventually led to her death. As a result of
7 the observation of such injuries she has suffered emotional distress entitling her to recover
8 damages according to law.

9 27. TORI ABBY is the mother of MILEY ABBY. She was present when
10 the impact occurred to the Vibe vehicle causing injury to her daughter MILEY. As a result
11 of this she is entitled to recover damages for her emotional distress in the experience and
12 immediate observation of her daughter's injury in the backseat of the Vibe.

13
14 WHEREFORE, Plaintiffs pray judgment as follows:

15 **FIRST CAUSE OF ACTION:**

- 16 1. For economic damages for funeral, burial, including medical expenses, loss
17 of household services, and other expenses as allowed by law.
18 2. For non-economic damages for wrongful death as are allowed by law
19

20 **SECOND CAUSE OF ACTION:**

- 21 3. For non-economic damages for pain and suffering and other damages
22 allowed by law.
23 4. For economic damages for medical and other incidental expenses as allowed
24 by law.
25 5. For punitive damages.

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THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH;
PERSONAL INJURIES; PUNITIVE DAMAGES

THIRD CAUSE OF ACTION:

6. For non-economic damages for pain and suffering and other damages as allowed by law.
7. For economic damages for medical and other expenses as allowed by law.
8. For punitive damages.

FOURTH CAUSE OF ACTION:

9. For non-economic damages for pain, suffering and emotional distress and other damages as allowed by law.
10. For punitive damages.

ALL CAUSES OF ACTION

13. For costs of suit herein incurred.
14. For prejudgment interest as allowed by law.
15. For such other and further relief as the court may deem just and meet in the premises.

DATED: March 24, 2017.

CORNWELL & SAMPLE, LLP

By: 

Stephen R. Cornwell
René Turner Sample
Attorneys for Plaintiffs

CAL LeDUC; TORI ABBY; MILEY ABBY,
a minor, by and through her Guardian ad
Litem TORI ABBY; MANDY JOBE;
LUKUS LeDUC; and JAY LeDUC

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THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH;
PERSONAL INJURIES; PUNITIVE DAMAGES

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 7045 N. Fruit Avenue, Fresno, California. On March 22, 2017, I served the within documents:

***THIRD AMENDED COMPLAINT FOR WRONGFUL DEATH;
PERSONAL INJURIES; PUNITIVE DAMAGES***

☐

BY FAX: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐

BY HAND: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒

BY MAIL: by placing the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

☐

BY OVERNIGHT MAIL: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

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BY PERSONAL DELIVERY: by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

☐

BY ELECTRONIC MAIL: to the electronic mail address(es) below.

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GUERRA PRODUCE and
CANCHOLA*

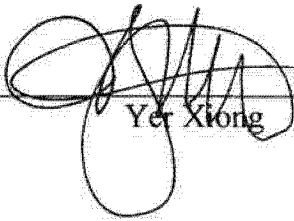
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1 I am readily familiar with the firm's practice of collection and processing
2 correspondence for mailing. Under that practice it would be deposited with the U.S.
3 Postal Service on that same day with postage thereon fully prepaid in the ordinary course
4 of business. I am aware that on motion of the party served, service is presumed invalid if
postal cancellation date or postage meter date is more than one day after date of deposit
for mailing in affidavit.

5 I declare under penalty of perjury under the laws of the State of California
6 that the above is true and correct.

7 Executed on March 22, 2017, at Fresno, California.

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