

GERAGOS & GERAGOS

A PROFESSIONAL CORPORATION
LAWYERS
HISTORIC ENGINE CO. No. 28
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411
TELEPHONE (213) 625-3900
FACSIMILE (213) 232-3255
GERAGOS@GERAGOS.COM

MARK J. GERAGOS SBN 108325
CHRIS CAMPBELL SBN 230168
Attorneys for Plaintiff KRISTINE M. RODAS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

KRISTINE M. RODAS, individually,
and as successor-in-interest, and on
behalf of the Estate of Roger W. Rodas,

Plaintiff,

v.

PORSCHE CARS NORTH
AMERICA, INC., a Delaware
corporation; and DOES 1-20, inclusive,

Defendants.

CASE NO. 2:14-CV-03747-PSG-MRW

Hon. Philip S. Gutierrez

PLAINTIFF'S STATEMENT OF GENUINE DISPUTES OF MATERIAL FACT AND ADDITIONAL MATERIAL FACTS

Date: February 29, 2016

Time: 1:30 PM

Court: 880

Complaint filed: May 12, 2014

Trial Date: May 3, 2016

GERAGOS & GERAGOS, APC
644 South Figueroa Street
Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Porsche Cars North America, Inc. (“PCNA”), pursuant to Local Rule 56-1, respectfully submits this statement of uncontroverted facts and conclusions of law.

STATEMENT OF UNCONTROVERTED FACTS

Fact	Supporting Evidence
------	---------------------

BACKGROUND

<p>1. The subject vehicle is a 2005 Porsche Carrera GT, Vehicle Identification No. WPOCA29815L001131.</p>	<p>Undisputed.</p>
<p>2. The vehicle was manufactured between 16th to 30th of November 2004 by Dr. Ing. h.c. F. Porsche Aktiengesellschaft in Leipzig, Germany. That company, Porsche AG, performed the design, manufacturing and testing work for the subject vehicle and all other Carrera GT’s.</p>	<p>Undisputed.</p>
<p>3. The vehicle was sold to, and title transferred to, Porsche Cars North America, Inc. on December 7, 2004.</p>	<p>Undisputed.</p>
<p>4. At the time of the crash, the vehicle had been through 5 prior owners.</p>	<p>Undisputed.</p>
<p>5. At the time of the crash, the vehicle had been operated for only a total of 1169 hours.</p>	<p>Undisputed.</p>
<p>6. The vehicle was required to</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 comply with the U.S. Government’s 3 Federal Motor Vehicle Safety Standards 4 that were in effect on December 7, 5 2004.	
6 7. The subject crash occurred 7 on November 30, 2013 in Santa Clarita, 8 CA.	Undisputed.
9 8. Roger Rodas was the driver 10 and Paul William Walker, IV was the 11 lone passenger at the time of the crash.	Undisputed.
12 9. Mr. Rodas and Mr. Walker 13 had been and left an event at Always 14 Evolving and the crash occurred not 15 long after they left the event.	Undisputed.
16 10. The vehicle was driven 17 northbound on Kelly Johnson Parkway. 18 Kelly Johnson Parkway follows a curve 19 to the right and then becomes Hercules 20 Street.	Undisputed.
21 11. As the vehicle was being 22 driven out of the curve from Kelly 23 Johnson onto Hercules Street, the 24 vehicle put into a clockwise yaw or 25 spin. 26	Disputed. The vehicle had already successfully navigated the curve and was driving on a straight path on Hercules Street when it suddenly entered a clockwise yaw or spin. Renfroe Decl., ¶¶ 26, 28, 51.
27 12. Damaged trees, a destroyed 28 light pole and skid marks leading	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 upstream of the vehicle’s point of rest 3 established that the vehicle was crashed 4 after it was driven through the sweeping 5 right curve.	
6 13. Katherine Zimmerman was 7 at Point C on Figure 1. She was on 8 Copper Hill, facing Northeast with her 9 daughter driving. They were waiting to 10 turn left on Kelly Johnson Parkway.	Undisputed.
11 14. Ms. Zimmerman heard the 12 loud noise of an engine, looked up and 13 saw a red sports car coming the other 14 way on Copper Hill.	Undisputed.
15 15. Ms. Zimmerman saw the 16 driver take the turn fast, accelerating 17 Kelly Johnson and fishtailing before he 18 went out of sight, as shown on 19 Deposition Exhibit 4. She said to her 20 daughter, “People are so dumb, driving 21 so fast.”	Undisputed.
22 16. After a brief stop to buy a 23 gift at a nearby business, Ms. 24 Zimmerman saw the same red sports car 25 on fire at the crash site. She stayed 26 behind and gave her name to 27 investigating officers.	Undisputed.
28 17. Donna Frank had just	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 pulled out of the parking lot at Walmart, 2 at Point W-1 on Figure 1 and turned to 3 her right onto Kelly Johnson. She was 4 going down the hill toward Point C, the 5 intersection with Copper Hill Drive. 6</p>	
<p>7 18. Ms. Frank saw a red sports 8 car coming the opposite direction, 9 evidently just after Ms. Zimmerman had 10 lost sight of it. The driver was “sucking 11 asphalt,” a term she learned to describe 12 how fast people drive when they are 13 street racing.</p>	<p>Undisputed.</p>
<p>14 19. At the time Ms. Frank saw 15 the vehicle, she estimated the speed at 16 “way past 60” and observed that the 17 vehicle was accelerating as it went out 18 of sight. She said to herself, “What a 19 fool,” and headed home.</p>	<p>Undisputed.</p>
<p>20 20. Later that evening, Ms. 21 Frank’s mother called her and told her 22 that it was on the news that there had 23 been a crash near her home. She turned 24 on the TV and watched news reports 25 from the scene. She recognized the car 26 in the news reports as the same one she 27 saw.</p>	<p>Undisputed.</p>
<p>28 21. The vehicle slid off the</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 road to the right. A rough, not-to-scale 2 sketch of the travel path is on page 3 LASD0009 of the Sheriff’s Department 4 report. 5	
6 22. The front tires and wheels 7 of the vehicle struck the curb at Area of 8 Impact (“AOI”) ## 1 and 2.	Undisputed.
9 23. The front of the vehicle 10 struck a tree, commonly known in this 11 litigation as Tree 1 and identified as 12 AOI #3 on the LASD report. Tree 1 13 was gouged and damaged.	Undisputed.
14 24. The left side of the vehicle 15 then struck a light pole (AOI #4) in the 16 vicinity of the driver door’s outside 17 handle and knocked the pole down.	Undisputed.
18 25. A rear tire or tires then 19 struck another curb at AOI #6, shown 20 on the LASD report.	Undisputed.
21 26. The vehicle then struck 22 another tree (Tree 2), again at the driver 23 side door at AOI #7 on the LASD 24 Report. The impact with Tree 2 broke it 25 off above the ground.	Undisputed.
26 27. The vehicle continued to 27 rotate clockwise until it struck another 28 tree (Tree 3) at AOI #8 on the LASD	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3	Report. The vehicle struck Tree 3 with the passenger side door.	
4 5	28. The vehicle came to rest in two pieces next to Tree 3.	Undisputed.
6	29. A fire ensued.	Undisputed.
7 8 9 10	30. After the fire was put out and the bodies were removed, autopsies were performed on Mr. Rodas and Mr. Walker.	Undisputed.
11 12 13 14 15 16	31. Representatives of the Los Angeles Sheriff's Department documented the presence of four tire marks that led from the travel lanes of Kelly Johnson Parkway to the Areas of Impact on the curbs.	Undisputed.
17 18	32. The LASD photographed the tire marks, starting at dusk.	Undisputed.
19 20 21 22 23 24 25 26 27 28	33. After dark, the LASD placed reflectors adjacent to each of the four marks. They put white reflectors on the mark left by the driver side rear tire, blue reflectors on the mark left by the passenger side rear tire, red reflectors on the mark left by the driver side front tire, and yellow reflectors on the mark left by the passenger side front tire.	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 34. The LASD measured the 3 marks at night.	Undisputed.
4 35. The LASD measured the 5 tire marks that night as follows: Driver 6 Side Rear: 101.26 feet; Passenger Side 7 Rear: 114.1 feet; Driver Side Front: 8 41.88 feet; Passenger Side Front: 93.31 9 feet.	Undisputed.
10 36. Geoff Germane, Ph.D. 11 performed a photogrammetric analysis 12 of the tire marks depicted in LASD 13 Rodas 014, 017 and 022. 14 Photogrammetry is the process by which 15 one plots the locations of known, fixed 16 landmarks in a photograph and uses 17 geometry to plot the locations of items 18 in the same photograph that have since 19 been moved or faded, such as the tire 20 marks left by the Carrera GT.	Undisputed.
21 37. Dr. Germane used 22 photogrammetry to measure the tire 23 marks that were photographed by the 24 LASD before it got dark.	Undisputed.
25 38. Dr. Germane’s analysis 26 determined that the lengths of the tire 27 marks shown in LASD 014, 017 and 28 022 were as follows: Driver Side Rear:	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>100 feet; Passenger Side Rear: 118 feet; Driver Side Front: 40 feet; Passenger Side Front: 47 feet.</p>	
<p>39. The LASD obtained security camera videos from several businesses located along Kelly Johnson Parkway and Hercules Street. The videos were taken during the time of the crash and leading up to the crash.</p>	<p>Undisputed.</p>
<p>40. Surveillance video from Lockheed Corporation captured the Carrera GT as it was being driven through the sweeping right turn. Lockheed’s building is on the inside of that curve. Video from two Lockheed cameras (L-1 and L-3 on Figure 1), showed the vehicle being driven at Points E and F, respectively. L-3 is trained on the first part of the curve that Mr. Rodas drove on his way toward the crash site. L-1 is trained on the last part of that curve. These videos show the Carrera GT being driven northbound on Kelly Johnson, through portions of the sweeping right curve that is just upstream of the crash site.</p>	<p>Undisputed.</p>
<p>41. By measuring the</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 stationary objects that are depicted in 2 the videos and that were still at the 3 scene during his inspections, Dr. 4 Germane, PCNA’s accident 5 reconstruction expert, could determine 6 the distances that the Carrera GT 7 traveled in those videos. 8</p>	
<p>9 42. Dr. Germane also analyzed 10 the videos and video equipment to 11 determine what the frame rate of each 12 video was. That allowed him to 13 determine the time that it took the 14 Carrera GT to travel over the distances 15 mentioned above.</p>	<p>Undisputed.</p>
<p>16 43. By determining the amount 17 of time it took the Carrera GT to travel 18 over the distances depicted in the video 19 and measured by Dr. Germane, Dr. 20 Germane was able to determine the 21 vehicle’s speed. (Speed = distance x 22 time).</p>	<p>Disputed.</p>
<p>23 44. The vehicle’s speed at the 24 in the first part of the curve covered by 25 the Lockheed cameras was 26 approximately 72 mph at the beginning 27 of that view and approximately 80 mph 28 at the end of that view. The vehicle’s</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 speed in the second part of the curve 3 covered by the Lockheed cameras was 4 approximately 82 mph at the beginning 5 of that view and approximately 90 mph 6 at the end of that view.	
7 45. The driver of the Carrera 8 GT was accelerating in the curve.	Undisputed.
9 46. Newt Wimer, a friend of 10 Rodas’s and Walker’s who was at the 11 event, heard the crash and heard the 12 sound of the Carrera GT being driven 13 just before the crash. He heard the 14 vehicle being upshifted twice and heard 15 the sounds of engine being raced to its 16 rev limiter twice.	Undisputed.
17 47. The speeds of the vehicle 18 as depicted in the Lockheed videos is 19 consistent with the driver hitting the rev 20 limiter in second gear and shifting into 21 third.	Undisputed.
22 48. The rev limiter Mr. Wimer 23 heard is a device that prevents a driver 24 from running the crankshaft’s 25 revolutions per minute (“RPM”)’s 26 above a certain limit.	Undisputed.
27 49. In the Carrera GT, the rev 28 limiter is set at 8,400 RPMs.	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 50. At the time the Attraction 3 Services camera recorded the pole being 4 knocked down and the impacts with 5 Trees 1, 2 and 3, the frame rate was 6 29.97 frames per second.	Undisputed.
7 51. The distance travelled 8 between its impact with Tree 1 and its 9 impact with Tree 3 was approximately 10 56 feet and 1 inch.	Undisputed.
11 52. Dr. Germane worked 12 backward from the point of rest to 13 establish the speeds of the vehicle as it 14 contacted the various objects in its path.	Undisputed.
15 53. The top speed of a Carrera 16 GT on a flat surface in first gear at the 17 rev limiter is approximately 48 mph. At 18 the rev limiter in second gear, the top 19 speed is approximately 79 mph. The 20 top speed of a Carrera GT on a flat 21 surface in third gear at the rev limiter is 22 approximately 112 mph.	Undisputed.
23 54. The Carrera GT was being 24 driven at these speeds at these points: 25 a. Near the beginning of 26 Kelly Johnson curve: ~70 mph. 27 b. Near the end of Kelly 28 Johnson curve: ~90 mph.	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

	Fact	Supporting Evidence
1		
2	c. Beginning of tire marks:	
3	~89 mph	
4	d. Impact with Tree 1 (AOI	
5	#1): ~74 mph.	

SURVIVING LEGAL CLAIMS

7	55. The only claims that	Undisputed.
8	survived the motions to dismiss are	
9	these product liability claims regarding	
10	four defects: (1) “failure of the	
11	suspension component [the right rear toe	
12	adjuster rod],” (2) “absence of a crash	
13	cage” (3) “substandard side impact	
14	protection” and (4) “lack of a fuel cell.”	
15	Only certain legal claims survived with	
16	respect to them.	

17	56. With regard to the failure	Undisputed.
18	of the suspension component theory—	
19	the right rear toe adjuster rod—these	
20	claims survived:	
21	a. A strict liability design	
22	defect claim under the consumer	
23	expectations test because that	
24	suspension component allegedly	
25	“spontaneously failed causing the car	
26	[to] spin out on the road when being	
27	driven at 55 miles-per-hour....”	
28	b. A negligent design defect	

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3 4 5 6 7 8	claim with respect to the toe rod, in that the rod “was improperly designed because its fatigue life was too short” such that it “would break upon one application of 2,400 pounds of force and stretch upon application of 1,040 pounds of force;”	
9 10 11 12 13 14 15 16 17 18	c. A strict liability manufacturing defect claim “that the toe adjuster rod in the rear right wheel suspension component broke due to ‘fatigue failure which occurred at a load much lower than that of the ultimate strength of the material used to produce the [] rod and at a load much lower than that with the Carrera GT was designed to withstand;” and	
19 20 21 22	d. A negligent manufacturing defect claim that the toe rod was “defectively manufactured to be weaker than PCNA’s intended design...”	
23 24 25 26 27 28	57. With respect to the absence of a crash cage theory, these claims survived: a. A strict liability design defect claim under the risk/benefits theory in that “a ‘properly functioning	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3 4 5 6 7 8 9 10	crash cage would have prevented the death [of Rodas]’ by preventing ‘intrusion into the passenger compartment,’ damage to the fuel tank and the splitting of the vehicle in half;” and b. A negligent design claim for “designing the Carrera GT without a crash cage....”	
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	58. With respect to the substandard side impact protection theory, these claims survived: a. A strict liability design defect claim under the consumer expectations test for “substandard side impact protection” in that “an ordinary consumer would not have expected a car traveling at [a relatively high, but customary road speed] to break in half upon impact” with a tree; and b. A negligent testing theory in that “PCNA did not test the 2005 Carrera GT’s ‘side impact/collision safety’ for compliance with industry standards” and “did not engage ‘in the rigorous testing to ensure that the Carrera GT could withstand the industry	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 standard forces of a side collision.”” 3 c. A negligent failure to warn 4 claim for failing to warn Mr. Rodas 5 about the lack of “rigorous testing to 6 ensure that the Carrera GT could 7 withstand the industry standard forces of 8 a side collision.”	
9 59. With respect to the lack of 10 a fuel cell theory, these claims survived: 11 a. A strict liability design 12 defect claim under the risk/benefits test 13 for lack of a racing fuel cell; and 14 b. A negligent design claim 15 for failing to include a fuel cell.	Undisputed.
16 <u>SCOPE OF THE FACTS PRESENTED BY THE PLAINTIFF DURING</u> 17 <u>DISCOVERY</u>	
18 60. In her second supplemental 19 initial disclosures, the plaintiff identified 20 no evidence on matters relating to 21 liability other than the LASD report and 22 its attachments (which included her 23 experts’ preliminary reports). She 24 identified no witnesses other than police 25 personnel, fact witnesses identified in 26 the LASD report and her experts, David 27 Renfroe and Stanley Andrews.	Undisputed.
28 61. During fact discovery,	Disputed. Plaintiff produced the report

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3 4 5 6 7 8 9 10 11 12 13	PCNA propounded an interrogatory asking the plaintiff for the details of how the crash occurred. The plaintiff objected and provided no information. During the meet and confer process, the plaintiff confirmed that she was not withholding any facts or information in reliance on her objections. This was an admission that she has no other facts regarding how the crash occurred. She never supplemented her response to that interrogatory.	of Dr. David Renfroe. Renfroe Authenticating Decl., Exh. "A."
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	62. PCNA propounded requests for production calling for all electronic and tangible evidence that the vehicle was defective, that alternative designs were feasible and that the vehicle failed to meet any standards. The plaintiff objected and produced nothing. During the meet and confer process on the objections, the plaintiff confirmed that she was not withholding any facts or information in reliance on her objections. This was an admission that she has no facts to support the claim that the Carrera GT was defective, that it could have been designed differently or	Disputed. Plaintiff produced the report of Dr. David Renfroe. Renfroe Authenticating Decl., Exh. "A."

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
<p>that it failed to meet any standard. She never supplemented her response to those requests for production.</p>	
<p>63. On December 22, 2015, the deadline for disclosing experts, the plaintiff disclosed only Dr. Renfroe and Dr. Andrews as Rule 702 experts. The reports that the plaintiff disclosed were the same reports she submitted to the LASD. According to the disclosures, Dr. Renfroe and Dr. Andrews have done no work or analysis on this matter since February 2014.</p>	<p>Disputed. Dr. Renfroe has performed significant analysis on updated information since February 2014. Renfroe Decl., ¶ 4; Renfroe Authenticating Decl., ¶ 15.</p>
<p>64. The plaintiff cannot rely upon anything to sustain her burdens of proof other than what was in the police report, what the plaintiff provided in discovery and what was in her expert disclosures.</p>	<p>Disputed. Plaintiff may also rely on all evidence submitted by Defendant in sustaining her burdens of proof. <i>See, e.g., Aviation Finance Group, LLC v. DUC Housing Partners, Inc.</i> 2010 WL 1576841 at *12 (2010 D. Idaho) [plaintiff permitted to rely upon defendant’s expert appraiser’s opinion]; <i>Netairus Technologies, LLC, v. Apple, Inc.</i> 2013 WL 9570686 (2013 CD Cal.) [plaintiff permitted to call defense expert as a witness and/or use the expert’s relevant deposition testimony during its case-in-chief].</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
<p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p>	<p>65. The National Highway Traffic Safety Administration keeps a tally of the number and type of crashes that occur each year in the United States.</p>	<p>Undisputed.</p>
<p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>66. In 2013, the year of the Rodas crash, there were:</p> <p>a. 1,388 fatal crashes in which the first harmful event was a passenger car striking a pole or post;</p> <p>b. 2,389 fatal crashes in which the first harmful event was a passenger car striking a tree or shrubbery;</p> <p>c. 1,085 fatal crashes in which the first harmful event was a passenger car striking its side against a fixed object; and</p> <p>d. 2,991 fatal crashes in which the first harmful event was a passenger car being struck in the side by another vehicle;</p> <p>e. 2,815 fatal crashes and 3,524 total deaths in which the most harmful event was a side impact in a passenger car; and</p> <p>f. 32,719 deaths associated</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
with speeding.	
<u>PLAINTIFF’S FAILURE OF A SUSPENSION COMPONENT THEORY AND CLAIMS</u>	
<p>67. There is no genuine dispute of material fact with respect to plaintiff’s claims that a defective toe adjuster rod broke so as to cause the crash. The undisputed facts show that the left and right rear tie rods were found fractured after the accident and fire. The physical evidence reveals that the fracture was not a fatigue fracture, but a ductile rupture and that the fracture did not occur prior to impact, rather after the collisions and fire.</p>	<p>Disputed. The undisputed evidence demonstrates that the tie rod fractured prior to the vehicle entering a clockwise yaw. Renfroe Decl., ¶ 28, 51.</p>
<p>68. These claims are based upon the deductions of her expert, David Renfroe, as related in his preliminary report, which was attached to the LASD Report.</p>	<p>Disputed. The undisputed evidence demonstrates that the tie rod fractured prior to the vehicle entering a clockwise yaw. Renfroe Decl., ¶ 28, 51.</p>
<p>69. The first question Dr. Renfroe sought to answer was, “What caused this racecar to suddenly begin a clockwise yaw?”</p>	<p>Undisputed.</p>
<p>70. Dr. Renfroe candidly admitted in his report that there were only two possible explanations for the</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 spin into the pole and trees: “an overt 2 action on the driver’s part” such as 3 “Roger trying to do some sort of stunt” 4 or “some portion of the vehicle [failing 5 so as to cause] a sudden yaw.” 6</p>	
<p>7 71. Renfroe noted, “At the time 8 of our inspection [on January 14, 2014] 9 there were 3 discernable tire marks on 10 the pavement...” He measured Track 1 11 as 88 feet long from inception to its 12 point of termination at the curb, Track 2 13 as 58 feet long, and Track 3 as 34 feet 14 long.</p>	<p>Undisputed.</p>
<p>15 72. Considering only the 16 photographs and measurements he took 17 on January 14, 2014 (a month and a half 18 after the crash), Dr. Renfroe noted that 19 the tire mark he associated with the left 20 rear tire “extends much further back and 21 is darker than the right rear tire mark. In 22 fact the right rear is not really evident 23 until it crosses the white fog line.... For 24 this vehicle not to leave a right rear tire 25 mark for some significant distance while 26 it is spinning would require either that 27 the right rear tire did not have any 28 significant weight on it, or that its slip</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 angle was different from the left rear 3 tire.”	
4 73. Dr. Renfroe wrote, “The 5 only conclusion that can be drawn from 6 this is that the right rear wheel is turned 7 to the left which relative to the center 8 line of the car.... The position of the 9 right rear wheel will push the rear of the 10 vehicle to the left which then points the 11 car to the right putting it into the 12 clockwise spin. The sudden change of 13 steering angle of the right rear tire is the 14 beginning of the accident sequence.”	Undisputed.
15 74. Based on that analysis and 16 the fact that Dr. Renfroe found that the 17 toe adjuster rod was broken during his 18 inspection, Dr. Renfroe concluded that 19 the toe adjuster rod must have broken 20 and thus caused the crash.	Undisputed.
21 75. Immediately after the 22 crash, the right rear tire marks were 23 actually <u>longer</u> than the left rear marks.	Undisputed.
24 76. The tire marks that Dr. 25 Renfroe saw on January 14 were not in 26 the same condition as they existed 27 immediately after the crash. They had 28 faded over the month and a half that had	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
<p>passed between the time of the crash and Renfroe’s inspection.</p>	
<p>77. Dr. Renfroe did not realize that because he did not see the marks nor did he review the police measurements and photographs. They were not among the materials he reviewed.</p>	<p>Undisputed as to Dr. Renfroe’s February 2014 report.</p>
<p>78. Therefore, Dr. Renfroe’s opinion is based on an assumption that is unequivocally wrong.</p>	<p>Disputed. Dr. Renfroe personally inspected the rear suspension, and concluded: “When the right rear wheel suspension was inspected, the upper control arm was found to be deformed from a compressive load indicated by the bowed shape. However, at the same location, we find the toe adjuster rod has failed from a tensile load. These two failures did not experience the same load at the same time. The toe adjuster rod failed first allowing the right rear wheel to twist to a left steer attitude that caused the rear to swing to the left causing the vehicle to yaw to the right. Therefore, the sudden change in steering angle of the right rear wheel was caused by the toe adjuster rod suddenly failing.” Renfroe Authenticating Decl.,</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
	Exh. “A” at p. 23.
79. An opinion that is based upon an erroneous assumption that is contrary to established facts is not admissible.	Undisputed.
80. The fact that Dr. Renfroe’s opinion is inadmissible means that the plaintiff has no evidence that the crash was caused by a failure of the suspension component—the right rear toe adjuster rod.	Disputed. Disputed. Dr. Renfroe personally inspected the rear suspension, and concluded: “When the right rear wheel suspension was inspected, the upper control arm was found to be deformed from a compressive load indicated by the bowed shape. However, at the same location, we find the toe adjuster rod has failed from a tensile load. These two failures did not experience the same load at the same time. The toe adjuster rod failed first allowing the right rear wheel to twist to a left steer attitude that caused the rear to swing to the left causing the vehicle to yaw to the right. Therefore, the sudden change in steering angle of the right rear wheel was caused by the toe adjuster rod suddenly failing.” Renfroe Authenticating Decl., Exh. “A” at p. 23.
81. There is no evidence to	Disputed. Renfroe Decl., ¶¶ 40–47.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 support plaintiff’s allegation in FAC ¶ 2 35(a) that the toe adjuster rod will break 3 with one application of a 2,400 pound 4 force and will stretch with an 5 application of force of just 1,400 6 pounds. 7</p>	
<p>8 82. The plaintiff has produced 9 no testing or analysis to support such a 10 theory.</p>	<p>Disputed. Renfroe Decl., ¶¶ 40–47.</p>
<p>11 83. Testing by Dr. Rau, a 12 metallurgist with extensive education, 13 training and experience, shows that the 14 tensile strength of the toe rod as 15 designed and manufactured exceeds 16 9000 pounds, which is 5 times (500%) 17 stronger than the maximum anticipated 18 service loads. The tie rod did not 19 fracture or yield at an applied load of 20 9060 pounds. The end loops into which 21 the rod was screwed deformed 22 plastically, forcing termination of the 23 test at that load.</p>	<p>Undisputed.</p>
<p>24 84. This is consistent with 25 Porsche AG testing, which yielded 26 similar results.</p>	<p>Undisputed.</p>
<p>27 85. The allegation in paragraph 28 20 of the FAC that the right rear toe rod</p>	<p>Disputed. Plaintiff has presented substantial evidence indicating that the</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 failed from fatigue has no basis in fact. 2 The plaintiff has presented no evidence 3 to support such a surmise.</p>	<p>right rear toe rod failed from fatigue during normal driving conditions. Renfroe Decl., ¶¶ 20, 29–35, 40–47.</p>
<p>5 86. Visual, optical microscope 6 and scanning electron microscope 7 evaluation, and dispersive energy x-ray 8 analysis of the tie rod fracture surface 9 shows no evidence of fatigue cracking 10 or fracture. The characteristic marks of 11 metal fatigue are entirely absent from 12 the subject toe adjuster rod.</p>	<p>Disputed. Renfroe Decl., ¶¶ 29–35.</p>
<p>13 87. Optical and SEM 14 fractography show that the tie rod was 15 fractured after the fire when its strength 16 had been reduced by 35% from a design 17 hardness of 80,000 psi to about 50,000 18 psi by the fire.</p>	<p>Disputed. Renfroe Decl., ¶¶ 20, 29–35, 40–47.</p>
<p>19 88. Visual, microscopic and 20 electrochemistry analyses also show that 21 the right rear toe adjuster rod was 22 fractured after the post-collision fire was 23 extinguished. There is soot and there 24 are carbon deposits on all of the surfaces 25 of the rod except the fracture surfaces. 26 Visual and microscopic examination of 27 the fracture surfaces shows no soot 28 there.</p>	<p>Disputed. Renfroe Decl., ¶¶ 20, 29–35, 40–47.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 89. It is impossible for the fire</p> <p>2 to have deposited soot and carbon</p> <p>3 residue on the entirety of the toe</p> <p>4 adjuster rod except the fracture surfaces.</p> <p>5 Therefore, the fracture surfaces had to</p> <p>6 have appeared after the post-collision</p> <p>7 fire was extinguished, not before the</p> <p>8 collision.</p> <p>9</p>	<p>Disputed. Renfroe Decl., ¶¶ 20, 29–35,</p> <p>40–47.</p>
<p>10 90. The probable cause of the</p> <p>11 toe adjuster rod’s fracture was wrecking</p> <p>12 operations. There are marks on the rear</p> <p>13 suspension parts from interaction with</p> <p>14 tow hooks and a tow cable.</p>	<p>Disputed. Renfroe Decl., ¶¶ 20, 29–35,</p> <p>40–47.</p>
<p>15 91. The tow truck driver</p> <p>16 testified during his deposition that he</p> <p>17 put hooks on the rear suspension</p> <p>18 components to pull the rear of the</p> <p>19 vehicle onto his truck and that he heard</p> <p>20 the noises of crunching parts.</p>	<p>Undisputed.</p>
<p>21 92. There is no evidence of a</p> <p>22 manufacturing defect.</p> <p>23</p> <p>24</p> <p>25</p>	<p>Disputed. The fact that the right rear toe</p> <p>adjuster rod failed during normal</p> <p>driving conditions is evidence of a</p> <p>manufacturing and/or design defect.</p> <p>Renfroe Decl., ¶¶ 20, 29–35, 40–47.</p>
<p>26 93. PCNA is entitled to</p> <p>27 summary judgment on the claims of</p> <p>28 defective toe road design and</p>	<p>Disputed. Fed. R. Civ. P. 56.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 manufacture.</p>	
<p>2 <u>PLAINTIFF’S ABSENCE OF A CRASH CAGE THEORY AND CLAIMS</u></p>	
<p>3 94. The undisputed facts show</p> <p>4 that plaintiff’s claims that the vehicle</p> <p>5 was defective because it did not have “a</p> <p>6 properly functioning crash cage” are</p> <p>7 wrong.</p>	<p>8 Disputed. Renfroe Authenticating</p> <p>9 Decl., Exh. “A” at pp. 24–25.</p>
<p>10 95. The only types of “crash</p> <p>11 cage” that the plaintiff has proposed are</p> <p>12 a racing type cage used in race cars</p> <p>13 competing in the IndyCar Series, 24</p> <p>14 Hours of LeMans, competitive racing</p> <p>15 karts, and those that follow the Sports</p> <p>16 Car Club of America General</p> <p>17 Competition Rules.</p>	<p>18 Disputed. No such reference or</p> <p>19 proposals were made. Renfroe</p> <p>20 Authenticating Decl., Authenticating</p> <p>21 Exh. “A” at pp. 23–25.</p>
<p>22 96. Racing cages of those</p> <p>23 kinds would be illegal in cars designed</p> <p>24 and manufactured to be driven on the</p> <p>25 streets. They would violate Federal</p> <p>26 Motor Vehicle Safety Standard 201</p> <p>27 because they are too rigid. PCNA could</p> <p>28 not lawfully sell a vehicle that did not</p> <p>comply with FMVSS 201.</p>	<p>Undisputed.</p>
<p>97. In addition, such a crash</p> <p>cage would make the side doors</p> <p>inoperable. One would have to climb in</p> <p>and out the vehicle through a window.</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3 4 5 6 7 8 9	98. Furthermore, the only crash cage related claims that survive are claims that “a properly functioning crash cage would have prevented the death [of Rodas] by preventing intrusion into the passenger compartment, damage to the fuel tank and the splitting of the vehicle in half.”	Undisputed.
10 11 12 13 14	99. There is no evidence that Rodas’s death was caused by intrusion into the occupant compartment, damage to the fuel tank or the vehicle splitting in half.	Undisputed.
15 16 17	100. Mr. Rodas had three sets of injuries, each of which was independently fatal.	Undisputed.
18 19 20 21 22	101. One of the three independently fatal sets of injuries to Mr. Rodas was an atlanto-occipital dislocation, hinge fracture of the skull, and associated brainstem laceration.	Undisputed.
23 24 25 26 27 28	102. The probable cause of the atlanto-occipital dislocation (head dislocated from spinal column), hinge fracture, and associated brainstem laceration was a direct impact to the Mr. Rodas’s head or chin with either the	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 light pole or Tree 2 when they were 3 presented to the window opening in the 4 driver door, or with Mr. Walker. The 5 pole and Tree 2 did not penetrate the 6 occupant compartment at all.	
7 103. The second of the three 8 independently fatal sets of injuries to 9 Mr. Rodas was multiple open and 10 comminuted calvarium (skull) fractures, 11 with more extensive fracturing on the 12 right side, toward Mr. Walker. There 13 were associated right-sided brain 14 injuries, including lacerations, which 15 were fatal in the aggregate.	Undisputed.
16 104. The probable cause of the 17 right-sided skull fractures and brain 18 lacerations was contact between Mr. 19 Rodas and Mr. Walker or something to 20 Mr. Rodas' right, not to anything 21 outside the vehicle.	Undisputed.
22 105. The third of the three 23 independently fatal sets of injuries to 24 Mr. Rodas was multiple rib fractures, 25 flail chest, lung lacerations and 26 contusions with associated hemothorax 27 and mediastinal shift.	Undisputed.
28 106. The probable cause of Mr.	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 2 Rodas’ multiple rib fractures, flail chest, 3 lung lacerations and contusions with 4 associated hemothorax, and mediastinal 5 shift was contact with the interior panel 6 of his door when the vehicle impacted 7 the pole or Tree 2 or both.</p>	
<p>8 107. There were at least three 9 opportunities for Mr. Walker and Mr. 10 Rodas to collide with one another.</p>	<p>Undisputed.</p>
<p>11 108. When the Carrera GT hit 12 the pole (AOI #4), the vehicle 13 experienced a change in velocity (Delta- 14 V or ΔV) of about 9-10 mph. As it 15 struck the pole it was going about 60-70 16 mph. As it left the pole, it was going 17 about 50-60 mph. During this 18 interaction, Mr. Rodas’ head would 19 have continued to his left at a velocity of 20 about 50-60 mph (the initial speed of 21 vehicle into pole). The side head/torso 22 airbag would have deployed as a result 23 of this impact, interposing itself 24 between the pole and Mr. Rodas’ head.</p>	<p>Undisputed.</p>
<p>25 109. After hitting the air bag and 26 the interior of the door panel beyond 27 that, Mr. Rodas rebounded to his right 28 while Mr. Walker continued leftward.</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 This is the first opportunity for 3 occupant-to-occupant interaction that 4 resulted in fatal right-sided head injuries 5 to Mr. Rodas.	
6 110. When the Carrera GT hit 7 Tree 2 (AOI #7), the vehicle 8 experienced a ΔV of about 10-13mph. 9 As it struck Tree 2 it was going about 10 50-60 mph. As it left that tree, it was 11 going about 35-37 mph. During this 12 interaction, Mr. Rodas' head would 13 have continued to his left at a velocity of 14 about 50-60 mph (the initial speed of 15 vehicle into Tree 2). At this point, the 16 side airbag was spent and provided less 17 than optimal to no protection against 18 fatal head and thoracic injuries.	Undisputed.
19 111. After the vehicle-to-Tree 2 20 impact, Mr. Rodas rebounded again to 21 his right towards Mr. Walker. This is the 22 second opportunity for occupant-to- 23 occupant interaction that resulted in 24 fatal right-sided head injuries to Mr. 25 Rodas.	Undisputed.
26 112. When the Carrera GT hit 27 Tree 3 (AOI # 8) the vehicle 28 experienced a ΔV of about 33-35 mph.	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3 4 5 6 7 8 9 10	As it struck Tree 3 it was going about that speed. It stopped at that tree. During this interaction, Mr. Rodas and Mr. Walker moved to the right. Mr. Walker rebounded while Mr. Rodas continued rightward. This is the third of the three opportunities for occupant-to-occupant interaction that resulted in fatal injuries to Mr. Rodas.	
11 12 13 14	113. Each of the impacts mentioned above had sufficient energy to potentially cause Mr. Rodas' fatal injuries.	Undisputed.
15 16 17 18 19 20	114. No crash cage could prevent Mr. Rodas from moving to his left or right within the occupant compartment, and no crash cage could have prevented Mr. Rodas and Mr. Walker from colliding with one another.	Undisputed.
21 22 23 24 25 26 27 28	115. A surrogate study showed that both the driver and passenger are able to move their heads out their respective windows while in their seats. In a dynamic impact scenario, head contact with an external rigid object would be possible regardless of a stiffer side structure.	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	<u>Fact</u>	<u>Supporting Evidence</u>
2 3 4 5 6 7 8 9 10	116. The Carrera GT was tested according to all of the side impact regulations in the world that applied to cars such as the Carrera GT. It not only passed, but it performed better than required. In the door crush test, which uses a pole-like device, the vehicle passed with a margin of safety more than twice what the regulation required.	Undisputed.
11 12 13 14 15 16 17	117. The impact speed of the test barrier in FMVSS 214 is 54 kph (33.5 mph). The speed of the barrier is in ECE 95 testing is 50 kph (31 mph). Notably, in the barrier testing, the occupant compartment was not damaged at all.	Undisputed.
18 19 20 21 22 23 24 25	118. The closing speeds with struck objects of the subject vehicle during the crash sequence were up to twice as high as those in FMVSS 214. The impact speed with the light pole ranged from approximately 59-69 mph, with Tree 2 it was approximately 50-60 mph, and was 35-37 mph with Tree 3.	Undisputed.
26 27 28	119. The Carrera GT was equipped with a head and torso protecting side airbag, which was above	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 and beyond regulatory requirements and 3 the fitment of most passenger cars in 4 2004.	
5 120. The torso loads generated 6 in FMVSS 214 side impact testing beat 7 the standard by a safety margin of 61%.	Undisputed.
8 121. During FMVSS 214 9 dynamic testing, the occupant 10 compartment was not comprised at all. 11 Neither the side impact beam nor the 12 door inner panel were deformed into the 13 occupant compartment, which is 14 outstanding performance.	Undisputed.
15 122. During intrusion testing— 16 when a rigid cylinder is forced into the 17 side of the vehicle—the Carrera GT was 18 stronger than FMVSS 214 required by 19 substantial margins: 5755 measured 20 pounds vs. a minimum of 2500 lbs at 6 21 inches of penetration, 8812 lbs 22 measured vs. a minimum of 3500 lbs at 23 12 inches and a peak load that was 24 236% of what the standard required it to 25 withstand.	Undisputed.
26 123. Compliance with an 27 FMVSS means that, according to 28 NHTSA and Congress, the vehicle	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 presents no unreasonable risk of harm in 2 that respect.</p>	
<p>4 124. In ECE-95 testing, the 5 Head Protection Criteria were better 6 than required by a 91% margin (86 7 measured vs. 1000 allowed); the rib 8 deflection criterion was better by a 24% 9 margin (32 measured vs. 42 allowed); 10 the soft tissue thorax criterion was better 11 by a 69% margin (.31 m/sec measured 12 vs. 1.0 m/s allowed); the pelvis 13 performance was better by a 73% 14 margin (1.6 kN measured vs. 6.0 kN 15 allowed) and the abdominal peak force 16 was better by an 88% margin (0.3 kN 17 measured vs 2.5 kN allowed). On all of 18 these injury measures, the Carrera GT 19 performed better than the standard 20 required by substantial margins.</p>	<p>Undisputed.</p>
<p>21 125. The clearance between the 22 high strength steel door beams and the 23 occupant’s seat bolster was about 330 24 mm or 13 inches on average.</p>	<p>Undisputed.</p>
<p>25 126. The plaintiff has presented 26 no evidence that there is an 27 unreasonable danger in the Carrera GT’s 28 side impact resistance characteristics.</p>	<p>Disputed. Renfroe Decl., ¶ 52.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3 4 5 6 7 8 9 10	127. A crash cage would not be practical for the Carrera GT. There is no room in the occupant compartment for such structures. Furthermore, such structures are welding to the existing metal structures of a vehicle as aftermarket parts. This is a carbon fiber vehicle; there is nothing to weld a crash cage to.	Undisputed.
11 12 13 14 15	128. Adding a crash cage would destroy the concept of the Carrera GT because it would no longer be a street legal lightweight carbon fiber car with removable roof panels.	Undisputed.
16 17 18 19 20 21 22	129. A stiffer side structure would eliminate the ride-down effects of energy-absorbing door panels, exposing the occupants to much higher accelerations. This would likely result in potentially fatal inertially-induced injuries.	Undisputed.
23 24 25 26 27	130. Adding a crash cage would require disabling the door, removing the window glass, installing a racing seat and racing seat belt, window netting and the use of helmets and HANS devices.	Undisputed.
28	131. A surrogate study	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 demonstrated that the occupants’ heads 2 were near the upper doorsill of the 3 window opening when leaning 4 outboard. Were it not for contact with 5 intruding rigid objects, the occupants' 6 heads would likely strike the doorsills, 7 likely resulting in severe head injuries.</p>	
<p>9 132. A stiffer side structure 10 would not have prevented Mr. Rodas's 11 chest from impacting interior 12 components of the vehicle. He still 13 could have received his flail chest and 14 lung lacerations from impacts with the 15 driver's side door, the center console, or 16 Mr. Walker.</p>	<p>Undisputed.</p>
<p>17 133. There is no evidence that 18 anything intruded into the occupant 19 compartment of the Carrera GT within 20 striking range of Mr. Rodas. Indeed, the 21 inner sill wall was found intact, 22 indicating the impact from the pole or 23 Tree 2 did not intrude beyond the inner 24 wall into the occupant space.</p>	<p>Undisputed.</p>
<p>25 134. A stiffer side structure or 26 roll cage would do nothing to prevent 27 forceful interaction between the 28 occupants.</p>	<p>Undisputed.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3 4 5	135. No street legal 2005 vintage motor vehicle was equipped with a crash cage that could have prevented Mr. Rodas’s injuries.	Undisputed.
6 7 8 9 10 11 12 13 14 15 16	136. A racing roll cage is intended to be used in concert with other safety devices found in racing cars but not in street legal cars. These include a racing seat, a five-point harness, a helmet, netting over the window opening and a HANS device. These reduce the ability of the occupant to be slammed into the side of the vehicle’s interior or into some object that is presented at the window opening.	Undisputed.
17 18 19 20 21	137. Without the restraints mentioned in the preceding paragraph, the occupant of a roll caged vehicle can be killed or injured by coming into contact with the interior of the vehicle.	Undisputed.
22 23 24 25 26 27 28	138. The fact described in the preceding paragraph can be understood with two examples. Imagine that one gets into a rigid box of infinite strength, which is then pushed off the top of a five story building. When it hits the ground, the box is not damaged; there is	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1	Fact	Supporting Evidence
2 3 4 5 6 7 8 9 10 11 12 13	no intrusion. But the occupant is dead because, when the box hit the ground, it stopped, but the occupant kept going toward the side of the stopped box at the same speed at which he and the box were falling five stories. Imagine one gets into the same box while it is on a railroad track. A train hits it at 60 mph. The box is undamaged but the occupant is dead because the train hit the box, which was then slammed into the occupant at 60 mph.	
14 15 16 17 18 19 20 21	139. It was obvious to Mr. Rodas, who had experience racing automobiles, that neither he nor the Carrera GT was outfitted with any of the items listed in the preceding paragraphs. Mr. Rodas knew what racing crash cages and related safety equipment looked like.	Undisputed.
22 23 24 25 26 27	140. The Carrera GT complied with the world’s industry standards for side impact resistance in passenger cars and performed better than those standards required. It also complied with the requirements of FMVSS 201.	Undisputed.
28	141. PCNA is entitled to	Disputed. Fed. R. Civ. P. 56.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
summary judgment on the plaintiff's claims that the Carrera GT was defective for lack of crash cage.	
<u>PLAINTIFF'S SUBSTANDARD SIDE IMPACT PROTECTION THEORY AND CLAIMS</u>	
142. There is no genuine dispute of material fact sufficient to permit the plaintiffs' substandard side impact protection claim to go to the jury under either the strict liability design defect or the negligent testing theories.	Undisputed.
143. There is no evidence that the fact that the car "[broke] in half upon impact" with Tree 3 caused or contributed to Rodas's injuries or death.	Undisputed.
144. Mr. Rodas sustained his fatal injuries before the impact with Tree 3.	Undisputed.
145. Stiffening the side of the vehicle would have resulted in increased risk of harm to far side occupants, such as Mr. Walker. Stiffer structures absorb less energy and that energy can be transmitted to far side occupants.	Undisputed.
146. The plaintiff has not proposed an alternative design short of installing a crash cage.	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
147. With regard to the plaintiff's negligent testing theory, PCNA did not design, manufacture, or test the vehicle. Those functions were performed by Porsche AG.	Undisputed.
<u>PLAINTIFF'S LACK OF A FUEL CELL THEORY AND CLAIMS</u>	
148. There is no genuine dispute of material fact sufficient to permit the plaintiff's lack-of-fuel-cell claims to go to the jury because of a lack of causation.	Undisputed.
149. The plaintiff has no evidence that Mr. Rodas was alive when his body was affected by the fire.	Undisputed.
150. The plaintiff has no evidence that Mr. Rodas died as a result of the fire.	Undisputed.
151. Mr. Rodas had no soot in his airway, no laryngeal edema, and no elevated levels of carboxyhemoglobin.	Undisputed.
152. The absence of soot or edema in his airway and absence of elevated carboxyhemoglobin is evidence that Mr. Rodas did not inhale products of combustion.	Undisputed.
153. The uncontroverted evidence is that Mr. Rodas did not die as	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 a result of the fire.	
3 154. The uncontroverted 4 evidence is that Mr. Rodas did not 5 suffer a personal injury as a result of the 6 fire before he died.	Undisputed.
7 155. There is no evidence that 8 the fuel tank was punctured or otherwise 9 compromised and released fuel during 10 the crash sequence.	Undisputed.
11 156. To the contrary, plastic 12 polymer parts inside the tank survived 13 the fire without being burned or melted 14 because they were protected by the fuel 15 that remained in the tank that was not 16 leaked or evaporated.	Undisputed.
17 157. Gasoline was not the first 18 fuel ignited. Given the location and 19 origin of the fire, the collision damage, 20 the presence of a compromised 21 transmission cooler, and the high speed 22 of the vehicle on impact, the most likely 23 cause of the fire is hot surface ignition 24 of transmission oil.	Undisputed.
25 158. The plaintiff admitted that 26 she has no evidence that allowed her to 27 deny that Mr. Rodas “died of injuries 28 received in one or more impacts of the	Undisputed.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
crash sequence ... before or by the time the Carrera GT came to rest.”	
159. The plaintiff admitted that she has no evidence that allowed her to deny that “Mr. Rodas was not breathing when the fire began.”	Undisputed.
160. The plaintiff admitted that she has no evidence that allowed her to admit or deny that whether “Mr. Rodas was alive at the time the fire had an effect on his body.”	Undisputed.
161. PCNA is entitled to summary judgment on the plaintiff’s claims that the Carrera GT was defective for lack of a fuel cell.	Undisputed.
PLAINTIFF’S ADDITIONAL MATERIAL FACTS	
162. When the right rear wheel suspension was inspected, the upper control arm was found to be deformed from a compressive load indicated by the bowed shape. However, at the same location, we find the toe adjuster rod has failed from a tensile load. These two failures did not experience the same load at the same time. The toe adjuster	Renfroe Authenticating Decl., Exh. “A” at p. 23.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 rod failed first allowing the right rear 2 wheel to twist to a left steer attitude that 3 caused the rear to swing to the left 4 causing the vehicle to yaw to the right. 5 Therefore, the sudden change in steering 6 angle of the right rear wheel was caused 7 by the toe adjuster rod suddenly failing. 8</p>	
<p>9 163. As Roger Rodas was 10 traveling up the road, he had just 11 completed navigating a wide sweeping 12 curve and the road then straightened out 13 and he was heading up the hill with a 14 3% grade.</p>	<p>Renfroe Decl., ¶ 26.</p>
<p>15 164. Even if he was holding a 16 constant speed there would still be 17 throttle application and the forces would 18 be acting to push the wheel and tire 19 forward and to turn it to the left. This 20 turning force is restrained by the tie rod. 21 Therefore, just as [PCNA’s expert] 22 Geoff Germane concluded, the tire 23 would turn toward the left when the tie 24 rod breaks.</p>	<p>Renfroe Decl., ¶ 27.</p>
<p>25 165. In this case, [Mr. Rodas] is 26 accelerating going up the hill on a 27 straight road and the right rear tie rod 28 breaks which allows the tire to turn</p>	<p>Renfroe Decl., ¶ 28.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
<p>1 suddenly and unexpectedly to the left. 2 The tire turned to a sufficient degree to 3 make a tire mark first as we see in the 4 scene photos. 5</p>	
<p>6 166. The turning of that tire at 7 that speed would push the rear end to 8 the left slightly to cause the left rear tire 9 to begin to leave a mark and give the 10 vehicle a heading angle to the right and 11 thus head to the right.</p>	<p>Renfroe Decl., ¶ 28.</p>
<p>12 167. This is the onset of the 13 crash that killed both Roger Rodas and 14 Paul Walker.</p>	<p>Renfroe Decl., ¶ 28.</p>
<p>15 168. The sudden lateral impulse 16 to the rear would start the spin of the 17 vehicle. As can be seen in the photos of 18 the front tire yaw marks they are lighter 19 than the left rear tire mark because 20 Roger Rodas responded immediately to 21 this spinning action by the car but his 22 expert steering response could not 23 overcome the rotational momentum 24 caused by the right rear wheel turned to 25 the left.</p>	<p>Renfroe Decl., ¶ 28.</p>
<p>26 169. Photographs of the Carrera 27 GT's right rear tie rod establish that it 28 broke prior to the fire.</p>	<p>Renfroe Decl., ¶¶ 32, 33, 35.</p>

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
170. The right rear tie rod was not broken during wrecker operations.	Renfroe Decl., ¶¶ 36–39.
171. Plaintiff’s expert agrees that Roger Rodas was killed at the impact with the light pole and the unexpectedly poor side impact performance and fire preventative qualities of the vehicle did not play a role.	Renfroe Decl., ¶ 53.
172. It is seen that the right rear tire mark starts first, then the left rear; then the left front tire mark is seen.	Renfroe Decl., ¶ 12.
173. The right rear mark starts near a reflector in the road and the left rear is near an iron cap labeled “water.”	Renfroe Decl., ¶ 12.
174. These features were not changed before the area was surveyed by several entities, including EI Consultants, unlike the tire marks which faded quickly after the accident.	Renfroe Decl., ¶ 12.
175. With this additional scene photo information, it was determined that the right rear tire mark started 20 feet before the left rear tire mark.	Renfroe Decl., ¶ 12.
176. The left front mark is evident about 35 feet after the first appearance of the right rear tire mark.	Renfroe Decl., ¶ 12.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
177. Sheriff’s photo 103 depicts the tire marks of the left front tire as it approaches the curb. On all three of these tires, left front, left rear, and right rear, there are lateral striations consistent with no braking.	Renfroe Decl., ¶ 18.
178. The staggering of the beginning of the tire marks is consistent with yaw marks from the vehicle spinning and not from braking marks.	Renfroe Decl., ¶ 18.
179. There is no evidence from tire marks or any other data that indicates that Roger Rodas applied the brakes in this crash.	Renfroe Decl., ¶ 18.
180. If this crash had been caused or involved brake application, the anti-lock braking system would have prevented the wheels from sliding on the pavement and causing such heavy marks.	Renfroe Decl., ¶ 18.
181. The left rear tire mark has increasing darkness as the vehicle yaw gradually increases but the width of the marks is consistent.	Renfroe Decl., ¶ 20.
182. The right rear tire mark has varying intensity and width as the mark proceeds to the curb.	Renfroe Decl., ¶ 20.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
183. The left rear and right rear wheels are normally pointing the same direction as the centerline of the vehicle and thus their respective marks as the vehicle gradually yaws to the right would be consistent as to color and width.	Renfroe Decl., ¶ 20.
184. The only way the right rear tire can leave that kind of mark is for the tire to be flat or for the wheel to be wobbling from a broken tie rod.	Renfroe Decl., ¶ 20.
185. If the tire had gone flat we would also see scuff marks from the rim on the pavement and abrasion marks on the rim from the pavement. We find neither of those pieces of evidence on the road or the rim.	Renfroe Decl., ¶ 20.
186. There is no evidence on the right rear tire that it went flat at any time prior to leaving the road.	Renfroe Decl., ¶ 20.
187. The right rear tire starts leaving a mark first and the vehicle begins to spin then the left rear tire leaves a mark. Finally the front tires begin to leave marks. If loss of control due to driver error is the allegation, these yaw marks appear out of	Renfroe Decl., ¶ 22.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
sequence.	
188. The Carrera GT’s right rear tie rod broke while Mr. Rodas was accelerating and going up the hill.	Renfroe Decl., ¶¶ 26–30.
189. The photograph at page 15, line 1 of the Renfroe Declaration depicts the subject right rear tie rod’s exterior surface, fracture surface, and interior surface following the accident.	Renfroe Decl., ¶ 32.
190. Note that, as depicted in the photograph discussed in AUF #189 above, the outside of the tie rod is brown with soot or some fire-related residue, as is the interior, and as is the fracture surface itself. The fracture surface is rough and the high portions of the surface have the brown patina from the fire. The smooth interior is also brown similar to the exterior surface.	Renfroe Decl., ¶ 32.
191. Looking at the fracture surface you can see thermal damage to the surface. This would not have happened if the part was broken after the fire.	Renfroe Decl., ¶ 33.
192. The photograph at page 16, line 1 of the Renfroe Declaration establishes that the tie rod broke before	Renfroe Decl., ¶ 34.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
the fire.	
193. The tie rod’s fracture surface is rough but it also has small nodules on the surface, like singed hair on an arm.	Renfroe Decl., ¶ 34.
194. The melting point of 7075 aluminum is between 890 and 1175 degrees F.	Renfroe Decl., ¶ 34.
195. The tips of the metal extending from the fracture surface will tend to melt quicker than the main piece of material because of the surface area versus mass of the extended filaments of the metal. This surface melting can be seen in the pictures on pages 17 and 18 of the Renfroe Declaration.	Renfroe Decl., ¶ 34.
196. The photograph on page 18, line 8 of the Renfroe Declaration illustrates the melting that occurred to the tie rod’s broken surface during the fire.	Renfroe Decl., ¶ 35.
197. The aluminum melted enough to slightly smooth the surface and some molten metal ran across the land of the machined portion of the thread. Appearance of this “drip” is typical of a cold solder joint where the	Renfroe Decl., ¶ 35.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
1 2 solder melts but, without flux and the 3 other surface not being hot enough, it re- 4 solidifies as a porous ragged structure as 5 seen in the photograph on page 18, line 6 8 of the Renfroe Declaration.	
7 198. This could only happen if 8 the break occurred before the fire.	Renfroe Decl., ¶ 35.
9 199. On both the right and left 10 side of the Carrera GT, the marks made 11 by the wrecker’s hooks are evident on 12 the subject vehicle’s control arms.	Renfroe Decl., ¶ 39.
13 200. There are no marks on the 14 right rear tie rod.	Renfroe Decl., ¶ 39.
15 201. So in order for the tie rod 16 to break from the act of removing the 17 vehicle from the scene, the forces acting 18 to break the tie rod would have to be 19 indirect, not from actual contact with the 20 wrecker’s hooks.	Renfroe Decl., ¶ 39.
21 202. The tie rod broke in tension 22 and not in compression or bending.	Renfroe Decl., ¶ 39.
23 203. Therefore, in order for the 24 tie rod to break while the vehicle is 25 being moved, the hooks will pull on the 26 upper control arms and the wheel would 27 have to hang on something to cause a 28 tensile force to act on the tie rod.	Renfroe Decl., ¶ 39.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

Fact	Supporting Evidence
204. According to Dr. Rau’s and Dr. Germaine’s scenario, the hooks of the wrecker are pulling on a vehicle that weighs 3114 lbs. before the fire and this right rear tie rod experiences a 7,475 pound force and breaks.	Renfroe Decl., ¶ 46.
205. Dr. Rau says that during the testing of the new tie rod the end loops begin to deform at 6,000 lbs.	Renfroe Decl., ¶ 47.
206. According to Dr. Rau’s scenario, in order to break this weakened tie rod a force of at least 7,475 pounds would have to be applied. This would certainly have caused deformation of the tie rod end loops.	Renfroe Decl., ¶ 47.
207. As can be seen in Dr. Rau’s photograph of the end loop of the subject rear right tie rod, at page 22 line 3 of the Renfroe Declaration, there is no deformation.	Renfroe Decl., ¶ 47.
208. There is evidence of the same deposits on the inside of the tie rod and on the fracture surface. So the tie rod was broken before the fire.	Renfroe Decl., ¶ 48.
209. The fracture surface roughness lent itself to melting superficially during the fire due to the	Renfroe Decl., ¶ 49.

GERAGOS & GERAGOS, APC
 644 South Figueroa Street
 Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fact	Supporting Evidence
<p>spicules of metal extending away from the main heat sink of the part. This superficial melting is seen in areas of shiny material and where metal has melted and started to drip like a piece of solder dripping across a piece of steel.</p>	
<p>210. With the end loops being undeformed, this part could not have failed while being pulled from the scene of the wreck as Dr. Rau and Dr. Germaine have proposed. Using Dr. Rau’s evidence, the tie rod failed at a lower force than the fire weakened part would have failed, and it failed before the fire.</p>	<p>Renfroe Decl., ¶ 50.</p>

DATED: February 8, 2016

GERAGOS & GERAGOS, APC

By: /s/ Mark J. Geragos
 MARK J. GERAGOS
 CHRIS CAMPBELL
 Attorneys for Plaintiff
 KRISTINE M. RODAS