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**Electronically FILED by
Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By N. Alvarez, Deputy Clerk**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE**

10
11 **DR. KOLAPO DASILVA, M.D.**, an
12 individual,

13 Plaintiff,

14 vs.

15 **FRANZ GERALD ANDRE TISSERA**, an
16 individual; **PHASE9MOTORSPORTS, INC.**,
a California corporation; and DOES 1 through
17 20, inclusive,

18 Defendants.

CASE NO. 23STCV07067

COMPLAINT FOR DAMAGES

1. FRAUD
2. NEGLIGENCE
3. BREACH OF CONTRACT
4. CONVERSION

[DEMAND FOR JURY TRIAL]

1 Plaintiff DR. KOLAPO DASILVA, M.D. alleges as follows:

2 **THE NATURE OF THIS CASE**

3 1. Plaintiff DR. KOLAPO DASILVA, M.D. (“Plaintiff”) contracted with Defendant
4 PHASE9MOTORSPORTS, INC. (“Phase9” or “Defendant”) and its president, Defendant FRANZ
5 GERALD ANDRE TISSERA¹ (“Tissera” or “Defendant”) to import his 2002 Nissan Skyline GT-R
6 M-Spec NUR vehicle (the “Skyline”) from Japan into the United States by obtaining a special
7 temporary import exemption through the National Highway Transportation Safety Administration
8 (NHTSA) and a one year importation exemption through the Environmental Protection Agency
9 (EPA) for a ‘Show and Display’. Defendants failed to apply for, and obtain the special temporary
10 import exemptions for the Skyline. Instead, Tissera wrongfully took possession and custody of
11 Plaintiff’s vehicle. Defendants then fabricated a gargantuan repair bill from a phantom repair shop in
12 Japan in order to extort the sum of \$65,000,000 JPY or \$478,750 USD out of Plaintiff, and if
13 Plaintiff did not pay this sum immediately, Plaintiff would forfeit ownership of his Skyline to
14 Defendants. Defendants’ conduct amounts to economic duress, extortion, fraud and conversion.
15 Plaintiff has a reasonable belief based on reviewing Defendants’ social media accounts that
16 Defendants may have already sold his vehicle to an unwitting buyer and used the proceeds for their
17 own pecuniary gain to fund their lavish lifestyle and to defend two pending civil lawsuits filed
18 against Tissera by two former customers.

19 **THE PARTIES**

20 2. Plaintiff DR. KOLAPO DASILVA, M.D. is a practicing emergency physician, over
21 the age of eighteen, and was and is a resident of Silver Spring Maryland at all relevant times.

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¹ On October 24, 2011, Franz Gerald Andre Tissera aka Cecilia Fernando, pled guilty in Federal Court, and was therefore convicted for the Removal of Markings from an Imported Vehicle or Article in violation of Title 19 U.S.C. Section 1304(a)(1). These criminal charges originated out of Tissera’s alleged illegal smuggling of Nissan Skylines into the United States. Tissera negotiated the Federal Court criminal charges down to a misdemeanor from a felony charge. Tissera has a pattern and practice of using Nissan Skylines as a means to defraud unsuspecting enthusiasts and buyers of Nissan Skylines.

1 3. Plaintiff is informed and believes and based thereon alleges that Defendant
2 PHASE9MOTORSPORTS, INC., was a corporation organized and existing under the laws of the
3 State of California and is a licensed and bonded California automobile dealer engaged in the
4 importation, and sale of exotic sport cars from Japan into the United States. This defendant's place
5 of business is located Torrance, California.

6 4. Plaintiff is informed and believes and based thereon alleges that Defendant FRANZ
7 GERALD ANDRE TISSERA is, and at all relevant times was, an individual doing business in the
8 County of Los Angeles, and is also engaged in the importation, sale of exotic sport cars from Japan
9 into the United States. Plaintiff is informed and believes and based thereon alleges that Defendant
10 Franz Gerald Andre Tissera is a resident of Los Angeles County.

11 5. At all times relevant to this Complaint, all Defendants acted on behalf of each and
12 every other Defendant, and each Defendant ratified, approved, and endorsed the actions of each and
13 every other Defendant.

14 6. At all times relevant to this Complaint, there existed a unity of interest and ownership
15 between Defendant Tissera, and Defendant Phase9 such that any individuality between Tissera and
16 Phase9 has ceased and Defendant Phase9 is the alter ego of Tissera. Defendant Phase9 is, and at all
17 times was, a mere shell, instrumentality, and conduit through which Defendants carried on their
18 fraudulent business activities, exercising complete control and dominance of such business to such
19 an extent that any individuality or separateness of Tissera and Phase9 does not, and never did exist.
20 Defendant Phase9 is, and at all times was, controlled, dominated, and operated by Defendants, and
21 Does 1-20, as their individual business and alter ego in that activities of the business of Defendant
22 Phase9 was carried out without the holding of 'directors' or 'shareholders' meetings, no records of
23 minutes of any corporate proceedings were maintained, and Defendants entered into personal
24 transactions with Defendant Phase9. Adherence to the fiction of the separate existence of Defendant
25 Phase9 as an entity distinct from Tissera, and Does 1-20 would permit abuse of the corporate
26 privilege, produce an inequitable result and sanction fraud.

27 7. Plaintiff does not know the true names and capacities of Defendants sued herein as
28 DOES 1-20, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will

1 amend this Complaint to allege their true names and capacities when ascertained. Each of these
2 fictitiously named Defendants is responsible, in some manner, for the occurrences herein alleged,
3 and Plaintiff's damages and injuries as herein alleged were proximately caused by the
4 aforementioned Defendants.

5 8. At all relevant times to this Complaint, each of Defendant was the agent, managing
6 agent, and employee of each of the remaining Defendants and, in doing the things herein alleged,
7 was acting within the course and scope of such agency and employment. Defendants are co-
8 conspirators who planned and then implement the misconduct.

9 9. Said misconduct was committed with malice, fraud, oppression, and in reckless and
10 knowing violation of Plaintiff's contractual, common law, and statutory rights.

11 10. Said misconduct was committed with actual knowledge or reckless disregard of its
12 likely consequences.

13 11. Evidence of this nature of the misconduct of Defendants includes, but is not limited
14 to: the intentional nature of such conduct, the fact that such conduct generally and usually causes
15 monetary damages, physical and emotional injuries, the fact that Defendants were aware of the fact
16 that they occupied a position of particular power over Plaintiff as experts in the industry.

17 12. Defendants committed such acts in spite of said knowledge, and the fact that
18 Defendants were aware of the laws of conversion, fraud, and their provisions and committed such
19 misconduct anyway.

20 **FACTS OF THE CASE**

21 13. On or about August 26, 2020, Plaintiff purchased a 2002 Nissan Skyline GT-R M-
22 Spec NUR from JDM Expo Co. Ltd in Japan (hereinafter the "Skyline") for purchase price of
23 \$128,000.00 USD. Plaintiff placed the Skyline in storage with JDM Expo Co. Ltd in Japan from
24 August 2020 until January 2022.

25 14. In December 2021, Plaintiff contracted with Defendant Phase9 and its president,
26 Defendant Tissera ("Tissera" or "Defendant") to import his Skyline from Japan into the United
27 States by obtaining a special temporary import exemption through the National Highway
28 Transportation Safety Administration (NHTSA) and a one-year importation exemption through the

1 Environmental Protection Agency (EPA) for a ‘Show and Display’. A true and correct copy of the
2 “Importation Agreement” is attached hereto as Exhibit “1” and is incorporated herein by reference.

3 15. On December 23, 2021, Tissera and Plaintiff mutually contacted JDM Expo about
4 transferring vehicle to Phase9’s custody to arrange importation into the United States. JDM Expo
5 advised them that the Skyline may be released only after paying additional \$12,800 sales tax and
6 \$5,500 storage fees. From March 2021 to January 2022, both Tissera and Plaintiff disputed these
7 extra charges.

8 16. Plaintiff is informed and believes and based thereon alleges that on or about January
9 24, 2022, the Skyline was transferred to Phase9’s warehouse in Kyoto Japan where it may remain
10 today.

11 17. On or about January 25, 2022, Tissera informed Plaintiff that the Skyline likely has
12 ‘engine trouble’, and Tissera sent a video to Plaintiff purportedly showing blue smoke from the
13 exhaust when the Skyline is turned on. Tissera recommended having the Skyline sent to a reputable
14 shop known for working on Skyline GTRs, noting that the owner Osamu-san used to work at the
15 Omori Factory, a Nissan workshop famous for the quality of their parts and the work they do on
16 Skyline GTRs. Plaintiff informed Tissera that he is only interested in a diagnosis of the issue, and
17 did not want any repairs to be done on the Skyline whatsoever.

18 18. On February 11, 2022, Plaintiff wired Defendants the sum of \$10,000 USD pursuant
19 to the Importation Agreement.

20 19. Plaintiff is informed and believes and based thereon alleges that on February 17,
21 2022, allegedly Tissera transferred the Skyline from Phase9’s warehouse in Kyoto to unnamed repair
22 shop.

23 20. On March 7, 2022, Tissera sent alleged pictures to Plaintiff of a transmission and
24 pictures of what appears to be cylinder walls of an engine showing some scoring damage.

25 21. From March 7, 2022 to September 30, 2022, Tissera failed to provide a single update
26 as to status of the repair estimate or the repairs.

27 22. Plaintiff is informed and believes and based thereon alleges that Tissera eventually
28 informed Plaintiff that the name of the repair shop is “Kanto Power”, near Totori Japan. Tissera also

1 periodically informed Plaintiff that the owner of the shop was ill with COVID for months as a reason
2 for the lack of any significant updates (the new excuse for scammers, the “COVID made me do it”).
3 Plaintiff is a practicing emergency physician who has treated hundreds of COVID patients. While
4 not unheard of, Plaintiff doubts the veracity of the claim that the owner would be ill with COVID for
5 that extended period of time in the year 2022, a time when COVID in not very lethal.

6 23. Tissera then provided limited responses to Plaintiff’s many text messages and emails,
7 stating that between August 11, 2022 and September 29-30, 2022, Tissera and his family were
8 overseas in Sri Lanka with limited internet and cell phone service.

9 24. On or about April 20, 2022, Tissera informed Plaintiff that vehicle was denied
10 approval by the U.S. government for early importation, something he knew would happen upfront,
11 but nonetheless lied about his expertise to import the Skyline. To date, Tissera has not provided a
12 copy to Plaintiff of the NHTSA’s importation denial letter, or a copy of the Plaintiff’s application for
13 a special temporary import exemption through the National Highway Transportation Safety
14 Administration (NHTSA). Plaintiff doubts that Tissera ever made any application(s) to the NHTSA
15 or EPA to import the Skyline into the United States as contracted for.

16 25. On or around September 26-30, 2022, Tissera and his family returned from Sri Lanka,
17 and informed Plaintiff that the vehicle was “fixed.” However, the Skyline allegedly underwent
18 significant repairs, including rust repair, repaint, new OEM body parts and the Skyline was restored
19 to a “like new” condition. Tissera maintains that he did not authorize these repairs and was not
20 informed about them until they were complete which is an outright lie. Tissera represented that
21 Kanto Power has the Skyline in its possession, that too is an outright lie. Mr. Tissera then informed
22 Plaintiff that the amount of 25,881,790 yen (which exceeds the value and purchase price of the
23 Skyline) is owed for the repairs, and that if they are not repaid, the Skyline will be re-titled to the
24 shop via a mechanic’s lien or Tissera would pay the invoice and Tissera would sell the Skyline to be
25 reimbursed.

26 26. Tissera assured Plaintiff that the repairs were in fact completed, stating that he was
27 sent a video by Kanto Power that shows the repair work. Mr. Tissera sent a copy of an “invoice”
28 purportedly from Kanto Power, which is dated June 19, 2022. After researching the address on the

1 June 19, 2022 invoice, no such address in Japan exists and there is no registered company in Japan
2 with the name “Kanto Power.”

3 27. On October 1, 2022, Tissera sent Plaintiff a video that he represented was sent to him
4 by Kanto Power. Plaintiff inquired if the video was recent, to which Mr. Tissera replied “Yes. From
5 yesterday”. However, video metadata suggests that video was in fact filmed on September 30, 2022.
6 An Instagram user *team_free_spirit*, known to be a champion of exposing illegal or shady import
7 practices, later notes that the video is shot in the same location that Mr. Tissera films other vehicles
8 in their possession.

9 28. Between October 2, 2022 and October 14, 2022, Plaintiff demanded Tissera obtain
10 more pictures and/or videos of the rest of the Skyline in order to confirm repairs were in fact made.
11 Tissera stated that he has already requested this. Tissera then represented to Plaintiff that he was
12 willing to pay thirty-thousand dollars (\$30,000.00 USD) on Plaintiff’s behalf as a deposit, which
13 Kanto Power declined.

14 29. Tissera reported initially he had fifty-thousand dollars (\$50,000.00 USD) which he
15 intended to use to put a down payment on the Kanto Power repair bill. However, that money was
16 “tied up in escrow” on a new warehouse in Kyoto Japan. Plaintiff became increasingly frustrated,
17 and informed Tissera that he intended to go public with the situation. Plaintiff then demanded Kanto
18 Power’s address and phone number, to which Tissera responds that he would connect the two parties
19 in an email.

20 30. On October 14 through October 21, 2022, Mr. Tissera wrote an email to Plaintiff, and
21 Kanto Power, introducing the two parties. Plaintiff wrote back to Kanto Power in English,
22 explaining that the vehicle is his dream Skyline, he was shocked to hear that the Skyline was
23 restored, and that he and Tissera intend to pay, but will need additional time. The email for Kanto
24 Power is a Hotmail account used in the United States and not in Japan which is a red flag and
25 something that Tissera should have known would be discovered.

26 31. Kanto Power allegedly responded directly and stated that the Skyline was in bad
27 condition and needed an overhaul, and this was done at the shop owner’s direction, even though
28 Tissera never gave permission. Plaintiff is informed and believes and thereon alleges that Tissera is

1 Kanto Power who authored the email from “Kanto Power” to Plaintiff.

2 32. On October 23, 2022, Plaintiff posted on his public Instagram account car_and_crafts
3 the same video Tissera sent on October 1, 2022, and a copy of the Japanese to English translation of
4 Kanto Power’s response email mentioned in previous bullet point. Names of Plaintiff, Phase9, and
5 Kanto Power were all redacted. The post went on to explain the situation, as well as be on the
6 lookout for the vehicle in case someone attempts to sell it soon. The post asks for “suggestions,
7 solutions, and possibly influence in order to save my Skyline”. This post is brought to the attention
8 of a Skyline collector, who offers to help Plaintiff with the money in order to regain custody of the
9 vehicle (specifics of this agreement were never contractually agreed upon and no money was
10 exchanged).

11 33. On October 24, 2022, Plaintiff contacted Tissera and what purportedly is “Kanto
12 Power” on October 24, 2022 that he has secured the funds to pay for the vehicle.

13 34. On October 25, 2022, Plaintiff asked Mr. Tissera what is being done to contact the
14 shop and secure the vehicle now that the money has been secured. Tissera responded that he is
15 waiting for their response, will email later that night if no response.

16 35. On October 26, 2022, Kanto Power responded (Japanese to English translation):
17 “Since more than one month has passed since the invoice was issued, the transaction regarding this
18 vehicle will be canceled. Thank you for your understanding.”

19 36. Plaintiff demanded that Tissera for the address of Kanto Power, noting that this
20 should be the address that Phase9’s employees dropped the Skyline off at and since the address on
21 the work invoice cannot be confirmed to exist. Mr. Tissera never responded to this query.

22 37. On October 29, 2022, Plaintiff demanded an update.

23 38. On October 31, 2022, allegedly Phase9 wrote via email to Kanto Power on Plaintiff’s
24 behalf, stating that Plaintiff now has the money to pay the balance, and wants to reclaim his vehicle.
25 There was no response allegedly from Kanto Power despite Kanto Power advancing all of the costs
26 to repair which is illogical.

27 39. Between November 2, 2022 and 14, 2022, Plaintiff messaged Tissera two times
28 asking for updates and information on what is being done to secure his Skyline, and again, there was

1 no response from Tissera.

2 40. As of today's date, Plaintiff has never received a genuine invoice, a call or any other
3 meaningful communication from Kanto Power. Plaintiff is informed and believes and based thereon
4 alleges that, there is no such company registered in Japan called "Kanto Power" and the address on
5 the fabricated repair bill does not exist.

6 41. Plaintiff is informed and believes and based thereon alleges that Tissera/Phase9 is
7 Kanto Power and further alleges that and that Tissera created the Kanto Power Hotmail.com email
8 account and that Tissera wrote the emails to Plaintiff pretending to be the manager at Kanto Power
9 in Japan.

10 42. On or about November 18, 2022, Plaintiff, who was treating a sick patient, received a
11 shameful demand letter from Tissera's long term attorney Jeff A. Mann, Esq. demanding a payment
12 of 65,000,000 JPY or \$478,750 USD otherwise Plaintiff would forfeit ownership of the Skyline to
13 Mr. Tissera unless he paid for the phony repairs. It is clear to Plaintiff that Tissera has no ethics
14 given Tissera is attempting to defraud a physician out of thousands of dollars.

15 **FIRST CAUSE OF ACTION**

16 **FRAUD**

17 **Alleged Against FRANZ GERALD TISSERA, PHASE9, and Does 1-20**

18 43. Plaintiff re-alleges and incorporates by this reference the foregoing paragraphs 1
19 through 42 inclusive.

20 44. Plaintiff is informed and believes and based thereon alleges that Defendants Phase9
21 and Tissera with Does 1-20 represented to Plaintiff that because of the Skyline's poor mechanical
22 condition, certain repairs to the engine were warranted and allegedly completed by a phantom repair
23 shop in Japan called Kanto Power.

24 45. These repairs were never authorized by Plaintiff, nonetheless the Defendants
25 represented that the repairs were completed and Defendants represented to Plaintiff that Kanto billed
26 Defendants the sum \$65,000,000 JPY or \$478,750 USD (the "Kanto Repair Bill"). Defendants then
27 represented to Plaintiff that if he did not pay for the 'valid' Kanto Repair Bill, Defendants would sell
28 the Vehicle to be "reimbursed".

1 46. Plaintiff attempted to contact Kanto Power to arrange payment without success. The
2 telephone and address on the Kanto Repair Bill do not exist.

3 47. Plaintiff is informed and believes and thereon alleges that Tissera fabricated Kanto
4 Power, the Kanto Repair Bill and the alleged repairs as a ruse to sell the Skyline, and use the
5 proceeds for his personal expenses, pay for attorney's fees for an upcoming civil jury trial, and his
6 lavish lifestyle.

7 48. Plaintiff is informed and believes and based thereon alleges that Defendant Tissera,
8 Phase9, and Does 1-20 knew that the representations were false when they made them, or that they
9 made the Representations recklessly and without regard for their truth.

10 49. Plaintiff is informed and believes and based thereon alleges that Defendants Phase9
11 and Tissera and Does 1-20 intended that Plaintiff rely on the Representations.

12 50. Plaintiff is informed and believes and based thereon alleges that Plaintiff reasonably
13 relied on Defendants' misrepresentations because Plaintiff was relying on their alleged expertise in
14 the importation of Japanese' sport cars into the United States and because Phase9 is a licensed and
15 bonded automobile dealer by the State of California.

16 51. Plaintiff is informed and believes and based thereon alleges that Hammond was
17 harmed and suffered a financial loss of at least \$500,000.00 USD not including attorney's fees and
18 costs.

19 52. Plaintiff is informed and believes and based thereon alleges that Plaintiff's reliance on
20 the Defendants' Representations was a substantial factor in causing his harm.

21 53. As a legal result of said misconduct, Plaintiff is entitled to and seeks recovery of
22 punitive damages because of the conduct of Defendants and Does 1-20 were reprehensible,
23 fraudulent, malicious, oppressive, and done with reckless disregard of Plaintiff's rights.

24 **SECOND CAUSE OF ACTION**

25 **NEGLIGENCE**

26 **Alleged Against Tissera and Phase9 and Does 1-20**

27 54. Plaintiff realleges and incorporates by this reference the foregoing paragraphs 1
28 through 51 inclusive.

1 55. Defendants Phase9, Tissera, and Does 1-20 owed Plaintiff a duty of care as a bonded
2 and licensed automobile dealer/importer pursuant to Civil Code section 1714(a).

3 56. Defendants and Does 1-20 breached that duty of care when Defendants failed to
4 import the Skyline into the United States and allowed Kanto Power to charge Plaintiff for repairs
5 that were never authorized or ever undertaken.

6 57. As a legal result of said conduct, Plaintiff was harmed.

7 58. That Defendants' negligence was a substantial factor in causing Plaintiff's harm and
8 damages.

9 59. As a result of Defendants' negligence, Plaintiff is entitled to compensatory and
10 specials damages according to proof at the time of trial.

11 **THIRD CAUSE OF ACTION**

12 **BREACH OF CONTRACT**

13 **Alleged Against Defendant Phase9MotorSports, Inc., and Does 1-20**

14 60. Plaintiff realleges and incorporates by this reference the foregoing paragraphs 1
15 through 57 inclusive.

16 61. On December 18, 2022, Plaintiff entered into an importation agreement with
17 Defendant Phase9 and provided a retainer of ten thousand dollars soon thereafter (\$10,000.00). The
18 only purpose of the importation agreement was to import his 2002 Nissan Skyline GT-R M-Spec
19 NUR vehicle from Japan into the United States by obtaining a special temporary import exemption
20 through the National Highway Transportation Safety Administration (NHTSA) and a one-year
21 importation exemption through the Environmental Protection Agency (EPA) for a 'Show and
22 Display' (the "Importation Agreement").

23 62. Defendants breached the Contract by failing to apply for, and/or to obtain the special
24 temporary import exemptions for Plaintiff's Skyline vehicle as Defendant unequivocally promised.

25 63. Instead, Tissera illegally took possession and custody of Plaintiff's Skyline vehicle,
26 and without Plaintiff's consent and is essentially holding the Skyline hostage.

27 64. The misconduct of Phase9, and Does 1-20 constitutes a material breach of contract.

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1 65. As a legal result of said misconduct, Plaintiff incurred damages as alleged including
2 general and consequential damages according to proof at the time of trial.

3 **FOURTH CAUSE OF ACTION**

4 **CONVERSION**

5 **Alleged Against All Defendants and Does 1-20**

6 66. Plaintiff realleges and incorporates by this reference the foregoing paragraphs 1
7 through 65 inclusive.

8 67. Plaintiff is informed and believes and based thereon alleges that all relevant times
9 herein that Plaintiff owned and had the right to possess his Skyline.

10 68. That all of the Defendants, substantially interfered with Plaintiff's ownership of his
11 Skyline by knowingly or intentionally taking possession of the Skyline, and refusing to return the
12 Skyline after Plaintiff demanded its return.

13 69. Plaintiff did not consent to Defendants' wrongful actions. ("[C]onversion is a strict
14 liability tort. It does not require bad faith, knowledge, or even negligence; it requires only that the
15 defendant have intentionally done the act depriving the plaintiff of his or her rightful possession."
16 (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1158).)

17 70. That Plaintiff was harmed according to proof at the time of trial.

18 71. That Defendants' conduct was a substantial factor in causing Plaintiff's harm.

19 72. As a legal result of said conversion, Plaintiff is entitled to and seeks recovery of
20 compensatory and punitive damages because of the conduct of Defendants and Does 1-20 were
21 reprehensible, fraudulent, malicious, oppressive, and done with reckless disregard of Plaintiff's
22 rights. ("Causes of action for conversion and trespass support an award for exemplary [punitive]
23 damages." (*Krieger v. Pacific Gas & Electric Co.* (1981) 119 Cal.App.3d 137, 148)

24 **WHEREFORE**, Plaintiff prays for judgment against all Defendants and Does 1-20, jointly
25 and severally, as follows:

26 1. For compensatory damages according to proof at the time of trial in an amount not less than
27 Four Hundred Seventy-Eight Thousand Dollars (\$478,000.00), together with interest thereon at the
28 maximum legal rate;

1 2. For punitive damages pursuant to Civil Code Section 3294 in an amount appropriate to
2 punish and set an example of Defendants, and each of them, and to deter such conduct in the future,
3 the exact amount of such punitive damages subject to proof at the time of trial;

4 3. For pre-judgment and post-judgment interest on the above requested damages and at the
5 maximum legal rate provided by law;

6 4. For costs of suit;

7 5. For reimbursement to Plaintiff of attorney's fees and costs, as provided by law and/or
8 contract; and

9 6. For such other relief as the Court may deem just and proper.

10 DATED: March 30, 2023

YOURIST LAW CORPORATION, APC

11
12 By: /s/ Bradley J. Yourist

BRADLEY J. YOURIST

DANIEL J. YOURIST

MICHAEL AJ NANGANO

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15 Attorneys for Plaintiff Dr. Kalopo DaSilva M.D.

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18 **REQUEST FOR JURY TRIAL**

19 Plaintiff Dr. Kalopo DaSilva, M.D. hereby demands a trial by jury

20 DATED: March 30, 2023

YOURIST LAW CORPORATION, APC

21
22 By: /s/ Bradley J. Yourist

BRADLEY J. YOURIST

DANIEL J. YOURIST

MICHAEL AJ NANGANO

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25 Attorneys for Plaintiff Dr. Kalopo DaSilva M.D.

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EXHIBIT “1”



P9MS USA MAIN

4001 Pacific Coast Hwy,
Torrance, California 90505
CA DMV Dealer #88894
Phone: (714) 801-4910
Phone: (714) 869-4577
Phone: (714) 600-9657

P9MS JAPAN MAIN

No. 11 Shimoyanagihara,
Gonokuchi, Ujitawara-Cho,
Tsuduki-Gun, Kyoto-6100255
Phone: +81-90-8886-8969
Fax: +81-90-7499-8491



P9MS USA HAREHOUSE I

476 W. Meats Ave,
Orange, California 92865
Phone: (714) 801-4910
Phone: (714) 869-4577
Phone: (714) 600-9657

Kolapo DaSilva

PHASE9MOTORSPORTS, INC. ("Importer"), is hereby retained by _____
("Party of Interest"), collectively hereto as ("Party"). Party of Interest is residing at: 1202 Sweetbay Place, Silver Spring, MD 20906. Importer is retained to aid in legally importing a vehicle known as the: 2002 NISSAN SKYLINE GT-R M-SPEC NUR hereto as ("Vehicle"). Said Vehicle currently does not conform to all applicable Federal Motor Vehicle Safety Standards hereto as ("FMVSS") and therefore does not fall into the vehicle eligibility list for normal, 25-year importation; however, it is permitted by federal law under a special temporary import exemption through the National Highway Transportation Safety Administration (NHTSA) and a one (1) year importation exemption through Environmental Protection Agency (EPA) hereto as ("Agencies"), for a Show and Display, hereto as ("S&D").

Importer will provide all necessary proof for said Vehicle along with handling all in-land, outbound exportation and inbound importation processes. Party of Interest will remit the exact service amount of \$10,000.00 USD. Party of Interest certifies and warrants to the Importer that he/she has the authority to transfer said Vehicle to the custody of the Importer until all paper work is deemed approved by the Agencies therein.

Party of Interest further certifies and warrants to the Importer that said Vehicle is free and clear from any and all legal claims, liens or encumbrances, and further certifies that all information disclosed is true and correct to the best of the Party of Interest's knowledge to ensure a speedy approval. In-land transportation of Said Vehicle and international shipping charges is paid by the Party of Interest.

VEHICLE INFORMATION & ESSENTIALS

| | | | |
|-------------------------|----------------------|---|----------------------|
| Make | Nissan | Trim | M-Spec NUR |
| Mileage (Approximately) | 224,418 Kilometers | Repair History | Unknown at this time |
| Body Color Code | #JW0 | Non-smoking car | Unknown at this time |
| Interior Color | Gray on Black Fabric | Vehicle Inspection | Unknown at this time |
| Exterior Color | Millenium Jade | Model year (Date of first registration) | 2002 (Heisei 14) |
| Transmission | MT 6 Speed | Vehicle ID Number | BNR34-403308 |

TERMS AND CONDITIONS

- Conditions.** Party of Interest has requested Importer to help with importation of a non-conforming vehicle, legally into the United States of America. Importer certifies to the Party of Interest that they will do all necessary logistical handlings from the either the sourcing, purchasing, Ro/Ro, lock and bracing within a containerized shipment and process / present documentations to Customs officers with the necessary documentation needed to file for a legal entry into the United States commerce.
- Vehicle Cost Breakdown.** Party of Interest and Importer have agreed to enter into this agreement ("Agreement") whereby Party of Interest will transfer monies through PayPal (info@p9ms.com), bank wire transfer, certified classic car financing program (JJ-Best Banc), Square and/or a certified bank cashier's check. If Party of Interest is remitting funds via bank wire transfer, please ensure such transfer of money is directed to Importer's business account as indicated below.

The above said Vehicle's importation logistical, documentation and importation document preparation fee is **\$10,000.00 USD**. If any de-registration and/or miscellaneous taxes from Japan apply prior to outbound exportation preparation, these charges will be billed separately to the Party of Interest. Party of Interest will make a non-refundable bank-to-bank wire transfer of **\$10,000.00 USD**, the full amount towards the document preparation for the above said Vehicle into the Importers business account as denoted below. Additional parts, paint and/or servicing is not inclusive of the document preparation fee as it is extra and will be billed at the sole discretion of the Party of Interest stated herein this Agreement. A separate invoice will be generated for such services, parts and/or labor.

- Pre-Purchase Inspection (PPI).** Prior to outbound exportation, Importer will conduct a **Pre-Purchase Inspection (PPI)** and is contingent upon a mechanical inspection that must pass. PPI check list entails: *checking of the kilometers, vehicle history report (Japanese Car Fax), Examine for Rust and Paint discoloration, Tire Inspection – examine for wear, Undercarriage and leaks on the ground, Open the hood (check oil levels, Look for signs of rust or corrosion under the hood, inspect belts for signs of wear, check transmission fluid, brake fluid, check antifreeze, check the battery), check lights, driving test to ensure vehicle operates and runs fine without any white or blue smoke emitting, and/or grinding of transmission gears.*
- Documentation / Process Breakdown.** Below is the total breakdown for the service being provided. Phase9MotorSports has elected to grant a **discount of \$4,996.00 USD** and in exchange requests, when possible, from the Party of Interest their collaboration and willingness to help promote said vehicle on social media.

| OUT / IN | FREIGHT / SHIPPING LOGISTICAL DESCRIPTION | PRICE | TOTAL |
|--------------|--|------------|------------|
| OUT-BOUND | FREIGHT CHARGES 20FT or Ro/Ro | TBA | TBA |
| OUT/IN BOUND | SUPPLY CHAIN MANAGEMENT (\$100 x 2) | \$200.00 | \$200.00 |
| OUT/IN BOUND | TERMINAL HANDLING CHARGES (\$670 x 2) | \$1,340.00 | \$1,340.00 |
| OUT/IN BOUND | BILL OF LAIDING (\$88 x 2) | \$176.00 | \$176.00 |
| OUT-BOUND | LOADING FEE | \$1,500.00 | \$1,500.00 |
| IN-BOUND | CUSTOMS 2.5% CHARGE ON DECLARED INVOICE VALUE (\$128,000.00) | \$3,200.00 | \$3,200.00 |
| IN-BOUND | ENTRY FILINGS / P9MS BOND USAGE | \$500.00 | \$500.00 |
| IN-BOUND | INSURANCE FEE ON AGREED VEHICLE VALUE (\$128,000) | \$1,000.00 | \$1,000.00 |
| IN-BOUND | IN-LAND CONTAINER TRANSPORTATION | \$850.00 | \$850.00 |
| IN-BOUND | CONTAINER UNLOADING FEE | \$1,500.00 | \$1,500.00 |
| OUT/IN BOUND | IN-LAND TRANSPORTATION (\$365 x 2) | \$730.00 | \$730.00 |
| OUT/IN BOUND | TRANS LOGISTICAL / SUBARU JPN / NHTSA / CBP / DOT / EPA PROCESSING FEE | \$3,500.00 | \$3,500.00 |
| IN BOUND | TWIC CARD / PORT ENTRY | \$500.00 | \$500.00 |
| DISCOUNT | PHASE9MOTORSPORTS MARKETING DISCOUNT | \$4,996.00 | \$4,996.00 |

Word-of-mouth is key to our survival and success and therefore we ask once the vehicle arrives to your satisfaction, to please do a short video recommendation promoting Phase9MotorSports to other potential Party of Interests.

See Instagram: @Phase9MotorSports | YouTube Channel: YouTube > Phase9MotorSports

5. **Shipping Cost Breakdown.** Party of Interest will be responsible to pay for all outbound preparation charges related to the exporting of said Vehicle from Japan to Long Beach, or store such vehicle in Japan until such time said vehicle can reach its full 25-year maturity based on the federal United States NHTSA direct grey market importation regulations, also found in the Federal Motor Vehicle Safety Standards (FMVSS). If Party of Interest chooses to store such a vehicle in our warehouse location in Uji, Kyoto Japan, then he/she will be responsible for paying storage charges, electrical usage to keep battery tender online and an insurance policy where Party of Interest will be named as a loss payee in case of force majeure or the act of God.

If Party of Interest choose to export said vehicle from Japan to Long Beach, California, then Party of Interest will be responsible to pay for all inbound transportation and customs duties related to said Vehicle importation. Storage rates will be anywhere from \$150.00 USD / Month to \$550.00 USD depending on the dimensions and Party of Interest's desired course of maintenance for said Vehicle.

6. **Containerized / Ro/Ro Cost.** Importer will aid Party of Interest in setting up clearance through the Port of Long Beach, California Customs and insure all necessary United States Federal documentation is approved on behalf of the Party of Interest prior to entry. Party of Interest shall furnish all information of the importer of record and consignee name prior to out-bound shipment to avoid any delays in processing through the United States Customs entry for said Vehicle. The Vehicle documentation including its title, spare keys, and other documents shall be mailed with a tracking number unless stipulated in writing otherwise to the Party of Interest's named in this Agreement. Importer may assist with in-land door-to-door transportation / documentation preparation through their preferred transport carriers or any other transportation service that is reasonable and safe. Party of Interest is also welcome to have their own transporter pick up the vehicle from the Importer at their own cost and/or expense.
7. **Attorneys' Fees.** The prevailing party shall be entitled to recover its costs, expenses, expert witness fees, and reasonable attorneys' fees related any proceeding, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in any legal action or proceedings. In the event formal litigation is required, the prevailing party shall be entitled to recover reasonable attorney fees and costs incurred. Any claim made that cannot be resolved shall be adjudicated by a binding

arbitration. The Party of Interest and Importer hereby waive their right to a trial. California law will apply and all claims will be venued and arbitrated in the City of Orange County as denoted within clause #11 – Governing Law.

8. **Right to Independent Attorney.** Both parties understand, that this is a binding legal contract between both parties. Both parties have notice that they can conceit independent counsel at any point to rebut this contract.
9. **Governing Law.** This Agreement is entered into the State of California and the Agreement and any rights, remedies, or obligations provided for in this Agreement, shall be construed and enforced in accordance with the laws of the State of California. The Parties agree that this Agreement may be enforced pursuant to California Code of Civil Procedure § 664.6.
10. **Interpretation.** This Agreement shall be construed as if all Parties jointly prepared it, and any uncertainty or ambiguity in the Agreement shall not be interpreted against any one Party.
11. **Mediation and Arbitration.** Party of Interest and Importer herein waive their rights to a jury trial in any legal action or proceeding with respect to this Agreement. Party of Interest and Importer hereby agree to submit all disputes first to mediation and shall attempt in good faith to resolve their disputes during the mediation process. The party refusing or failing to submit to mediation upon written request shall not be entitled to recovery any attorneys' fees incurred in subsequent litigation. In the event mediation is unsuccessful, Party of Interest and the Importer shall hereby submit their dispute to binding arbitration before a retired judge at Judicate West or Alternative Dispute Resolution (Orange County). The determination of the arbitrator shall be final and absolute, without any recourse of appeal.
12. **No Duress.** The Parties acknowledge that this Agreement is executed voluntarily by each of them, without duress or undue influence on the part of, or on behalf of any of them. The Parties further acknowledge that they have or had the opportunity for representation in the negotiation for, and in the performance of, this Agreement by counsel of their choice and that they are fully aware of the contents of this Agreement and its legal affects.
13. **Venue.** Party of Interest and the Importer irrevocably agree that any legal action or proceeding arising out of or relating to this Agreement or for the recognition and enforcement of any judgment in respect hereof brought by the other party or its successors or assigns may only be brought in the courts of the State of California, County of Orange, and each party hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself with respect to the Vehicle, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement.
14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one agreement. Photocopies, facsimile transmissions, or email transmissions of signatures shall be deemed original signatures and shall be fully binding on the parties to the same extent as original signatures.
15. **Federal DOT (HS-7) 25-Year Rule.** Unlike Canada, which stipulated a 15-year importation rule for any and all vehicles over the manufactures date of age of 15 years, United States deems a motor vehicle that is at least 25-years old can be lawfully imported into the U.S. without regard to whether it complies with all applicable FMVSS.
16. **Federal EPA (3520-1) 21-Year Rule.** Currently EPA stipulates that a vehicle at least 21 years old (calendar year of manufacture subtracted from year of importation) and in original unmodified configuration is either exempted or excluded from EPA emissions requirements, depending on age. Vehicles at least 21 years old with replacement engines are not eligible for this exemption unless they contain equivalent or newer EPA certified engines. Customs may require proof of vehicle age if asked.
17. **NHTSA Show or Display.** On August 13, 1999, a new rule was instated to permit entry of non-confirming motor vehicles for show or display. In order to import a vehicle under this exemption, one must apply to the NHTSA for permission. The purpose of the application is to establish whether or not the vehicle is of historical or technological significance that would be in the public interest to show or display it within the United States. These show or display vehicles would be difficult or close to impossible to be brought into compliance with the FMVSS. The rule is intended to facilitate the importation of a vehicle when the manufacturer never certified it for sale in the United States. If the vehicle is not 25-years or older and is requiring a Show or Display permit, the Importer does not warrant to the Party of Interest that it is in any legal capacity to automatically obtain and/or grant a federal exception, exclusion on a temporary importation and/or a Show and Display permit and/or any other form of legal permission for importation of said Vehicle into the United States. Time delays can occur due to the sensitivity of obtaining detailed information regarding the fitness, rarity and/or marketability of said Vehicle to the United States commerce and/or public. The federal government's application processes and are serviced on a first-come, first-served basis. To expedite such permits, Party of Interest will work alongside Importer to furnish the necessary documentations as requested by NHTSA,

EPA and Customs and Border Protection (CBP). Importer certifies to the Party of Interest that it is in a seasoned capacity to furnish such documentations and to safely provide a quick turnaround for all requested documentations by NHTSA and EPA for the Show or Display permit as it has done so in subsequent Vehicles already with approvals obtained, imported and delivered to the Party of Interest. Party of Interest confirms that he/she understands that if NHTSA and EPA agency grants this grey market vehicle a consumption permit to enter under the Show or Display, that he/she will need to comply with the federal restrictions and guidelines thereof.

18. **Temporary Importation of a Motor Vehicle.** As a general rule, all motor vehicles imported into the United States that are less than 25 years old must comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), or be brought into compliance with those standards by a Registered Importer. Vehicles temporarily imported in the following circumstances are exempt from this requirement and do not have to be modified to conform to the FMVSS. A DOT HS-7 declaration form must be accompanied along with the full entry package with the Box 7 on the HS-7 Form checked.
19. **EPA Temporary Exemption to Import a Motor Vehicle.** Under the 40 CFR 85.1511(b)(4) and Terms of Conditions therein, and based on the information supplied to EPA from the Importer, EPA may grant an exemption to approve a display exemption based on the requested vehicle make and model. This display exemption allows for the vehicle(s) / Engines to be used only at the locations listed in the applicant's application which is valid from the date and year of application up to one (1) year with subsequent renewal that is required to maintain approval of said Vehicle to stay within the United States of America. This display exemption does not apply to any other display purposes or promotional events unless otherwise pre-approved by the EPA. This display exemption covers the subject vehicle(s) /engine(s) only under the applicant's full compliance with NHTSA and EPA's Terms and Conditions. A breach of any term or condition shall cause the exemption granted pursuant to this approval to be void. Consequently, the introduction or delivery for introduction into commerce of the subject vehicle(s) / engine(s) other than in strict conformity with all terms and conditions shall constitute a violation of section 203(a)(1) of the Clean Air Act, and the applicant may be subject to a civil penalty as codified at 40 CFR 1068.101 per violation under section 205 of the Act, as well as other penalties. In addition, noncompliance may result in the seizure of the engine(s) by U.S. Customs and Border Protection.
20. **Non-Disparagement.** Party of Interest shall not at any time engage in any form of social media conduct, or make any statements or representations, whether in writing, orally or through word-of-mouth by way of business partners, associates, friends, family, acquaintances various other 3rd party affiliates that would disparage or otherwise impair the reputation, goodwill or commercial interests of Phase9MotorSports, Inc. Notwithstanding the foregoing, nothing in this paragraph will prevent any person from making any truthful statement to the extent (i) necessary with respect to any litigation, arbitration or mediation involving this Agreement, including, but not limited to, the enforcement of this Agreement or (ii) required by law or by any court, arbitrator, mediator or administrative or legislative body (including any committee thereof) with apparent jurisdiction to order such person to disclose or make accessible such information. Each of the parties agrees to notify the other of any statement that is required to be made as provided in the preceding sentence in writing. Such notice will be given as much in advance of the making of such statement on public forums as is reasonably possible to help amicably mediate any issues that may arise.

Party of Interest will not, directly or indirectly, make any written or verbal disparaging or negative statements, comments or references about Importers harmful to business interests, reputation or good will, its services or activities, its board members, officers, and employees, or about any other Released Party.

21. **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Counterparts may be delivered via facsimile, in-person delivery or email delivery of a PDF format data file, and signatures may be made by electronic means, including through the use of EchoSign, DocuSign, or such other commercially available electronic signature software which results in confirmed signatures being delivered electronically to each of the Parties, provided that such electronic means comply with the California Uniform Electronic Transaction Act., Cal. Civ. Code § 1633.1, *et seq.* (the "UETA"). All facsimile, scanned, and electronic signatures shall have the same legal effect as original signatures. The Parties further agree that this Agreement may be consummated by electronic means for purposes of the UETA.
22. **Indemnification / Release.** For consideration of the agreement herein and other covenants contained herein, the sufficiency of which are hereby expressly acknowledged, Party of Interest, his present, former, and future heirs, executors, administrators, partners, co-obligors, co-guarantors, guarantors, sureties, family members, spouses, attorneys, insurers, agents, representatives, predecessors, successors, assigns, and all those who claim through them or could claim through them (collectively the "Releasers") hereby releases, waives, remises, acquits, satisfies, and forever discharges Importer, in addition to Importer's respective past, present and future directors, officers (whether acting in such capacity or individually), shareholders, owners, investors, partners, joint ventures, principals, trustees, creditors, attorneys, representatives, employees, managers, members,

parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, assigns, and assignees, nominees, or any agent or loan servicer / dealer / wholesaler / import broker / broker / overseas agents acting or purporting to act on any or all of their behalf (collectively the "Releasees"), and each of them respectively, from and against any and all liability now accrued on account of any and all actions, causes of action, claims, defenses, affirmative defenses, suits, controversies, agreements, promises and demands of every kind and nature whatsoever, whether known or unknown including, but not limited to, suits, debts, accounts, bills, damages, judgements, executions, warranties, attorneys fees, costs of litigation, expenses, claims and demands whatsoever, whether brought individually or on behalf of any class, in law or in equity, that the Releasers, or their attorneys, agents, representatives, predecessors, successors, and assigns, have or may have against the Releasees, for, upon, or by reason of any matter, cause or thing, whatsoever, in law or equity, including, without limitation, all of the claims asserted by the Releasers or any other claims made or which could have been made by them within, arising from, or relating to this purchase agreement ("Released Matters").

Party of Interest realizes that he/she may sustain unknown or unforeseen charges or losses, costs, expenses, liabilities, claims, injuries, damages and consequences thereof which may be at this time unknown, unrecognized and not contemplated by he/she. By executing this Agreement, it is the full intent of the parties that Party of Interest releases the Released Parties of and from any and all liability for such unknown and/or unforeseen losses, costs, expenses, liabilities, claims, damages and consequences thereof, including those not known, recognized or contemplated. A portion of the consideration herein is for the release of such unknown or future claims or damages. Party of Interest shall indemnify, and hold harmless, Importer at all times from and after the date of this Agreement against any of Importer's Damages (as hereinafter defined). "Importer's Damages" means any claims, actions, demands, losses (which shall include diminution in value), costs, expenses, liabilities, penalties, and damages, including attorneys' fees incurred resulting from any claims arising from the conduct of Party of Interest or Party of Interest's agents or employees.

23. **Entire Agreement.** This Agreement sets forth the entire agreement between Party of Interest and Importer with regard to the subject matter hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to any other party with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby. This is an integrated agreement.

BUSINESS BANK INFORMATION

Please remit payment per this Agreement to the business bank account provided below:

| |
|--|
| NAME: PHASE9MOTORSPORTS, INC. |
| ADDRESS: 2535 N. TUSTIN STREET, ORANGE CA 92865 |
| ACCOUNT NUMBER: 7790462480 |
| ROUTING NUMBER: 121000248 |
| SWIFT CODE: WFBIUS6S |

AGREEMENT SIGNATURES

IN WITNESS WHEREOF, the Parties have caused this document to be executed on the last day set forth below. THE UNDERSIGNED HEREBY CERTIFY THAT THEY HAVE READ AND FULLY UNDERSTAND ALL OF THE TERMS, PROVISIONS, AND CONDITIONS OF THIS AGREEMENT AND HAVE EXECUTED THIS AGREEMENT VOLUNTARILY.

LOCATION: TORRANCE STATE: CA COUNTRY: UNITED STATES

DATE: DECEMBER 18, 2021

PRINT NAME OF IMPORTER

Kolapo DaSilva

PRINT NAME / PARTY OF INTEREST

SIGNATURE OF IMPORTER / AGENT

Kolapo DaSilva

SIGNATURE OF PARTY OF INTEREST