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GREENE BROILLET & WHEELER, LLP
LAWYERS
100 WILSHIRE BOULEVARD, SUITE 2100
P.O. BOX 2131
SANTA MONICA, CALIFORNIA 90407-2131
TEL. (310) 576-1200
FAX. (310) 576-1220

(SPACE BELOW FOR FILING STAMP ONLY)

SCOTT H. CARR, State Bar No. 156664
MOLLY M. McKIBBEN, State Bar No. 273897

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ESTATE OF STEPHANIE MARTINEZ, by
and through its Successors in Interest JESUS
MARTINEZ AVILA and ALEJANDRA
SANDOVAL DURAN; JESUS MARTINEZ,
an individual; ALEJANDRA SANDOVAL, an
individual;

Plaintiffs,

vs.

BRIGHTON MANAGEMENT, LLC, a limited
liability company; URBAN COMMONS
FRONTERA, LLC, a limited liability company;
UCF 1, LLC, a limited liability company;
DOES 1 through 100, inclusive,

Defendants.

CASE NO. BC668651
(Assigned to Hon. Elaine Lu, Dept. 5)

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO AMEND THE COMPLAINT
TO INCLUDE ALLEGATIONS IN
SUPPORT OF CLAIMS FOR PUNITIVE
DAMAGES AGAINST DEFENDANTS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
MOLLY McKIBBEN AND EXHIBITS**

*[Filed concurrently with Plaintiffs' Proposed
First Amended Complaint and [Proposed]
Order on Plaintiffs' Motion for Leave to
Amend]*

Date: December 13, 2018
Time: 1:30 p.m.
Dept: 5
Reservation ID: 180921350988

Action Filed: July 17, 2017
Trial Date: January 17, 2019

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 13, 2018 at 1:30 p.m. in the above entitled
Court, Plaintiffs the Estate of Stephanie Martinez, by and through its Successors in Interest Jesus
Martinez Avila and Alejandra Sandoval, Jesus Martinez individually, and Alejandra Sandoval

1 individually, will seek an Order granting Plaintiffs leave to file a First Amended Complaint setting
2 forth the basis for punitive damages against Defendants UCF 1, LLC, Urban Commons Frontera,
3 LLC, and Brighton Management, LLC. This Motion is based upon the following:

4 1. Good cause exists to grant the instant motion because the Proposed First Amended
5 Complaint (1) is in furtherance of justice and judicial expediency; (2) is based on material facts
6 and specific allegations; (3) will set forth fully and more accurately all claims against all
7 responsible parties; and (4) arises out of crucial facts and information obtained during the course
8 of discovery.

9 2. Plaintiffs' Proposed First Amended Complaint is based on the same general set of
10 facts as the Complaint; refers to the same incident that occurred on or about July 18, 2015; and
11 seeks recovery for the same injuries suffered by Plaintiffs as alleged in the original Complaint.

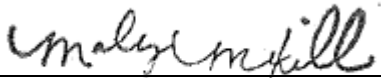
12 3. Plaintiffs hereby give further notice that Plaintiffs shall request an Order that the
13 Proposed First Amended Complaint be deemed by this Court to be the amended pleading, and that
14 it be deemed filed and served as of the date of the Court's granting of Plaintiffs' Motion For Leave
15 to Amend Complaint.

16 This motion is further based upon all papers and pleadings on file in this action, the
17 attached Memorandum of Points and Authorities, the accompanying Declaration of Molly M.
18 McKibben and Exhibits, and upon such further oral and documentary evidence as may be
19 provided at the time of the hearing of this Motion.

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DATED: November 14, 2018

GREENE BROILLET & WHEELER, LLP



Molly M. McKibben
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On July 18, 2015, three-year-old Stephanie Martinez was a guest at the Embassy Suites
4 Anaheim North hotel (the “Hotel”) with her parents, Alejandra Sandoval and Jesus Martinez, her
5 seven-year-old sister Melanie, and a group of aunts, uncles, and cousins on a trip to Disneyland
6 celebrate her uncle’s birthday. After a day celebrating and riding rides at the park, the family
7 returned to the Hotel to change clothes and eat dinner before going back to the park for fireworks.
8 Unbeknownst to Stephanie and her family, the Hotel had a serious defect that would prove to be
9 fatal that day – the guest corridor railings in the center atrium of the Hotel had vertical posts that
10 were spaced so far apart that a child could easily fit between them.

11 After initially going to their guestroom, Mr. Martinez took Melanie down to the ground
12 floor to order food for the family. Ms. Sandoval stayed in the room with Stephanie and put
13 cartoons on the television in the living room for her to watch. At some point, Ms. Sandoval went
14 to use the restroom connected to the bedroom. In the few minutes she was gone, Stephanie
15 managed to open the exterior guestroom door, walk to the other end of the guest corridor, and slip
16 through the excessively-spaced balusters of the corridor railings. When Ms. Sandoval came out of
17 the bathroom, she immediately noticed Stephanie was gone and exited the guestroom, where she
18 saw Stephanie hanging on the railings and then fall five stories. Stephanie hit the second floor and
19 landed on the tile in the atrium area near the restaurant just a few feet away from where Mr.
20 Martinez, Melanie, and members of their extended family were sitting. She sustained severe blunt
21 force trauma to her torso and head and died later that evening.

22 Ms. Martinez’s death was not an unpreventable freak accident. Rather, her death was the
23 tragic, logical result of the Hotel’s ownership and management’s repeated and longstanding
24 refusal to (1) make the property safe for guests, including children, and (2) heed warnings
25 provided to them for years by multiple of their own hired consultants about the dangerous
26 condition of the railings on their property. Accordingly, her parents filed the instant lawsuit for
27 wrongful death against the Hotel’s owners, UCF 1, LLC and Urban Commons Frontera, LLC
28 (“Urban Commons” or the “Owners”) and the Hotel’s management company, Brighton

1 Management, LLC (“Brighton”).

2 **II. PROCEDURAL POSTURE OF THIS CASE.**

3 Three-year-old Stephanie Martinez was killed as a result of the dangerous condition of the
4 Embassy Suites Anaheim North Hotel on July 18, 2015. (See Declaration of Molly McKibben at ¶
5 1.) This case was filed against Urban Commons and Brighton (“Defendants”) on July 17, 2017.
6 (See Declaration of Molly McKibben at ¶ 2.) Trial is set for January 17, 2019. (See Declaration
7 of Molly McKibben at ¶ 3.)

8 Throughout this litigation, Defendants have stridently claimed that they have no
9 responsibility for Ms. Martinez’s death. In addition to blaming Ms. Sandoval and Mr. Martinez
10 completely for Ms. Martinez’s death and attempting to paint them as negligent parents,
11 Defendants have tried to portray themselves as responsible but naïve hotel owners and managers
12 who care about their guests. However, in preparing this case for trial, Plaintiffs have come across
13 evidence that demonstrates that Defendants are far from responsible, caring, or naïve. The facts
14 discovered by Plaintiffs reveal that Defendants are bad actors who fully understood the
15 consequences of their choices and demonstrate such a shocking level of conscious disregard that
16 they rise to the level of punitive damages.

17 Quite simply, if Defendants had performed any actual inspections for the safety of their
18 guests (instead of just for “cleanliness” or “aesthetics”) or if they had not chosen to completely
19 ignore their hired consultants who had warned them for over three years about the dangerous
20 condition of the railings, Ms. Martinez would be alive today.

21 **III. DISCOVERY IN THIS CASE HAS REVEALED NEW FACTS THAT WARRANT**
22 **A CLAIM OF PUNITIVE DAMAGES AGAINST DEFENDANTS.**

23 When Plaintiffs filed this case, they had no way of knowing of the many times prior to July
24 18, 2015 that Defendants failed to take even the most basic, reasonable steps to make the property
25 safe for guests, or how many times Defendants intentionally ignored warnings that the guest
26 corridor railings were unsafe. Now, after extensive discovery, it has become clear that the owners
27 and operators of Hotel knew that the railings not just this property, but on other properties they
28 owned and managed, were dangerous. Accordingly, these newly discovered facts warrant a claim

1 of punitive damages against the Defendants in this case.

2 **The Hotel:** The Hotel is seven stories, including a ground-level floor with a restaurant and
3 indoor pool and six upper floors of guest suites. It is designed with an open rectangular central
4 atrium from the ground-level floor to the top of the Hotel. Guest suites are located between the
5 atrium and the exterior of the Hotel on all 4 sides, with doors facing the atrium. (Exh. 3, Pre-
6 Renovation Atrium Photo.) The guest floors have corridor walkways between the guest suites and
7 the atrium that are lined with metal railings adjacent to the atrium. (Exh. 4, Pre-Renovation Guest
8 Corridor Railing Photo.) These guest corridor railings have a top rail, a bottom rail, and vertical
9 posts (known as balusters) that run between the top and bottom rail.

10 The Hotel is a franchised Hilton property – as such, Defendants were required by Hilton to
11 renovate the Hotel, a process that began shortly after its purchase. In addition, Defendants were
12 required by Hilton to ensure that the property was safe for guests and complied with all applicable
13 building code sections. Despite this, Defendants did nothing to affirmatively ensure guest safety
14 at the Hotel and intentionally chose not to remedy hazardous conditions on the property. In 2012,
15 California *Building Code* section 1013.4, which addressed railings such as those at the Hotel,
16 required spacing of less than four inches between balusters. (Cal. *Building Code* § 1013.4.) Yet,
17 prior to July 18, 2015, the space between the vertical posts of the guest corridor railings ranged
18 between 5 and 6 inches. (Exh. 5, Anaheim Police Department Photographs.)

19 **Defendants Were Repeatedly Warned of the Danger:** Given the danger posed by the
20 dangerous condition of the Hotel’s railings, it is unsurprising this lawsuit is not the first time
21 Defendants have been told the railings were unsafe. Three unbiased, third-party consultants hired
22 by Defendants told them that the railings, including the guest corridor railings, were unsafe and
23 needed to be changed. First, Defendants were warned by an architect they hired to evaluate the
24 Hotel. In June 2012, Hotel ownership had a Property Condition Assessment (PCA) report
25 prepared. (Exh. 6, June 27, 2012 Property Condition Assessment Report.) The evaluation was
26 done by Terral Harvey, a licensed architect and property condition assessment specialist who has
27 performed over 100 property condition assessments on hotels. Mr. Harvey performed an
28 inspection of the Hotel and determined that the balusters on the guest corridor railings (as well as

1 the guestroom balcony railings) were “clearly” greater than 4 inches and violative of the building
2 code in effect at the time. Accordingly, the PCA report stated that “the guardrails at the
3 guestroom balconies, as well as at the interior walkways were constructed with baluster spacings
4 that exceed current model code requirements” and that “for liability purposes, [Defendants] may
5 want to consider guardrail modifications throughout the Property.” (*Id.* at 21.) Mr. Harvey
6 testified that a “liability” issue is a safety issue and risk to human health, meaning that someone
7 could get hurt or killed by the condition of the guest corridor railings. He testified that the guest
8 corridor railings were dangerous prior to July 18, 2015. This Property Condition Assessment
9 report was provided to Hotel ownership in June 2012, over three years before Stephanie Martinez
10 was killed by the dangerous condition of the railings.

11 Next, Defendants were warned by specialists hired to evaluate the conditions of the Hotel.
12 In October 2013, a site survey and Americans with Disabilities Act (ADA) evaluation was
13 performed at the Owners’ request. (Exh. 7, October 29, 2013 Site Survey & ADA Evaluation
14 Report.) The resulting report specifically stated that “all interior/exterior railings exhibit excessive
15 spacing of picket that could allow entrapment room” and stated that the Hotel needed to “install
16 new or modify approximately 4000 lineal feet of existing 2nd to 7th floor interior railing and
17 exterior railing at stair landings to provide compliant 42” minimum height guard rail with
18 maximum gapping in all areas to allow 4” sphere to pass through.” (*Id.* at 35-36.) All of the action
19 items contained within this report were non-negotiable – in order to maintain the “Embassy
20 Suites” brand, they had to be completed. This Report was provided to Hotel ownership in at least
21 January 2014, a year and a half before Stephanie Martinez was killed by the dangerous condition
22 of the railings.

23 In addition, Defendants’ own general contractor hired to perform the renovations on the
24 Hotel warned them about the dangerous condition of the railings. Bret Morrison of JAC
25 Construction was assigned to the Hotel starting in January 2015. In April 2015, Mr. Morrison
26 walked on an upper floor of the Hotel for the first time, noticed that the guest corridor balusters
27 were around 6 inches apart, and knew that such spacing violated the building code requirement of
28 a gap of no more than 4 inches between balusters. He believed the excessive spacing was unsafe.

1 He immediately brought it to the attention of Megan Paulsgrove, the project manager for Urban
2 Commons working at the Hotel at that time. Mr. Morrison brought up with Defendants the need
3 to modify the guest corridor baluster spacing two or three times prior to July 18, 2015.

4 Most tellingly, Defendants’ own emails indicate that they knew the railings were
5 dangerous and needed to be changed. On May 14, 2015, Ms. Paulsgrove emailed a group of
6 people, including Urban Commons’ principal Taylor Woods and Brighton general manager Tanya
7 Eisenman. (Exh. 8, May 14, 2015 Email.) Ms. Paulsgrove advised the group that the Hotel
8 needed “to bring the railing to code, 2 inches at the bottom and less than 4 inches on the vertical
9 post.” On May 21, 2015, Ms. Paulsgrove emailed the same group, stating that the railings
10 “throughout all corridors” needed to be changed, that they would “[n]eed to design a solution that
11 works with cost” as replacing the railing “will be about \$265,000” and the Hotel needed “a less
12 expensive solution.” (Exh. 9, May 21, 2015 Emails.) In response, Mr. Woods asked why
13 Defendants had to do more to the railings than add a bottom rail, to which Ms. Paulsgrove replied
14 that “[t]he vertical metal posts are not per code, more than 4” apart.”

15 ***Defendants Did Nothing to Protect Guests:*** Despite being warned for years, Defendants
16 did absolutely nothing to address the dangerous condition of the guest corridor railings (or any
17 other railings at the Hotel). No one from Urban Commons inspected the Hotel before it was
18 purchased to determine whether there were any conditions that posed a danger to guests. No one
19 at Urban Commons was in charge of safety during the renovation of the Hotel. No one at Urban
20 Commons was responsible for determining whether the guest corridor railings were safe for
21 guests. No one at Urban Commons knew the City of Anaheim requirements for railing baluster
22 spacing. Brighton also did nothing to ensure that the guest corridor railings were safe. Ms.
23 Eisenman, who was in charge of guest safety at the Hotel, was never trained to inspect the guest
24 corridor railings for anything other than cleanliness. She has no familiarity with the building code
25 sections applicable to the corridor railings. None of Brighton’s employees were ever trained
26 regarding safe baluster spacing for railings on the property.

27 Defendants were warned in 2012 and 2013 that the railings were dangerous – they could
28 have modified the railings then. The Urban Commons project manager who worked on the

1 renovations prior to Ms. Paulsgrove testified there was no reason why the railings could not have
2 been modified in 2014. Owner Mr. Woods testified there was no reason why the railings could
3 not have been modified before July 18, 2015. General contractor Mr. Morrison also testified there
4 was no reason why the railings could not have been modified earlier.

5 After Ms. Martinez was killed, the Hotel put temporary safety fencing on the guest
6 corridor railings on all six floors. This safety fencing cost \$880 and took less than two weeks to
7 install. Mr. Morrison testified that there was no reason why the temporary safety fencing could
8 not have been installed as soon as the Hotel was warned about the excessive baluster spacing.
9 Defendants chose to do nothing until someone was killed. The Hotel eventually modified the
10 guest corridor railings by welding additional balusters onto the existing railings to make the gaps
11 between the vertical bars less than 4 inches. This process took just 3 months and only cost
12 \$131,000. Urban Commons spent \$25 million to purchase the Hotel, and likely millions of dollars
13 on its renovation. The cost to make the guest corridor railings safe for guests was 0.005% of the
14 Hotel purchase price.

15 Defendants' complete and utter conscious disregard for the safety of the Hotel guests was
16 made even more evident by Defendants' failure to have any meaningful response to a three-year-
17 old child being killed by their dangerous railings, which is exemplified by three facts. First, the
18 baluster spacing of the guestroom balconies at the Hotel still does not comply with California
19 Building Code requirements and currently exceeds 4 inches. This is despite the fact that both the
20 2012 and 2013 reports of the property both specifically identified the guestroom balcony baluster
21 spacing as something that was dangerous and needed to be changed; despite the fact that Mr.
22 Morrison warned Defendants before July 18, 2015 that the balcony railings had excessive baluster
23 spacing; and despite the fact that *after* Ms. Martinez was killed, Mr. Morrison again renewed his
24 concerns about the balcony railings and Defendants told him to only fix the guest corridor railings.
25 Despite all these warnings, and despite a child being killed, the balcony railings on the guestrooms
26 at the Hotel still to this day have baluster spacing greater than 4 inches.

27 Second, the guest corridor railings have never met and currently do not meet the California
28 Building Code requirements for railing height. This is despite the fact that since 1987 (when the

1 Hotel was built), all railings in California have been required to be 42 inches high; despite the fact
2 that the 2013 report of the property specifically identified the fact that the guest corridor and
3 balcony railings were not tall enough and needed to be changed; and despite the fact that Mr.
4 Morrison warned Defendants before July 18, 2015 that the railings' height were not to code.
5 Despite all of these warnings, and despite a child being killed, the guest corridor railings still to
6 this day are not 42 inches tall.

7 Third, it took Defendants nearly two years to fix dangerous railings with identical hazards
8 at a similar hotel after Ms. Martinez was killed. Defendants owned and managed another
9 Embassy Suites hotel that was being renovated at the same time as the Hotel – the Embassy Suites
10 Palm Desert (“ESPD”). ESPD had stairway railings with balusters that were spaced over *seven*
11 inches apart. Despite the fact that this spacing violated both the building code in effect when
12 ESPD was being renovated (requiring spacing of 4 inches or less) and the building code that was
13 in effect at the time ESPD was constructed (requiring spacing of 6 inches or less); despite the fact
14 that Mr. Morrison had warned Defendants that the stairway railings at ESPD needed to be
15 changed; and despite the fact that Ms. Martinez was killed at one of their properties after climbing
16 through excessively-spaced railing balusters in July 2015, Defendants didn't do anything to
17 address any excessive baluster spacing of the stairway railings at ESPD until March 2017, nearly
18 two years later.

19 Defendants still maintain there was nothing and is nothing dangerous about the Hotel's
20 railings, despite the fact that they still are noncompliant with the building code. Hotel owner Mr.
21 Woods was clear in his deposition that the railings were “satisfactory” and the only reason
22 Defendants modified them was because they were already going to add a bigger bottom rail to the
23 railings. He was clear that neither guest safety nor Stephanie Martinez's death played any part in
24 his decision to approve the modification of the baluster spacing of the guest corridor railings.
25 And, as evidenced by the correspondence among Defendants during the renovation of the Hotel,
26 when Defendants eventually decided to address the excessive baluster spacing of the railings, their
27 only concern was cost. In a May 21, 2015 email, Urban Commons project manager Ms.
28 Paulsgrove again indicated that all of the guest corridor railing baluster spacing needed to be

1 changed and that replacing them would cost approximately \$265,000. (Exh. 9, May 21, 2015
2 Emails.) She indicated that the Hotel needed “a less expensive solution.” (*Id.*) Mr. Woods’
3 responded, asking why all of the railings needed to be changed, given that Hilton was only
4 requiring them to replace the bottom rail “which is cheap.” (*Id.*) When they eventually settled on
5 a modification, they chose the one that was “\$100,000 in savings.”

6 As is so evident in this case, the failure to remedy the dangerous condition of the railings at
7 the Hotel or at the most basic, warn of their condition, is fraught with a foreseeable and substantial
8 risk of serious and life-threatening danger. The building code requirement for baluster spacing
9 was changed from 6 inches to 4 inches in 1991 after it was determined that 4 inches would more
10 effectively prevent small children from falling through the balusters. As Mr. Harvey testified, the
11 change was made to prevent exactly the situation that led to Ms. Martinez’s death.

12 Punitive damages may be awarded where a party presents evidence that a defendant acted
13 with “oppression, fraud, or malice.” (Cal. *Code Civ. Proc.* § 3294(a).) *Code of Civil Procedure*
14 section 3294 defines “malice” as “despicable conduct which is carried on by the defendant with a
15 willful and conscious disregard of the rights or safety of others.” (Cal. *Code Civ. Proc.* §
16 3294(c)(1).)

17 “Malice” does not require deliberate conduct. In interpreting the intent of Section 3294,
18 the California Supreme Court agreed malice can be shown where a defendant has “conscious[ly]
19 disregard[ed] the safety of others,” and that **punitive damages may be awarded where a**
20 **plaintiff establishes that “the defendant was aware of the probable dangerous consequences**
21 **of his conduct**, and that he willfully and deliberately failed to avoid those consequences.” (*Taylor*
22 *v. Sup. Ct.* (1979) 24 Cal.3d 890, 895-96, citing *G.D. Searle & Co. v. Sup. Ct.* (1975) 49
23 Cal.App.3d 22, 32, emphasis added; see also *Grimshaw v. Ford* (1980) 119 Cal. App. 3d 757, 808
24 [holding that “numerous California cases...have interpreted the term “malice” as used in section
25 3294 to include, not only a malicious intention to injure the specific person harmed, but conduct
26 evincing a ‘conscious disregard of the probability that the actor’s conduct will result in injury to
27 others.’”].) Malice may be proved either expressly through direct evidence or by implication
28 through indirect evidence from which the jury draws inferences. (See *Angie M. v. Sup. Ct.* (1995)

1 37 Cal.App.4th 1217, 1228; see also *Seimon v. Southern Pac. Trans. Co.* (1977) 67 Cal.App.3d
2 600, 607 “[M]ost often this element is proven by circumstantial evidence alone.”.)

3 Moreover, punitive damages are appropriate in a case alleging negligence. In *Taylor*,
4 *supra*, the defendant injured the plaintiff in an automobile collision. The plaintiff brought an
5 action for negligence and in connection with the negligence action sought punitive damages by
6 alleging that defendant was driving while intoxicated. The trial court struck the claim for punitive
7 damages based on the defense argument that punitive damages could not be plead in a negligence
8 case and that a drunk driver lacked the ability to form a malicious intent to kill. (*Taylor, supra*, 24
9 Cal.3d at 893.) The California Supreme Court overturned the motion to strike and held that a
10 plaintiff asserting a claim for negligence could also seek punitive damages: “We suggest
11 **conscious disregard of safety** as an appropriate description of the animus malus which may
12 justify an exemplary damage award when nondeliberate injury is alleged.” (*Id.* at 895, emphasis
13 added.)

14 In the context of premises liability, a defendant acting without intent to cause harm, but
15 who is careless in maintaining property, can be liable for punitive damages. In *Nolin v. National*
16 *Convenience Stores, Inc.* (1979) 95 Cal. App. 3d 279, the plaintiff alleged that a slip and fall
17 accident, which occurred near gas pumps at a convenience store, was caused by the defendant’s
18 conduct. Plaintiff’s contention, which was ultimately accepted by the jury, was that the defendant
19 had so carelessly maintained the area surrounding its self-service gas pumps that it had displayed a
20 conscious disregard for the safety of its customers. (*Id.* at 282-284.) In affirming a jury verdict in
21 favor of the plaintiff including an award of punitive damages, the *Nolin* court observed:

22 A tort having some of the characteristics of both negligence and willfulness occurs
23 when a person with no intent to cause harm intentionally **performs an act so**
24 **unreasonable and dangerous that he knows, or should know, it is highly**
25 **probable that harm will result.** Such a tort...is most accurately designated as
26 wanton and reckless misconduct. It involves no intention, as does willful
misconduct, to do harm, and it differs from negligence in that it does involve an
intention to perform an act that the actor knows, or should know, will very
probably cause harm.

27 (*Id.* at 286, emphasis added.) The *Nolin* court specifically noted that the defendant did nothing to
28 train its employees regarding the hazard posed by leaking gas and spilled oil (*id.* at 283-284); here,

1 Defendants did nothing to train their employees about regarding guest safety, let alone the hazard
2 posed by the Hotel’s defective railings. The *Nolin* court also specifically noted that the defendant
3 repeatedly ignored warnings by its employees about the danger posed by the leaking gas and
4 spilled oil (*id.*); here, Defendants ignored repeated warnings from individuals they themselves
5 hired to give them warnings about the danger posed by the excessive spacing of the railing
6 balusters.

7 But Defendants’ conduct is far worse than the Defendants in *Nolin*. In *Nolin*, the danger
8 posed by the leaking gas and spilled oil had only existed for five months. (*Id.* at 283.) In this case,
9 the danger posed by the excessive baluster spacing existed far longer – since the Hotel was built in
10 1987. Defendants were made specifically aware of this danger in June 2012, one month after they
11 purchased the property. The Defendants knew the hazard in this case had existed for a minimum
12 of three years before Ms. Martinez was killed and did absolutely nothing to address it. In *Nolin*,
13 once the defendant’s lower-level employees discovered the hazardous gas leak and oil spills, they
14 attempted to warn customers with warning signs. (*Id.* at 284.) They also attempted to clean up the
15 gas and oil spills but did so infrequently and ineffectively. (*Id.* at 283-284.) In this case,
16 Defendants did absolutely nothing to address the danger posed by the railings at the Hotel – they
17 never inspected them for anything other than cleanliness; they never measured them to make sure
18 they were safe for children; and even once they were made aware of the danger, Defendants never
19 put up any warning signs or safety barricades to protect hotel guests. In *Nolin*, the risk of injury
20 by slipping and falling on the leaked gas was serious but not grave – the plaintiff in that case
21 sustained a fractured ankle. (*Id.* at 282.) In this case, the risk of injury is catastrophic – either
22 severe injury or death. These railings are on the second through seventh floors of the Hotel where
23 all of the guestrooms are located. The second-floor guest corridor railing is 12 feet from the
24 atrium floor below, and each floor above that is another 8.5 feet higher. Even a fall from the
25 second floor would likely result in severe injury or death. Ms. Martinez fell from the fifth floor –
26 over 37 feet – and landed on the atrium tile floor, sustaining severe blunt force trauma to her torso
27 and head which eventually led to her death.

28 Moreover, the law is clear that Defendants owed a higher duty to its hotel guests such as

1 Ms. Martinez than the defendant in *Nolin* owed to customers of its convenience store. Courts
2 “have observed that ‘hotel proprietors have a special relationship with their guests that gives rise
3 to a duty ‘to protect them against unreasonable risk of physical harm.’...[H]otel guests can
4 reasonably expect that the hotel owner will be reasonably diligent in inspecting its rooms for
5 defects, and correcting them upon discovery.” (*Lawrence v. La Jolla Beach & Tennis Club, Inc.*
6 (2014) 231 Cal.App.4th 11, 22, internal citations omitted, emphasis added.) While “an innkeeper
7 is not an insurer of the safety of his guests”, hotel owners and managers such as Defendants
8 “owe[] to them ordinary care to see that the premises assigned to them are reasonably safe for their
9 use and occupancy.” (*Id.* at 26-27 [citing *Baker v. Dallas Hotel Co.* (5th Cir. 1934) 73 F.2d 825,
10 827-828].)

11 The law is also clear that Defendants owed minor hotel guests such as Ms. Martinez a
12 higher duty than the defendant in *Nolin* owed to its customers. It is well-settled that “a greater
13 degree of care is generally owed to children because of their lack of capacity to appreciate risk and
14 to avoid danger. A landowner similarly shares that duty to ‘protect the young and heedless from
15 themselves and guard them against perils that reasonably could have been foreseen.’ The
16 determination of the scope of foreseeable perils to children must take into consideration the known
17 propensity of children to intermeddle.” (*Lawrence, supra*, 231 Cal.App.4th at 24, emphasis
18 added.) “When a child of tender years is accepted as a guest, the inexperience and the natural
19 tendencies of such a child became a part of the situation and must be considered by the innkeeper.
20 We do not mean that the innkeeper becomes the nurse of the child, or assumes its control when the
21 child is accompanied by its parents, but only that he is bound to consider whether his premises,
22 though safe enough for an adult, present any reasonably avoidable dangers to the child guest.” (*Id.*
23 at 27, emphasis added [citing *Baker v. Dallas Hotel Co.* (5th Cir. 1934) 73 F.2d 825, 827-828].)
24 This duty is particularly poignant in this case where Defendants specifically marketed the Hotel to
25 families with small children, advertising its proximity to and connection with the Disneyland
26 resort, selling tickets to the park, and providing a free shuttle to and from the park.

27 Importantly, courts recognize that the “burden and cost to hotel owners” and operators
28 such as Defendants of making their property safe with protective devices such as temporary safety

1 fencing that costs \$880 or additional balusters on railings that cost just \$131,000 “is minimal
2 compared to the risk of small children suffering serious injury or death from such falls,
3 particularly in light of the obvious public policy of protecting children from accidental serious
4 injury and death.” (*Lawrence, supra*, 231 Cal.App.4th at 29-30, emphasis added [citing *Martinez*
5 *v. Bank of America* (2000) 82 Cal.App.4th 883, 897].)

6 Despite the fact that they owed Ms. Martinez and other children staying at their Hotel a
7 higher duty of care, Defendants did nothing to remedy or even warn of the danger posed by the
8 excessive baluster spacing on the Hotel’s railings. To this day, Defendants are unapologetic about
9 their failure to do anything to address the dangerous condition of the Hotel’s railings and refuse to
10 acknowledge they did anything wrong. The only way corporate change is going to occur at such
11 companies is with an award of punitive damages.

12 **IV. GOOD CAUSE EXISTS FOR THIS AMENDMENT.**

13 Here, good cause exists to allow Plaintiffs to amend their Complaint to include specific
14 facts of Defendants’ conscious disregard for the safety of the public warranting exemplary
15 damages. The guest corridor railings had a serious and known risk of causing severe injury or
16 death. Defendants not only deliberately failed to act before someone was killed, but actually have
17 continued to fail to act to protect their guests against this known hazard. Plaintiffs’ proposed
18 amendments are based on material facts and specific allegations that have been obtain as the result
19 of recently conducted discovery.

20 **A. Changes Plaintiffs Seek to Make to Their Complaint.**

21 In compliance with California *Rules of Court* Rule 3.1324, the following changes to
22 Plaintiffs’ complaint are warranted in light of Defendants’ conscious disregard for the safety of the
23 public. A copy of the proposed First Amended Complaint is attached as Exhibit 2. The changes
24 include:

- 25 1. The First Amended Complaint adds facts in support of a prayer for punitive
26 damages against Defendants at Para. 10 (Pg. 3:19-20), Para. 12 (Pg. 3:26-28),
27 Para. 13 (Pg. 4:1-3), Para. 14 (Pg. 4:4-10), Para. 15 (Pg. 4:11-15), Para. 16
28 (Pg. 4:16-19), Para. 17 (Pg. 4:20-26); Para. 18 (Pgs. 4:27-5:4), Para. 19 (Pg.
5:5-9), Para. 20 (Pg. 5:10-14), Para. 21 (Pg. 5:15-20), Para. 22 (Pgs. 5:21-6:3),
Para. 23 (Pg. 6:4-6), Para. 24 (Pg. 6:7-16), Para. 25 (Pg. 6:17-19), Para. 26

1 (Pgs. 6:20-7:2), Para. 27 (Pg. 7:3-14), Para. 28 (Pg. 7:15-17), Para. 29 (Pg.
2 7:17-24), Para. 30 (Pgs. 7:25-8:2), Para. 31 (Pg. 8:3-11), Para. 32 (Pg. 8:12-
3 18), Para. 33 (Pgs. 8:19-9:11), Para. 34 (Pgs. 9:12-10:3), Para. 35 (Pg. 10:4-
4 16), Para. 43 (Pg. 12:5-13), and Para. 49 (Pg. 13:17-25).

2. The First Amended Complaint adds a prayer for punitive damages against
Defendants on Page 14:10-13.

5 **B. The Amendments Are Proper Since They Arise From the Same General Set of**
6 **Facts.**

7 In *Glaser v. Meyers* (1982) 137 Cal.App.3d 770, 777, the court wrote that “[e]ven an
8 amendment which gives rise to a separate cause of action is permitted if recovery is being sought
9 ‘on the same general set of facts,’ and if the amendment is not prejudicial to the party against
10 whom it is offered.” While Plaintiffs seek to include more specific facts of oppressive conduct on
11 the part of Defendants in their First Amended Complaint, this evidence is based on the same
12 general set of facts found in the operative Complaint. The facts Plaintiffs have added to their
13 Proposed First Amended Complaint merely elaborate and expand on the conduct that originally
14 subjected Defendants to this litigation. The complaint originally alleged that Defendants owned,
15 operated, and maintained the Hotel in such a manner that created a dangerous condition that
16 caused Ms. Martinez’s death. This complaint merely explains that Defendants had a direct and
17 intentional role in allowing the dangerous condition to remain after knowing about the danger for
18 years and doing nothing to remedy it or warn about it.

19 **C. Great Liberality Is Permitted in Amending the Pleadings at Any Stage.**

20 The California Legislature has articulated a policy of great liberality in permitting
21 amendments to the pleadings at any stage of the proceedings. *Code of Civil Procedure* section
22 473 states that “[t]he court may...in its discretion, after notice to the adverse party, allow, upon
23 any terms as may be just, an amendment to any pleading or proceeding in other particulars...” In
24 addition, *Code of Civil Procedure* section 576 provides that “[a]ny judge, **at any time**, before or
25 after commencement of trial, in the furtherance of justice, and upon such terms as may be proper,
26 may allow the amendment of any pleading or pretrial conference order.”

27 California courts have held that statutory provisions such as Section 473 are to be liberally
28 construed in order to permit amendments. (See *Klopstock v. Sup. Ct.* (1941) 17 Cal.2d 13, 19; *see*

1 also *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581,
2 596.) In fact, the Court has discretion to permit any sort of amendment, and even those setting
3 forth entirely new claims are permitted. (See *Berman v. Bromberg* (1997) 56 Cal.App.4th 936,
4 945.) The liberal amendment of pleadings in furtherance of justice is also an established judicial
5 policy in California. For example, the Court in *Hirsa v. Superior Court* (1981) 118 Cal.App.3d
6 486, 488-89 stated:

7 Trial courts are vested with the discretion to allow amendments to pleadings “in
8 furtherance of justice.” That trial courts are to liberally permit such amendments,
9 at any stage of the proceeding, has been established policy in this state . . .
rest[ing] on the fundamental policy that “cases should be decided on their merits.”

10 Indeed, the judicial policy favoring amendment of the pleadings is so strong that denials
11 will be justified only in rare instances. (See *Morgan v. Sup. Ct.* (1959) 172 Cal.App.2d 527, 530.)
12 In *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 278, the court
13 found that:

14 While a motion to permit an amendment to a pleading to be filed is one addressed
15 to the discretion of the court, the exercise of this discretion must be sound and
16 reasonable and not arbitrary or capricious. And it is a rare case in which ‘a court
17 will be justified in refusing a party to leave to amend his pleading so that he may
18 properly present his case.’ If the motion to amend is timely made and the
19 granting of the motion will not prejudice the opposing party, it is error to refuse
20 permission to amend and where the refusal also results in a party being deprived
21 of the right to assert a meritorious cause of action or a meritorious defense, it is
22 not only error but an abuse of discretion.

23 “[A]n amendment is permissible if it does not change the cause of action even though it seeks an
24 additional or entirely different remedy or relief.” (5 Witkin, Cal. Proc. *Pleading* § 1229 (5th ed.
25 2008).)

26 Finally, California courts do not consider the validity of a proposed amended pleading in
27 deciding whether to grant leave to amend. (See *Kittredge Sports Company v. Sup. Ct.* (1989) 213
28 Cal.App.3d 1045, 1048.) Rather, it is after the leave to amend is granted that opposing parties will
have an opportunity to attack the validity of the amended pleading. (*Id.*) Under the numerous
cases cited above, this Court should grant Plaintiffs’ Motion to Amend the Original Complaint.
Plaintiffs’ amendments are in furtherance of justice and judicial expediency because it allows the

1 Plaintiffs to set forth more fully and accurately all claims against Defendants.

2 **D. There Will Be No Prejudice to Defendants.**

3 A court may grant leave to amend the pleadings at any stage of the litigation, up to and
4 including the time of trial, so long as it does not result in prejudice to the adverse party. (See
5 *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761, *citing Magpali v. Farmers Group, Inc.*
6 (1996) 48 Cal.App.4th 471, 487.) In fact, it is an abuse of discretion for the trial court to deny
7 leave where the amendment has not misled or prejudiced the other side, even if the amendment is
8 sought as late as the time of trial. (See *Higgins v. Del Faro* (1981) 123 Cal.3d 558, 564-65; *see*
9 *also Deetz v. Carter* (1965) 232 Cal.App.2d 851, 857.)

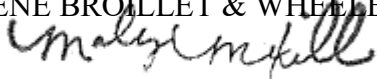
10 Amending the Complaint would not result in any prejudice to Defendants. All of the
11 information that resulted in the amending of the complaint was already in the possession of the
12 Defendants before it was produced to Plaintiffs. Defendants are well-aware of the facts that form
13 the basis of Plaintiffs' amendments. Plaintiffs have been diligently pursuing their case and have
14 only now filed this Motion to Amend based on facts that were discovered during depositions
15 Plaintiffs took and from documents Defendants disclosed after Plaintiffs' counsel had to send
16 multiple discovery requests and meet and confer with them in order to get them to produce them.
17 Defendants have requested extensions for nearly every set of discovery requests served in this
18 case, and have at times produced incomplete responses or incomplete documents, requiring
19 Plaintiffs' counsel to meet and confer in order to get relevant information. Any delay in Plaintiffs'
20 filing this Motion should be attributed to Defendants and not Plaintiffs.

21 **V. CONCLUSION**

22 For the foregoing reasons, Plaintiffs' Motion for leave to file a First Amended Complaint
23 with allegations supporting a claim for punitive damages should be granted, and the Proposed First
24 Amended Complaint attached hereto as Exhibit 2 should be deemed filed and served as of the date
25 of the Court's granting of this Motion.

26 DATED: November 14, 2018

GREENE BROILLET & WHEELER, LLP

27 
28 Molly M. McKibben
Attorneys for Plaintiffs

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DECLARATION OF MOLLY M. McKIBBEN

I, MOLLY M. McKIBBEN, declare and say that:

I am an attorney at law licensed to practice before all of the courts of the State of California, and am a member of the law firm of Greene Broillet & Wheeler, LLP, attorneys of record for Plaintiffs. As such, I have personal knowledge of the facts surrounding the present action and all facts herein stated. If called as a witness, I could testify competently to the following:

1. Three-year-old Stephanie Martinez was killed as a result of the dangerous condition of the Embassy Suites Anaheim North Hotel on July 18, 2015.

2. This case was filed on July 17, 2017.

3. Trial is set for January 17, 2019.

4. Attached hereto as Exhibit “1” is a true and correct copy of Plaintiffs’ reservation information for a hearing on their Motion to Amend the Complaint.

5. Attached hereto as Exhibit “2” is a true and correct copy of the [Proposed] First Amended Complaint that Plaintiffs seek to file in this case. Plaintiffs respectfully request an Order that the Proposed First Amended Complaint be deemed by this Court to be the amended pleading, and that it be deemed filed and served as of the date of the Court’s granting of Plaintiffs’ Motion For Leave to Amend Complaint.

6. Attached hereto as Exhibit “3” is a true and correct copy of a photograph of the atrium of the Embassy Suites Anaheim North hotel (“the Hotel”) taken before the Hotel was renovated. This photograph was attached as “Exhibit 2” to the deposition of Taylor Woods, principal of Urban Commons.

7. Attached hereto as Exhibit “4” is a true and correct copy of a photograph of the guest corridor railings of the Hotel taken before the Hotel was renovated. This photograph was attached as “Exhibit 3” to the deposition of Taylor Woods, principal of Urban Commons.

8. Attached hereto as Exhibit “5” is a true and correct copy photographs taken by the Anaheim Police Department on July 18, 2015 of the guest corridor railings at the Hotel. These

1 photographs were attached as “Exhibit N” to the deposition of Anaheim PD Forensic Specialist
2 Jeannette Torres.

3 9. Attached hereto as Exhibit “6” is a true and correct copy of the pertinent portions of
4 the June 27, 2012 Property Condition Assessment Report related to the Hotel.

5 10. Attached hereto as Exhibit “7” is a true and correct copy of the pertinent portions of
6 the October 29, 2013 Site Survey and ADA Evaluation Report related to the Hotel.

7 11. Attached hereto as Exhibit “8” is a true and correct copy of emails between
8 Defendants’ and their consultants dated May 14, 2015 and May 19, 2015.

9 12. Attached hereto as Exhibit “9” is a true and correct copy of emails between
10 Defendants’ and their consultants dated May 21, 2015.

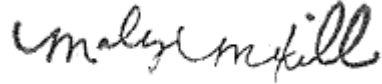
11 13. Good cause exists for this Motion. The facts alleged in the new amended
12 complaint arise out of the original facts that form the basis of this lawsuit. The original complaint
13 alleged that Defendants were liable for the dangerous and defective condition of the property they
14 own and manage, the Embassy Suites Hotel Anaheim North. The amendments merely reflect the
15 fact that Defendants was warned specifically multiple times prior to Ms. Martinez’s death about
16 the dangerous condition of the railings at the Hotel and chose to do nothing to remedy or warn of
17 the danger.

18 14. Amending the Complaint would not result in any prejudice to Defendants. All of
19 the information that resulted in the amending of the complaint was already in the possession of the
20 Defendants before it was produced to my office. Defendants are well-aware of the facts that form
21 the basis of Plaintiffs’ amendments. My office has been diligently pursuing Plaintiffs’ case and
22 have only now filed this Motion to Amend based on facts that were discovered during depositions
23 I took and from documents Defendants disclosed after I had to send multiple discovery requests
24 and meet and confer with defense counsel in order to get them to produce them. Defense counsel
25 has requested extensions for nearly every set of discovery requests served in this case and have at
26 times produced incomplete responses or incomplete documents, requiring me to meet and confer
27 in order to get relevant information. I reserved this hearing date on September 21, 2018 for the
28

1 first available date that worked with my schedule. Any delay in Plaintiffs' filing this Motion
2 should be attributed to Defendants and not Plaintiffs.

3
4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed this 14th day of November, 2018, at Santa Monica, California.

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Molly M. McKibben
10 Declarant

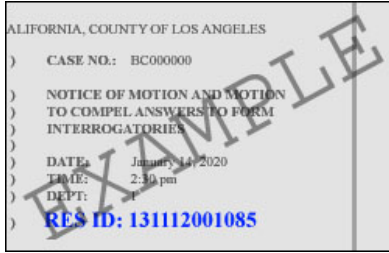
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Exhibit	Description
1	Hearing Reservation Information
2	[Proposed] First Amended Complaint
3	Pre-Renovation Photograph of Hotel Atrium
4	Pre-Renovation Photograph of Hotel Guest Corridor Railings
5	Anaheim Police Department Photographs of Guest Corridor Railings (Taken 7/18/15)
6	June 27, 2012 Property Condition Assessment Report
7	October 29, 2013 Site Survey & ADA Evaluation Report
8	May 14, 2015 Emails
9	May 21, 2015 Emails

EXHIBIT 1

THIS IS YOUR CRS RECEIPT

INSTRUCTIONS	
Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.	
 <p>ALIFORNIA, COUNTY OF LOS ANGELES) CASE NO.: BC000000)) NOTICE OF MOTION AND MOTION) TO COMPEL ANSWERS TO FORM) INTERROGATORIES)) DATE: January 14, 2020) TIME: 2:30 pm) DEPT:) RES ID: 131112001085</p>	

RESERVATION INFORMATION

Reservation ID: **180921350988**
Transaction Date: September 21, 2018
Case Number: BC668651
Case Title: ESTATE OF STEPHANIE MARTINEZ ET AL VS BRIGHTON MANAGEMENT LL
Party: ESTATE OF STEPHANIE MARTINEZ BY AND (Plaintiff/Petitioner)
Courthouse: Spring Street Courthouse
Department: 5
Reservation Type: **Motion for Leave to Amend**
Date: 12/13/2018
Time: 01:30 pm

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: Party asserts first paper was previously paid.

Description	Fee
Motion for Leave to Amend	\$60.00
Total Fees:	Receipt Number: 1180921K3900 \$60.00

PAYMENT INFORMATION

Name on Credit Card: Mark Quigley
Credit Card Number: XXXX-XXXX-XXXX-6110

A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE MOTION/DOCUMENT FACE PAGE.

EXHIBIT 2

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GREENE BROILLET & WHEELER, LLP
LAWYERS
100 WILSHIRE BOULEVARD, SUITE 2100
P.O. BOX 2131
SANTA MONICA, CALIFORNIA 90407-2131
TEL. (310) 576-1200
FAX. (310) 576-1220

(SPACE BELOW FOR FILING STAMP ONLY)

SCOTT H. CARR, State Bar No. 156664
MOLLY M. McKIBBEN, State Bar No. 273897

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ESTATE OF STEPHANIE MARTINEZ, by
and through its Successors in Interest JESUS
MARTINEZ AVILA and ALEJANDRA
SANDOVAL DURAN; JESUS MARTINEZ,
an individual; ALEJANDRA SANDOVAL, an
individual;

Plaintiffs,

vs.

BRIGHTON MANAGEMENT, LLC, a limited
liability company; URBAN COMMONS
FRONTERA, LLC, a limited liability company;
UCF 1, LLC, a limited liability company;
DOES 1 through 100, inclusive,

Defendants.

CASE NO.

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR WRONGFUL
DEATH**

- 1. Negligence**
- 2. Survival Action**

DEMAND FOR JURY TRIAL

**AMOUNT IN CONTROVERSY
EXCEEDS \$25,000.00**

COME NOW the plaintiffs ESTATE OF STEPHANIE MARTINEZ, by and through its
successors in interest, JESUS MARTINEZ AVILA and ALEJANDRA SANDOVAL DURAN;
JESUS MARTINEZ AVILA, an individual; ALEJANDRA SANDOVAL DURAN, an individual
(collectively "Plaintiffs"), and for causes of action against defendants, and each of them, alleges:

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GENERAL ALLEGATIONS

1
2
3 1. The true names and capacities, whether individual, corporate, associate or
4 otherwise, of defendants DOES 1 through 100, inclusive, and each of them, are unknown to
5 plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs are informed and
6 believe and thereupon allege that each of the defendants fictitiously named herein as a DOE is
7 legally responsible, negligently or in some other actionable manner, for the events and happenings
8 referred to, and thereby proximately caused the injuries to Plaintiffs as hereinafter alleged.
9 Plaintiffs will seek leave of court to amend this Complaint and state the true names and/or
10 capacities of said fictitiously named defendants when the same have been ascertained.

11 2. Plaintiffs are informed and believe and thereupon allege that at all times mentioned
12 herein, defendants, and each of them, including DOES 1 through 100, inclusive, and each of them,
13 were the agents, servants, employees and/or joint venturers of their co-defendants, and each was,
14 as such, acting within the course, scope and authority of said agency, employment and/or venture,
15 and that each and every defendant, as aforesaid, when acting as a principal, was negligent in the
16 selection and hiring of each and every other defendant as an agent, employee and/or joint venture.

17 3. Plaintiff JESUS MARTINEZ AVILA is the surviving father of decedent
18 STEPHANIE MARTINEZ. Plaintiff ALEJANDRA SANDOVAL DURAN is the surviving
19 mother of decedent STEPHANIE MARTINEZ. As such, Plaintiffs JESUS MARTINEZ AVILA
20 and ALEJANDRA SANDOVAL DURAN are the surviving heir at laws of STEPHANIE
21 MARTINEZ. Plaintiffs JESUS MARTINEZ AVILA and ALEJANDRA SANDOVAL DURAN
22 are the decedent’s successors in interest pursuant to California *Code of Civil Procedure* § 377.11.
23 (*See* Declarations of JESUS MARTINEZ AVILA and ALEJANDRA SANDOVAL DURAN
24 collectively attached hereto as Exhibit 1.)

25 4. Plaintiff JESUS MARTINEZ AVILA is, and at all times mentioned herein, was a
26 resident of the County of Clark, State of Nevada.

27 5. Plaintiff ALEJANDRA SANDOVAL DURAN is, and at all times mentioned
28 herein, was a resident of the County of Clark, State of Nevada.

1 6. Plaintiffs are informed and believe, and thereupon allege that defendant
2 BRIGHTON MANAGEMENT, LLC is a California limited liability company with its principal
3 place of business located at 21725 Gateway Center Drive, in Diamond Bar, County of Los
4 Angeles, State of California.

5 7. Plaintiffs are informed and believe, and thereupon allege that defendant URBAN
6 COMMONS FRONTERA, LLC is a California limited liability company with its principal place
7 of business located at 777 S. Figueroa Street, Suite 2850, in Los Angeles, County of Los Angeles,
8 State of California.

9 8. Plaintiffs are informed and believe, and thereupon allege that defendant UCF 1,
10 LLC is a Delaware limited liability company which is authorized to and does conduct business in
11 the State of California, with its principal place of business located at 3334 E Coast Highway, Suite
12 350, in Corona Del Mar, County of Orange State of California.

13 9. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned
14 herein, that defendants BRIGHTON MANAGEMENT, LLC and DOES 1 through 100, inclusive,
15 and each of them, are and were the property manager of the Embassy Suites Hotel, located at 3100
16 E. Frontera St., Anaheim, California 92806 (referred to hereinafter as the "SUBJECT
17 PREMISES"), were responsible for the property, and had a duty to insure the safety of persons on
18 the SUBJECT PREMISES, including decedent STEPHANIE MARTINEZ.

19 10. Plaintiffs are informed and believe, thereupon allege, that defendants BRIGHTON
20 MANAGEMENT, LLC began managing the SUBJECT PREMISES on or about August 29, 2012.

21 11. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned
22 herein, that defendants URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1
23 through 100, inclusive, and each of them, are and were the owners SUBJECT PREMISES, were
24 responsible for the property, and had a duty to insure the safety of persons on the SUBJECT
25 PREMISES, including decedent STEPHANIE MARTINEZ.

26 12. Plaintiffs are informed and believe, thereupon allege, that defendants URBAN
27 COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of
28 them, purchased the SUBJECT PREMISES on or about May 25, 2012.

1 13. Plaintiffs are informed and believe, thereupon allege, that the SUBJECT
2 PREMISES is a 222-room hotel located in Anaheim, California. It is a Hilton-franchised
3 property.

4 14. Plaintiffs are informed and believe, thereupon allege, that defendants BRIGHTON
5 MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1
6 through 100, inclusive, and each of them, markets the SUBJECT PREMISES specifically to
7 families with children – Defendants applied to be a Disneyland “Good Neighbor” hotel (a property
8 that is recommended by Disney), Disneyland tickets are sold directly to guests on the SUBJECT
9 PREMISES’ website and at its front desk, the SUBJECT PREMISES has Disney signage in its
10 lobby, and Defendants provide a free shuttle for hotel guests to and from the Disneyland park.

11 15. Plaintiffs are informed and believe, thereupon allege, that the SUBJECT
12 PREMISES is seven stories, including a ground-level floor with a restaurant and indoor pool and
13 six upper floors of guest suites. The SUBJECT PREMISES are designed with an open rectangular
14 central atrium from the ground-level floor to the top of the Hotel. Guest suites are located
15 between the atrium and the exterior of the Hotel on all four sides, with doors facing the atrium.

16 16. Plaintiffs are informed and believe, thereupon allege, that the guest floors at the
17 SUBJECT PREMISES have corridor walkways between the guest suites and the atrium that are
18 lined with metal railings adjacent to the atrium. These guest corridor railings have a top rail, a
19 bottom rail, and vertical posts (known as balusters) that run between the top and bottom rail.

20 17. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned
21 herein, the space between the balusters of the guest corridor railings on the SUBJECT PREMISES
22 ranged between 5 and 6 inches. Plaintiffs are informed and believe, thereupon allege, that at all
23 times mentioned herein, the guest corridor railings on the SUBJECT PREMISES were not in a
24 reasonably safe condition, were in a dangerous and defective condition, and created an
25 unreasonable risk of harm for persons on the SUBJECT PREMISES, including Decedent
26 STEPHANIE MARTINEZ.

27 18. Plaintiffs are informed and believe, thereupon allege, that because the SUBJECT
28 PREMISES was and is a Hilton franchised property, defendants BRIGHTON MANAGEMENT,

1 LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100,
2 inclusive, and each of them, were specifically required by Hilton to ensure the SUBJECT
3 PREMISES were safe for guests such as Decedent STEPHANIE MARTINEZ, and were required
4 to ensure that the SUBJECT PREMISES complied with the applicable building code sections.

5 19. Plaintiffs are informed and believe, thereupon allege, that because the SUBJECT
6 PREMISES was and is a Hilton franchised property, defendants BRIGHTON MANAGEMENT,
7 LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100,
8 inclusive, and each of them, were specifically required by Hilton to renovate the property after its
9 purchase in or about May 2012.

10 20. Plaintiffs are informed and believe, thereupon allege, that defendants BRIGHTON
11 MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1
12 through 100, inclusive, and each of them, had actual notice of the dangerous condition of the
13 railings at the SUBJECT PREMISES, including the guest corridor railings, as they had visited the
14 property and personally observed them prior to July 18, 2015.

15 21. Plaintiffs are informed and believe, thereupon allege, that defendants BRIGHTON
16 MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1
17 through 100, inclusive, and each of them, had actual notice of the dangerous condition of the
18 railings at the SUBJECT PREMISES, including the guest corridor railings, as they were warned
19 multiple times prior to July 18, 2015 that the railings were not safe, were dangerous, and needed to
20 be changed.

21 22. Plaintiffs are informed and believe, thereupon allege, that in June 2012, an
22 inspection and assessment of the SUBJECT PREMISES was performed, and a Property Condition
23 Assessment report was prepared. This inspection included addressed all the railings on the
24 property, including the guest corridor railings. In 2012, California *Building Code* section 1013.4,
25 which addressed railings such as those at the SUBJECT PREMISES, required spacing of less than
26 four inches between balusters. The inspection found that the guest corridor railings as well as the
27 guestroom balcony railings had baluster spacing greater than four inches. Accordingly, the
28 Property Condition Assessment report stated that “the guardrails at the guestroom balconies, as

1 well as at the interior walkways were constructed with baluster spacings that exceed current model
2 code requirements” and that “for liability purposes, [the Hotel owners] may want to consider
3 guardrail modifications throughout the Property.”

4 23. Plaintiffs are informed and believe, thereupon allege, that defendants URBAN
5 COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of
6 them, received this Property Condition Assessment Report in June 2012.

7 24. Plaintiffs are informed and believe, thereupon allege, that in October 2013, an
8 inspection and assessment of the SUBJECT PREMISES was performed, and a Site Survey and
9 Americans With Disabilities Act (ADA) report was prepared. This inspection included addressed
10 all the railings on the property, including the guest corridor railings. The inspection found that the
11 guest corridor railings as well as the guestroom balcony railings had baluster spacing greater than
12 4 inches. Accordingly, the Site Survey and ADA Evaluation report stated that “all interior/exterior
13 railings exhibit excessive spacing of picket that could allow entrapment room” and stated that
14 Defendants needed to “install new or modify approximately 4000 lineal feet of existing 2nd to 7th
15 floor interior railing and exterior railing at stair landings to provide compliant 42” minimum
16 height guard rail with maximum gaping in all areas to allow 4” sphere to pass through.”

17 25. Plaintiffs are informed and believe, thereupon allege, that defendants URBAN
18 COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of
19 them, received this Site Survey and ADA Evaluation in at least January 2014.

20 26. Plaintiffs are informed and believe, thereupon allege, that in or about April 2015,
21 the general contractor working on the renovations of the SUBJECT PREMISES walked on an
22 upper floor of the SUBJECT PREMISES and noticed that the balusters on the guest corridor
23 railings had spacing greater than 4 inches and that the excessive spacing was unsafe. The general
24 contractor immediately brought the excessive spacing to the attention of defendants BRIGHTON
25 MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1
26 through 100, inclusive, and each of them. The general contractor brought up the issue of the
27 excessive spacing to the attention of defendants BRIGHTON MANAGEMENT, LLC, URBAN
28

1 COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of
2 them, at least two or three times prior to July 18, 2015.

3 27. Plaintiffs are informed and believe, thereupon allege, that despite all these warnings
4 regarding the dangerous condition of the railings at the SUBJECT PREMISES, defendants
5 BRIGHTON MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC,
6 and DOES 1 through 100, inclusive, and each of them, did not use reasonable care to keep the
7 SUBJECT PREMISES in a reasonably safe condition, and did nothing to change the dangerous
8 condition of the railings at the SUBJECT PREMISES. Plaintiffs are informed and believe,
9 thereupon allege, that despite all of these warnings regarding the dangerous condition of the
10 railings at the SUBJECT PREMISES, defendants BRIGHTON MANAGEMENT, LLC, URBAN
11 COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of
12 them, did not give any warnings of the dangerous conditions on the SUBJECT PREMISES which
13 were reasonably expected to and did in fact harm others, including Decedent STEPHANIE
14 MARTINEZ.

15 28. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned
16 herein, that decedent STEPHANIE MARTINEZ was lawfully on the SUBJECT PREMISES.

17 29. Plaintiffs are informed and believe, thereupon allege, that on or about July 18, 2015
18 at approximately 6:30 p.m. while Plaintiffs' three-year-old daughter, Decedent STEPHANIE
19 MARTINEZ, was lawfully on the SUBJECT PREMISES, as a direct and proximate result of the
20 aforesaid wrongful acts, conduct or omissions of defendants BRIGHTON MANAGEMENT, LLC,
21 URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and
22 each of them, she walked on the Fifth Floor guest corridor, went between the balusters of the guest
23 corridor railings, and fell five stories to the atrium floor below, sustaining fatal injuries including
24 blunt force trauma to her head and torso.

25 30. As a proximate result of the conduct of the defendants BRIGHTON
26 MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1
27 through 100, inclusive, and each of them, as aforesaid, Plaintiffs suffered severe and permanent
28 damages, including but not limited to the loss of love, affection, society, service, comfort, support,

1 right of support, expectations of future support and counseling, companionship, solace and mental
2 support, as well as other benefits and assistance, of Decedent.

3 31. The above-described conduct of defendants BRIGHTON MANAGEMENT, LLC,
4 URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and
5 each of them, by and through their officers, directors, employees and/or managing agents, was
6 carried out with a conscious disregard of Decedent STEPHANIE MARTINEZ's and Plaintiffs'
7 rights and of the safety of guests/invitees on the SUBJECT PREMISES which they owned and
8 managed, and therefore, Plaintiffs are entitled to an award of punitive damages in an amount
9 sufficient to punish defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS
10 FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them, in light
11 of their financial condition, and to make an example of them.

12 32. The above-described conduct of defendants BRIGHTON MANAGEMENT, LLC,
13 URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and
14 each of them, by and through their officers, directors, employees and/or managing agents, was
15 carried out with a conscious disregard of the rights and safety of guests lawfully on the SUBJECT
16 PREMISES, including Decedent STEPHANIE MARTINEZ and Plaintiffs, is further exemplified
17 by Defendants failure to fully remedy the dangerous condition of the railings on the SUBJECT
18 PREMISES.

19 33. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned
20 herein, balusters on the guestroom balcony railings at the SUBJECT PREMISES were over four
21 inches apart, were not in a reasonably safe condition, were in a dangerous and defective condition,
22 and created an unreasonable risk of harm for persons on the SUBJECT PREMISES. Plaintiffs are
23 informed and believe, thereupon allege, that defendants BRIGHTON MANAGEMENT, LLC,
24 URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and
25 each of them, had actual knowledge of the dangerous and defective condition of the guestroom
26 balcony railings at the SUBJECT PREMISES. The June 2012 Report warned Defendants that that
27 "**the guardrails at the guestroom balconies**, as well as at the interior walkways were constructed
28 with baluster spacings that exceed current model code requirements." The October 2013 Report

1 warned Defendants that “all interior/**exterior** railing exhibit excessive spacing of picket” and that
2 Defendants needed to either replace or modify all of the guest corridor and guestroom balcony
3 railings “to provide compliant 42” minimum height guard rail **with maximum gaping in all areas**
4 **to allow 4” sphere to pass through.**” In 2015, the general contractor working on the renovations
5 inspected the guestroom balconies, discovered the excessive baluster spacing, and warned
6 defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF
7 1, LLC, and DOES 1 through 100, inclusive, and each of them. Plaintiffs are informed and
8 believe, thereupon allege, that at all times mentioned herein, balusters on the guestroom balcony
9 railings at the SUBJECT PREMISES are still currently over four inches apart, are not in a
10 reasonably safe condition, are in a dangerous and defective condition, and pose an unreasonable
11 risk of harm for persons on the SUBJECT PREMISES.

12 34. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned
13 herein, the guestroom balcony railings at the SUBJECT PREMISES were not 42 inches tall as
14 required by the California Building Code, were not in a reasonably safe condition, were in a
15 dangerous and defective condition, and created an unreasonable risk of harm for persons on the
16 SUBJECT PREMISES. Plaintiffs are informed and believe, thereupon allege, that defendants
17 BRIGHTON MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC,
18 and DOES 1 through 100, inclusive, and each of them, had actual knowledge of the dangerous and
19 defective condition of the guest corridor railings at the SUBJECT PREMISES, including the fact
20 that the railings are not 42 inches high as required by the California Building Code. The October
21 2013 Report warned Defendants that “all interior/exterior railing exhibit excessive spacing of
22 picket” and that the Hotel needed to either replace or modify all of the guest corridor and
23 guestroom balcony railings “to **provide compliant 42” minimum height guard rail** with
24 maximum gaping in all areas to allow 4” sphere to pass through.” In 2015, the general contractor
25 working on the renovations inspected the guest corridor railings, discovered the noncompliant and
26 unsafe height, and warned defendants BRIGHTON MANAGEMENT, LLC, URBAN
27 COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of
28 them. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned herein, the

1 guest corridor railings SUBJECT PREMISES are still not 42 inches high as required by the
2 California Building Code, are not in a reasonably safe condition, are in a dangerous and defective
3 condition, and pose an unreasonable risk of harm for persons on the SUBJECT PREMISES.

4 35. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned
5 herein, defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS FRONTERA,
6 LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them, own and control
7 another Embassy Suites Hotel in Palm Desert, California, located at 74-700 Highway 111, Palm
8 Desert, California, 92260 (“EMBASSY SUITES PALM DESERT”). Plaintiffs are informed and
9 believe, thereupon allege, that at all times mentioned herein, balusters on railings at the
10 EMBASSY SUITES PALM DESERT were over seven inches apart, were not in a reasonably safe
11 condition, were in a dangerous and defective condition, and created an unreasonable risk of harm
12 for persons on the SUBJECT PREMISES. Plaintiffs are informed and believe, thereupon allege,
13 that the railings at EMBASSY SUITES PALM DESERT were not modified to remedy the
14 dangerous condition of the excessive baluster spacing until March 2017, nearly two years after
15 Decedent STEPHANIE MARTINEZ was killed as a result of the dangerous and defective
16 condition of the railings at the SUBJECT PREMISES.

17
18 **FIRST CAUSE OF ACTION**

19 **NEGLIGENCE – PREMISES LIABILITY**

20 **(As Against Defendants BRIGHTON MANAGEMENT, LLC,**
21 **URBAN COMMONS FRONTERA, LLC, UCF 1, LLC,**
22 **and DOES 1 through 100, inclusive)**

23
24 36. Plaintiffs reallege and incorporate paragraphs 1 through 35, inclusive, of the
25 General Allegations, above.

26 37. Plaintiffs are informed and believe, thereupon allege, that at all times mentioned
27 herein, defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS FRONTERA,
28 LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them, were under a duty to

1 exercise reasonable care for the safety of others, including, but not limited to, inspecting,
2 supervising, owning, controlling, repairing, operating, managing, and/or otherwise maintaining the
3 SUBJECT PREMISES and to protect persons legally on said premises, including decedent
4 STEPHANIE MARTINEZ.

5 38. Plaintiffs are informed and believe, thereupon allege, that on or about July 18, 2015
6 at approximately 6:30 p.m., decedent STEPHANIE MARTINEZ was lawfully on the SUBJECT
7 PREMISES.

8 39. Plaintiffs are informed and believe, thereupon allege, that on or about July 18,
9 2015, defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS FRONTERA,
10 LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them, so negligently and/or
11 recklessly supervised, inspected, owned, operated, provided, repaired, inspected, controlled,
12 managed, and/or otherwise maintained the SUBJECT PREMISES thereby creating a dangerous,
13 defective, and unsafe condition so as to proximately cause decedent STEPHANIE MARTINEZ to
14 sustain fatal injuries as alleged herein.

15 40. Plaintiffs are informed and believe, and thereupon allege that on or about July 18,
16 2015 at approximately 6:30 p.m., defendants BRIGHTON MANAGEMENT, LLC, URBAN
17 COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of
18 them, failed to warn decedent STEPHANIE MARTINEZ of said dangerous, defective, and/or
19 unsafe condition on the SUBJECT PREMISES, although said defendants, and each of them, knew,
20 or in the exercise of ordinary care, should have known of said dangerous conditions.

21 41. As a direct and proximate result of the conduct of defendants BRIGHTON
22 MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1
23 through 100, inclusive, and each of them, as aforesaid, Plaintiffs sustained the loss of love,
24 affection, society, service, comfort, support, right of support, expectations of future support and
25 counseling, companionship, solace and mental support, as well as other benefits and assistance, of
26 Decedent, all to their general damage in a sum in excess of \$50,000 each, which will be stated
27 according to proof, in accordance with section 425.10 of the California *Code of Civil Procedure*.

28

1 42. As a direct and proximate result of the conduct of defendants BRIGHTON
2 MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1
3 through 100, inclusive, and each of them, Plaintiffs have incurred medical, funeral and burial
4 expenses in an amount to be shown at trial.

5 43. The above-described conduct of defendants BRIGHTON MANAGEMENT, LLC,
6 URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and
7 each of them, by and through their officers, directors, employees and/or managing agents, was
8 carried out with a conscious disregard of Decedent STEPHANIE MARTINEZ's and Plaintiffs'
9 rights and of the safety of guests/invitees on the SUBJECT PREMISES which they owned and
10 managed, and therefore, Plaintiffs are entitled to an award of punitive damages in an amount
11 sufficient to punish defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS
12 FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them, in light
13 of their financial condition, and to make an example of them.

14
15 **SECOND CAUSE OF ACTION**

16 **SURVIVAL ACTION**

17 **(As Against Defendants BRIGHTON MANAGEMENT, LLC,**
18 **URBAN COMMONS FRONTERA, LLC, UCF 1, LLC,**
19 **and DOES 1 through 100, inclusive)**

20
21 44. Plaintiffs reallege and incorporate paragraphs 1 through 35, inclusive, of the
22 General Allegations, and paragraphs 36 through 43, of the First Cause of Action, inclusive, above.

23 45. As a legal, direct and proximate result of the aforesaid wrongful acts, conduct or
24 omissions of defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS
25 FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them, which
26 was a substantial factor in causing Plaintiffs and Plaintiffs' decedent harm, decedent STEPHANIE
27 MARTINEZ suffered injuries and died from those injuries.

28

1 46. As a legal, direct and proximate result of the aforesaid wrongful acts, conduct or
2 omissions of defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS
3 FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them,
4 STEPHANIE MARTINEZ died on or about July 18, 2015. Decedent STEPHANIE MARTINEZ
5 had causes of action for Negligence as set forth herein against all Defendants and DOES 1 through
6 100, inclusive, and each of them, at the time of her death.

7 47. Pursuant to California *Code of Civil Procedure* § 377.34, Plaintiff the ESTATE OF
8 STEPHANIE MARTINEZ, by and through its successors in interest JESUS MARTINEZ AVILA
9 and ALEJANDRA SANDOVAL DURAN therefore seeks damages for the loss and/or damage
10 that the Decedent sustained or incurred before death.

11 48. As a further direct and proximate result of the wrongful acts, conduct or omissions
12 of defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS FRONTERA, LLC,
13 UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them, which proximately caused
14 the death of STEPHANIE MARTINEZ, Plaintiff the ESTATE OF STEPHANIE MARTINEZ has
15 incurred funeral, burial, and medical expenses in an amount to be proven pursuant to *Code of Civil*
16 *Procedure* § 425.10.

17 49. The above-described conduct of defendants BRIGHTON MANAGEMENT, LLC,
18 URBAN COMMONS FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and
19 each of them, by and through their officers, directors, employees and/or managing agents, was
20 carried out with a conscious disregard of Decedent STEPHANIE MARTINEZ's and Plaintiffs'
21 rights and of the safety of guests/invitees on the SUBJECT PREMISES which they owned and
22 managed, and therefore, Plaintiffs are entitled to an award of punitive damages in an amount
23 sufficient to punish defendants BRIGHTON MANAGEMENT, LLC, URBAN COMMONS
24 FRONTERA, LLC, UCF 1, LLC, and DOES 1 through 100, inclusive, and each of them, in light
25 of their financial condition, and to make an example of them.

26
27
28

1 WHEREFORE, Plaintiffs, and each of them, pray judgment against Defendants, and each of them,
2 as follows:

- 3 1. For general damages for loss of love, affection, care, society, service, comfort,
4 support, right to support, companionship, solace or moral support, expectations of
5 future support and counseling, as well as other benefits and assistance of decedent
6 STEPHANIE MARTINEZ, which will be stated according to proof, which sum is
7 in excess of Fifty Thousand Dollars (\$50,000.00);
- 8 2. For funeral and burial expenses, according to proof;
- 9 3. For hospital, medical, professional and incidental expenses, according to proof;
- 10 4. For an award of exemplary damages, in an amount properly calculated to punish
11 said Defendants for their despicable conduct and conscious disregard for the safety
12 of others, and to deter any such despicable conduct and conscious disregard for the
13 safety of others in the future.
- 14 5. For prejudgment interest, according to proof;
- 15 6. For damages for plaintiffs' other economic losses, according to proof;
- 16 7. For pre-trial interest, according to proof;
- 17 8. For such other and further relief as this Court may deem just and proper.

18
19 DATED: November 14, 2018

GREENE BROILLET & WHEELER, LLP

20
21 

22 Scott H. Carr
23 Molly M. McKibben
24 Attorneys for Plaintiffs

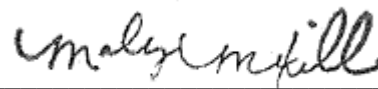
DEMAND FOR JURY TRIAL

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Plaintiffs, ESTATE OF STEPHANIE MARTINEZ, by and through its successors in interest, JESUS MARTINEZ AVILA and ALEJANDRA SANDOVAL DURAN; JESUS MARTINEZ AVILA, individually; ALEJANDRA SANDOVAL DURAN, individually, hereby demand trial of all causes of action by jury.

DATED: November 14, 2018

GREENE BROILLET & WHEELER, LLP



Scott H. Carr
Molly M. McKibben
Attorneys for Plaintiffs

GREENE BROILLET & WHEELER, LLP
P.O. BOX 2131
SANTA MONICA, CA 90407-2131

EXHIBIT 3



Exhibit 2 For ID
Deponent Woods
Date 9 / 11 / 2018
Total page(s) 1
Patricia Ayers, CSR 7164

EXHIBIT 4

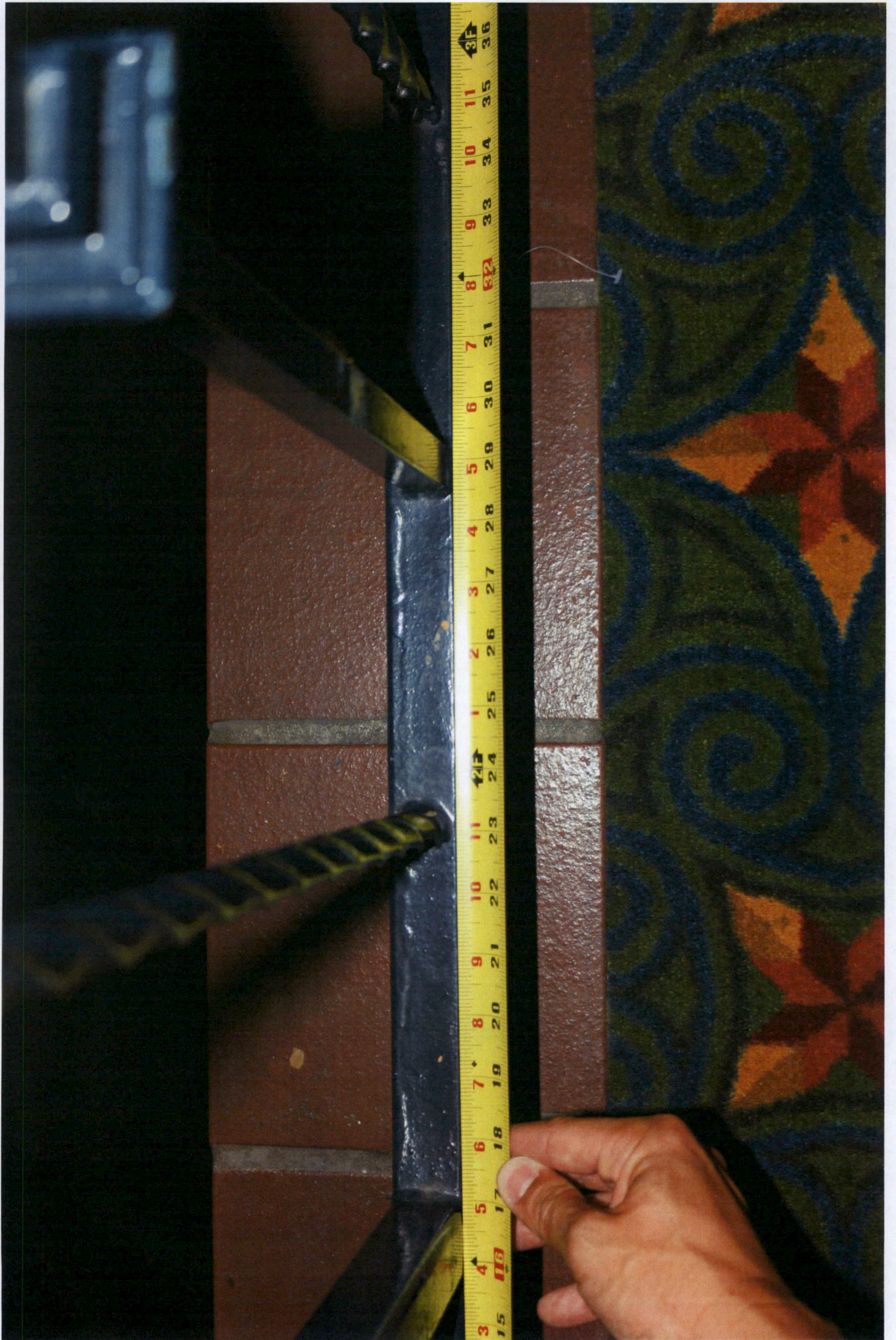


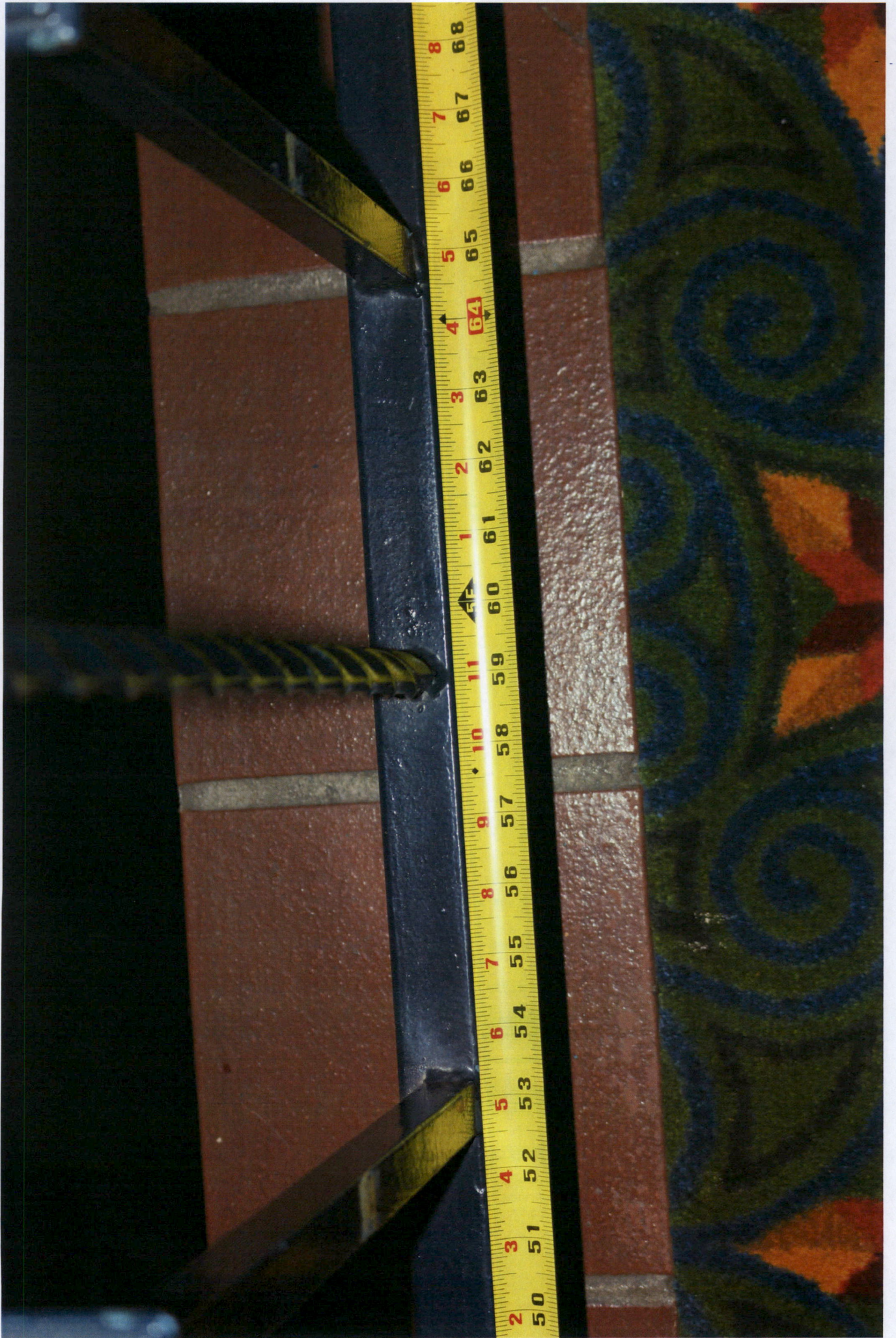
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Date 9 / 11 / 2018
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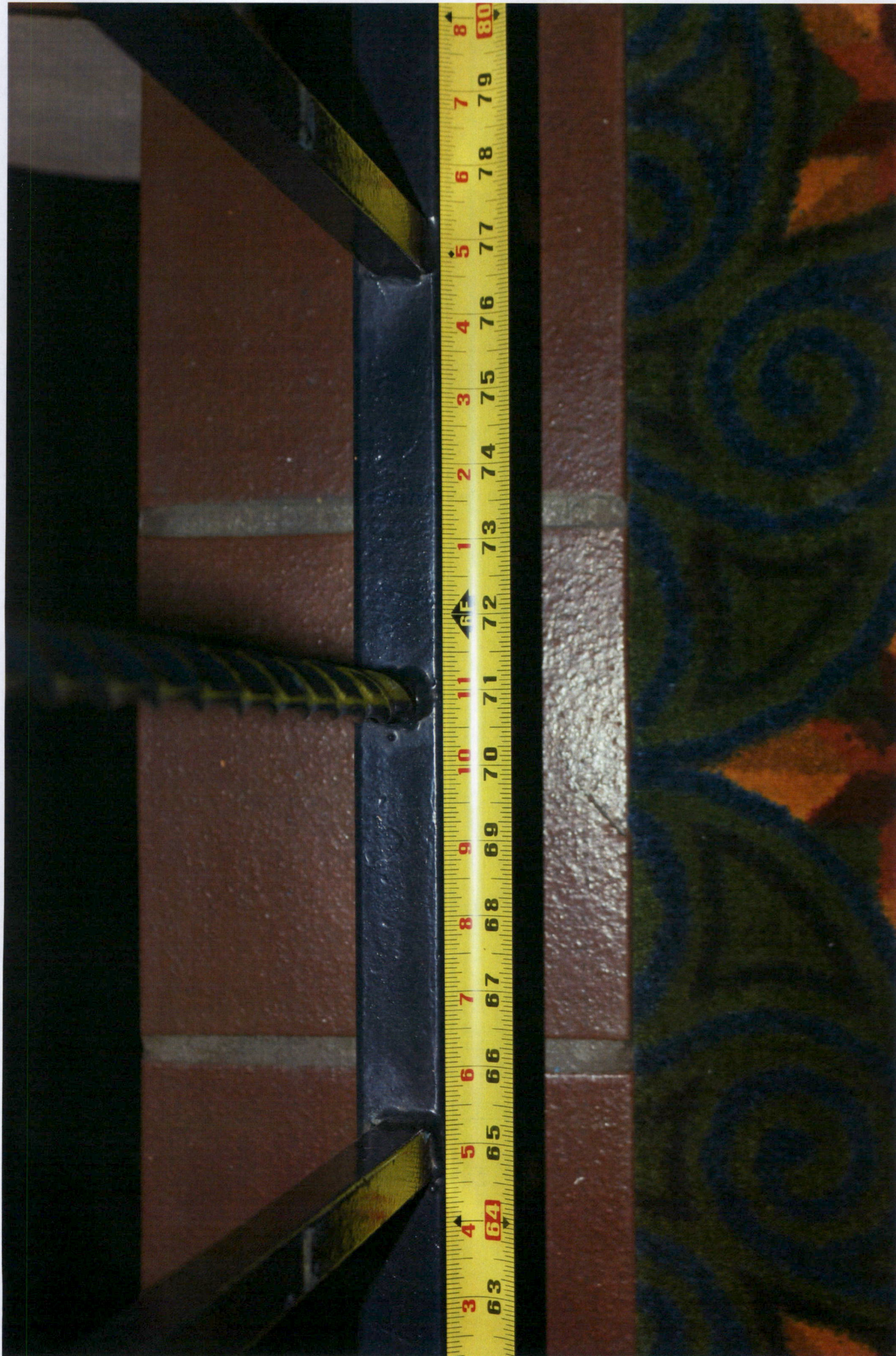
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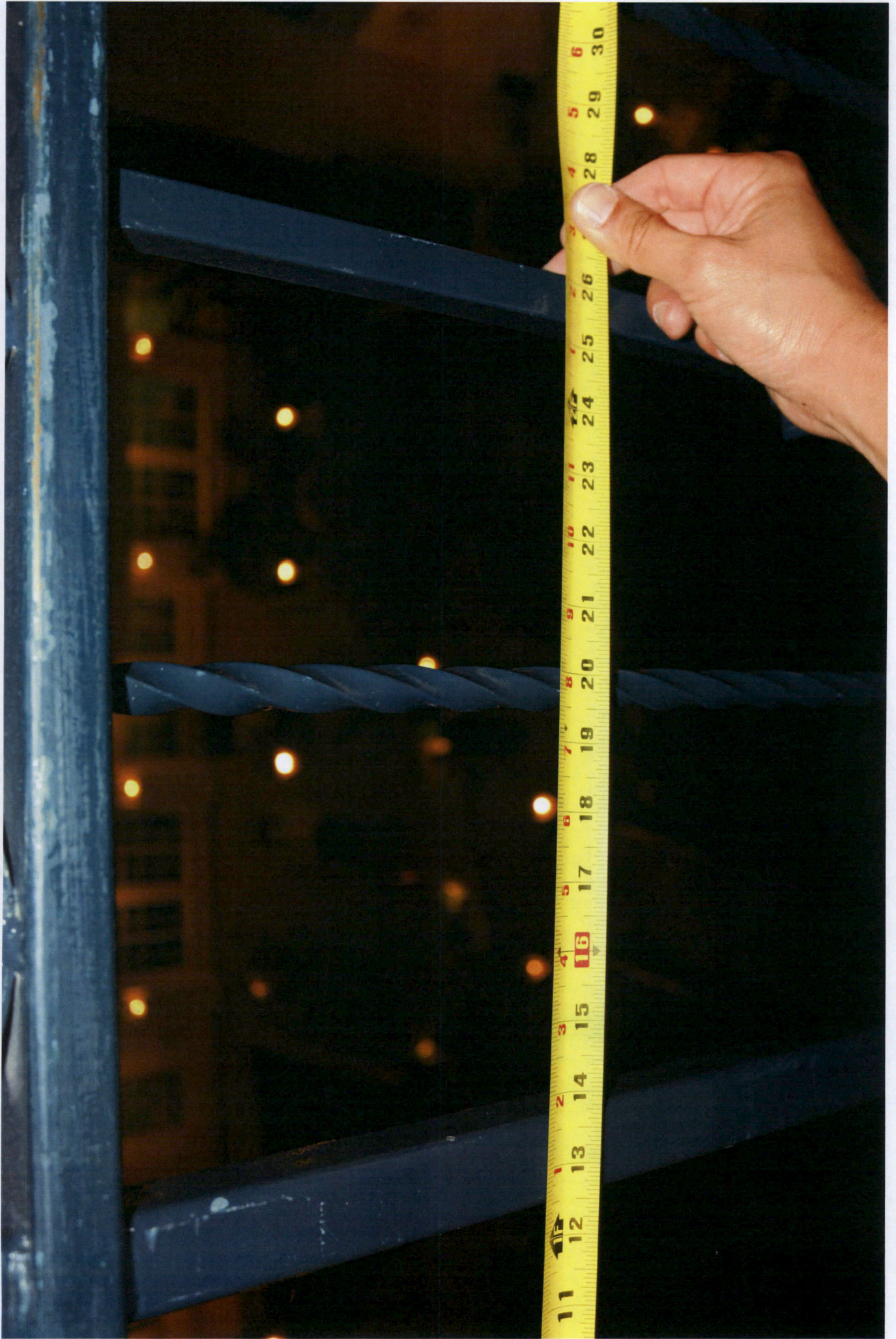












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EXHIBIT 6



AEI Consultants

Environmental & Engineering Services

June 27, 2012

PROPERTY CONDITION ASSESSMENT REPORT

Property Identification:

Embassy Suites Hotel
3100 East Frontera Street
Anaheim, Orange County, CA 92806

AEI Project No. 308736

Prepared for:

Urban Commons Frontera, LLC
3334 East Coast Highway #350
Corona del Mar, California 92625

Prepared by:

AEI Consultants
20 Gibson Place
Freehold, NJ 07728
732-414-2720

Environmental &
Engineering Due
Diligence

Site Investigation &
Remediation

Energy Performance
& Benchmarking

Industrial Hygiene

Construction
Consulting

Construction,
Site Stabilization &
Stormwater Services

Zoning Analysis
Reports & ALTA
Surveys

National Presence

Regional Focus

Local Solutions



AEI

Consultants

Environmental & Engineering Services

June 27, 2012

Urban Commons Frontera, LLC
3334 East Coast Highway #350
Corona del Mar, California 92625

RE: Property Condition Assessment
Embassy Suites Hotel
3100 East Frontera Street
Anaheim, CA 92806
Project No. 308736

AEI Consultants, Inc. (AEI) is pleased to provide the results of our property condition assessment of the above-referenced Property. This assessment was performed in accordance with the scope of services outlined in AEI's Proposal and ASTM E2018-08 "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process".

We appreciate the opportunity to provide this service. If you have any questions concerning this report, or if we can assist you in any other matter, please contact Gene Belli at 732.414.2720.

Sincerely,

AEI Consultants, Inc.

Eugene A Belli, REPA, CHMM
Vice President

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[Redacted]

Observations/Comments:

[Redacted]

The guardrails at the guestroom balconies, as well as at the interior elevated walkways, were constructed with baluster spacings that exceed current model code requirements. This condition is considered to be grandfathered. However, for liability purposes, the client may want to consider guardrail modifications throughout the Property.

[Redacted]

[Redacted]

EXHIBIT 7

3100 E FRONTERA ANAHEIM, CALIFORNIA



SITE SURVEY & ADA EVALUATION

OCTOBER 29TH, 2013

PRESENTED TO:

HFS CONCEPTS 4

PRESENTED BY:



ADA COMPLIANCE
CONSULTANTS, INC
.....
Our System is the Solution

3100 E FRONTERA

INTERIOR ACCESSIBLE ROUTE

Location Information: The general interior paths of travel are fully accessible a wood bridge in this courtyard area exhibits excessive sloping. This area should be signed to redirect the disabled to an alternate viewing site. All interior/exterior (at stair landings) railing exhibits excessive spacing of picket that could allow entrapment room identification signage lacking tactile with Braille along all accessible path of travel.

Item No.	Specific Item	Check	Technical Requirements ADA Standards /// CBC Sections	As-built Dimensions or Survey Comments																												
12.1A	Accessible Route & ISA symbol at main entry door	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Is there an accessible route of travel connecting accessible entrances with all accessible elements and spaces within the building? 206.3 /// 1114B.1.2																													
12.2A	Width of Aisles & Corridors	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Are the accessible aisles which serve one side a min. of 36" and aisles serving both sides at least, 44" ? /// 1133B.6.1 & 1133B.6.2																													
12.3A	U-Turn	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Where the accessible route of travel makes a U-turn around an obstacle which is less than 48" wide, is the accessible route at least 42" wide on the approaches and 48" wide in the turn? 403.5.2 /// Fig 11B-5E																													
12.4A	Floor Surface	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Are the floor surfaces on the accessible route of travel stable, firm, and slip-resistant? 302.1 /// 1124B.1																													
12.5A	Clear Door Opening	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	When the door is open 90 degrees, is there a clear opening width at least 32" measured between the face of the door and the doorstop on the latch side? (Check the N/A box if doors are being documented by another portion of your survey.) 404.2.3 /// 1133B.1.1.1.1, 1133B.2.2, 1133B2.3.1 Fig 11B-5B																													
12.6A	Door Maneuvering Space	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	<p>If the door is not automatic or power assisted, does it have maneuvering space relative to the direction of approach as shown in CBC Fig. 11B-26?</p> <table border="1"> <thead> <tr> <th>Approach</th> <th>Side</th> <th>Width</th> <th>Depth</th> </tr> </thead> <tbody> <tr> <td>Front</td> <td>Pull</td> <td>D + 18" *</td> <td>60"</td> </tr> <tr> <td>Front</td> <td>Push</td> <td>D + 0" **</td> <td>48"</td> </tr> <tr> <td>Latch</td> <td>Pull</td> <td>D + 24"</td> <td>60"</td> </tr> <tr> <td>Latch</td> <td>Push</td> <td>D + 24"</td> <td>44" ***</td> </tr> <tr> <td>Hinge</td> <td>Pull</td> <td>D + 36"</td> <td>60"</td> </tr> <tr> <td>Hinge</td> <td>Push</td> <td>54" ****</td> <td>44" *****</td> </tr> </tbody> </table> <p>* D + 24" at exterior doors. ** D + 12" if door has both a latch and a closer. *** 48" if door has closer. **** Measured from latch toward hinge. ***** 48" if door has both a latch and a closer.</p> <p>404.2.4.1 /// 1133B.2.4.2, Fig. 11B-26(a) (b) & (c)</p>	Approach	Side	Width	Depth	Front	Pull	D + 18" *	60"	Front	Push	D + 0" **	48"	Latch	Pull	D + 24"	60"	Latch	Push	D + 24"	44" ***	Hinge	Pull	D + 36"	60"	Hinge	Push	54" ****	44" *****	
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Hinge	Push	54" ****	44" *****																													
12.7A	Door Hardware	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	Are all handles, locks, and latches or other operative devices operable with one hand? Is hardware centered at 34" (404.2.7) and 44" (1133B.2.5.2) AFF? 309.4, 404.2.7 /// 1133B.2.5.2																													
12.8A	Door Operating Effort	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	Is the force required to operate a door no greater than 5 lbs? (Fire doors may have up to 15 lbs to achieve positive latching). 404.2.9 /// 1133B.2.5																													
12.9A	Revolving Door	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	If a revolving door or turnstile is used on an accessible route, is an accessible door or gate provided adjacent to the revolving door or turnstile to facilitate the same use pattern? 404.2.2 /// 1133B.2.3.3, 1133B.2.3.4, Fig 11B-5E(a) & (b)																													

Item No.	Specific Item	Check	Technical Requirements ADA Standards /// CBC Sections	As-built Dimensions or Survey Comments
12.10A	Directional and Informational Signs	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	Do signs which provide direction to, or information about, functional spaces of the building comply with the requirement for visual signage? EXCEPTION: Building directories, menus, and all other signs which are temporary are not required to comply. 216.1, 703.1 /// 1117B.5.1 item 2	
12.11A	Protruding Objects	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	If objects mounted to the wall have leading edges between 27 and 80" from the floor, do they project less than 4" into the circulation path? (Wall mounted objects with leading edges at or below 27" may project any amount so long as the required clear width of an accessible route is not reduced.) 307.2 ///1133B.8.6.1	
12.12A	Head room	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Is there at least 80" clear head room within the pedestrian circulation area, including the accessible route of travel? 307.4 /// 1133B.8.6.2	
12.13A	Alarms	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>	If emergency warning systems are provided, do they include both audible alarms and visual alarms complying with Survey Form - Alarms? 702.1 /// 907.9.1, 907.9.2, 1114B.2.2	Some fire arm pull boxes set
12.14A	Other	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>	If you have identified any other related barriers that were not covered by this survey form, check the "No" field and provide that information below.	Up to 5 3/4" gaping

4/12/11

SCOPE:

- Install directional sign on pillar prior to wood bridge to alert the disabled of non-accessible path of travel.
 - Lower fire alarm pull boxes and glass breaking tool on recessed fire extinguisher boxes, to provide at 48" maximum above finished floor.
 - Install new or modify approximately 4000 lineal feet of existing 2nd to 7th floor interior railing and exterior railing at stair landings to provide compliant 42" minimum height guard rail with maximum gaping in all areas to allow 4" sphere to pass through.
 - See common use facilities and building entrances for scoping of interior door signage.
- *Note: Existing evacuation signage lacks a clear description of the accessible path of travel and accessible exits.

EXHIBIT 8



Bret Morrison <bkm.jacconstruction@gmail.com>

FW: Recap of meeting with Brand at ESAN

1 message

Megan Paulsgrove <megan@urban-commons.com>

Tue, May 19, 2015 at 10:42 AM

Reply-To: megan@urban-commons.com

To: James Spitzig <jslevel3@gmail.com>, Alen Cooper <ac.jacconstruction@gmail.com>, Bret Morrison <bkm.jacconstruction@gmail.com>

Cc: cw.jacconstruction@gmail.com

Brand List, see below.

Megan Paulsgrove | Project Manager

URBAN COMMONS

777 South Figueroa Street

Suite 2850

Los Angeles, CA 90017

Office 213.784.5941

Direct 213.260.9111 x109

Cell: 760-809-1726

www.urban-commons.com

From: Megan Paulsgrove [mailto:megan@urban-commons.com]

Sent: Thursday, May 14, 2015 11:03 PM

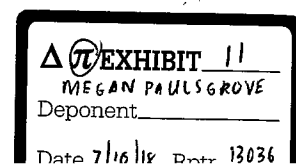
To: 'Taylor Woods'; 'Howard Wu'

Cc: 'Victor Nonato'; 'Mike Schaefer'; 'Tanya Eisenman'

Subject: Recap of meeting with Brand at ESAN

Hello Everyone,

I met with Brand today and walked ESAN with Rajan. We walked property for 2 hours. Overall I felt it was a positive walk through and Brand was very pleased with all the completed areas. Please see recap of meeting below. Items discussed are all items QA will look at it.



- All brass needs to be removed from the property: bar foot rail, all kick plates, door hardware, and handrails.
- Music in public restrooms
- Towel dispenser per brand needs to be recessed if cant it needs to be changed to stainless.
- No green paint throughout, need to paint skylights, railing, elevators
- Replace or paint all vents and grills throughout public area
- When was last time skylights were tested? Per Brand they need to be tested every 5 years, the glazing, seals and leaks.
- Brand wants scroll at top of railings removed it is dated.
- All brick throughout if broken we need to repair not just paint over.
- New technology for locks coming out Q4.
- Brand said we can wait to do all the guestrooms door scope, corridors and new hotel signage after we complete the atrium.
- Guestroom threshold needs to be stone
- Need to bring railing to code, 2" at bottom and less than 4" on the vertical post. Need to look into design options. The design needs to be submitted to Brand.
- Change out brass luggage carts.
- Brand said we could keep pond in atrium as is but make it more modern clean with plants. We could add speakers that play water sounds if we don't want to add a water feature for the white noise. If we keep pond the same size we need to make sure atrium area has a seating ratio of 75% of 223 guestroom.
- Brand acknowledge that the atrium area would not start till August and will take 2-3 mos to complete. The corridor work would start after the atrium with ballroom carpet being last of the scope to complete.

At my construction meeting this Tuesday, we are going to VE atrium and put list together and potential savings. The walk through with Brand was very helpful and will assist in the VE process.

Thank you,

Megan Paulsgrove | Project Manager

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Suite 2850

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Direct 213.260.9111 x109

Cell: 760-809-1726

www.urban-commons.com

EXHIBIT 9



Bret Morrison <bkm.jacconstruction@gmail.com>

ESAN Construction meeting recap from 5/19

5 messages

Megan Paulsgrove <megan@urban-commons.com>

Thu, May 21, 2015 at 2:54 PM

Reply-To: megan@urban-commons.com

To: Bret Morrison <bkm.jacconstruction@gmail.com>, Alen Cooper <ac.jacconstruction@gmail.com>, James Spitzig <jslevel3@gmail.com>

Cc: Tanya Eisenman <Tanya.Eisenman@hilton.com>, Taylor Woods <taylorwoods23@gmail.com>, Howard Wu <hwu410@gmail.com>, Mike Schaefer <mike@brightonmgfllc.com>

Hello Everyone:

Schedule:

Public Restrooms by ballroom started May 18th - complete in 3 weeks

Ballroom scope to start on May 26th

ADA room 718 completed on May 26th

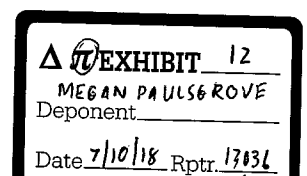
Atrium on hold unit Sept 1st.

Provide cost saving pricing on VE options we discussed in the meeting JAC and Level 3:

- Leave pond as is but modernize it with plants/clean it up: Scope consist of, remove gazebo but keep edge that goes over pond and install a glass rail. Keep levels as is but install new tile and railings throughout atrium.
- Remove pizza oven and 2nd hood from scope.
- Only install 2 millwork sitting areas not 3

Construction: (JAC)

- Soils report of pond, schedule a 2nd test and/or follow up with Engineer on existing test.
- Provide 2 additional quotes on gift shop cabinets
- Provide public restroom and ballrooms construction schedule
- Complete punch walk of Lobby
- Clean tile in lobby, check if epoxy grout stained the tile
- Provide quote to put lobby chandelier on a dimmer switch
- Pool contractor provide quote to replace the tile and coping and submit to health



- Provide cost of installing 2 coats of coating at the pool, I need this by Friday
- Need to decide if we are deleting the millwork cladding around the pillars. It will only save \$10,000
- Install pool coating, 2 coats.

FFE: (Level 3 Design)

- Level 3 to source a manager table for new meeting room next to restaurant. What is status and cost?
- New restaurant carpet scheduled for May 27th/28th. Along with BOH. Schedule the meeting rooms at middle of June.
- VE of atrium, Jim to utilize the demo plan to see if we can fit 167 seats in the atrium. We could keep pond as is if we can provide Brand required sitting.
- Source exterior lighting at front door, as of now it looks like the haunted mansion. (I can send you pictures)

Design TBD:

- Railings throughout all corridors. Need to design a solution that works with cost. If we replace railing with same it will be about \$265,000. We need a less expensive solution.

Please update me as task have been completed. We will meet on Tues May 26th at ESPD and review the above.

Thank you,

Megan Paulsgrove | Project Manager

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Los Angeles, CA 90017

Office 213.784.5941

Direct 213.260.9111 x109

Cell: 760-809-1726

www.urban-commons.com

Taylor Woods <taylorwoods23@gmail.com>

Thu, May 21, 2015 at 4:08 PM

To: "megan@urban-commons.com" <megan@urban-commons.com>

Cc: Bret Morrison <bkm.jacconstruction@gmail.com>, Alen Cooper <ac.jacconstruction@gmail.com>, James Spitzig <jslevel3@gmail.com>, Tanya Eisenman <Tanya.Eisenman@hilton.com>, Howard Wu <hwu410@gmail.com>, Mike Schaefer <mike@brightonmgtilc.com>

The PIP requires the toe kick on the railing which is cheap. Did something change ?

[Quoted text hidden]

Megan Paulsgrove <megan@urban-commons.com>

Thu, May 21, 2015 at 4:32 PM

Reply-To: megan@urban-commons.com

To: Taylor Woods <taylorwoods23@gmail.com>

Cc: Bret Morrison <bkm.jacconstruction@gmail.com>, Alen Cooper <ac.jacconstruction@gmail.com>, James Spitzig <jslevel3@gmail.com>, Tanya Eisenman <Tanya.Eisenman@hilton.com>, Howard Wu <hwu410@gmail.com>, Mike Schaefer <mike@brightonmgtilc.com>

The vertical metal post are not per code, more than 4" apart. We would have to add a new metal post in between each current post.

Megan Paulsgrove | Project Manager

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www.urban-commons.com

From: Taylor Woods [mailto:taylorwoods23@gmail.com]

Sent: Thursday, May 21, 2015 4:09 PM

To: megan@urban-commons.com

Cc: Bret Morrison; Alen Cooper; James Spitzig; Tanya Eisenman; Howard Wu; Mike Schaefer
Subject: Re: ESAN Construction meeting recap from 5/19

[Quoted text hidden]

Taylor Woods <taylorwoods23@gmail.com> Thu, May 21, 2015 at 4:32 PM
To: "megan@urban-commons.com" <megan@urban-commons.com>
Cc: Bret Morrison <bkm.jacconstruction@gmail.com>, Alen Cooper <ac.jacconstruction@gmail.com>, James Spitzig <jslevel3@gmail.com>, Tanya Eisenman <Tanya.Eisenman@hilton.com>, Howard Wu <hwu410@gmail.com>, Mike Schaefer <mike@brightonmgllc.com>

Let's consider a decorative covering.

[Quoted text hidden]

Megan Paulsgrove <megan@urban-commons.com> Thu, May 21, 2015 at 4:36 PM
Reply-To: megan@urban-commons.com
To: James Spitzig <jslevel3@gmail.com>
Cc: Bret Morrison <bkm.jacconstruction@gmail.com>, Alen Cooper <ac.jacconstruction@gmail.com>, Tanya Eisenman <Tanya.Eisenman@hilton.com>, Howard Wu <hwu410@gmail.com>, Mike Schaefer <mike@brightonmgllc.com>, Taylor Woods <taylorwoods23@gmail.com>

Jim,

Can you assist with a design solution for the ESAN railing?

Megan Paulsgrove | Project Manager

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Direct 213.260.9111 x109

Cell: 760-809-1726

www.urban-commons.com

From: Taylor Woods [mailto:taylorwoods23@gmail.com]
Sent: Thursday, May 21, 2015 4:33 PM

[Quoted text hidden]

1 PROOF OF SERVICE
2 (C.C.P. 1013A, 2015.5)

3 **STATE OF CALIFORNIA**

4 I am employed in the county of Los Angeles, State of California. I am over the age of
5 eighteen years and not a party to the within action; my business address is 100 Wilshire Boule-
6 vard, 21st Floor, Santa Monica, California 90401.

7 On November 14, 2018 I served the foregoing document, described as **PLAINTIFFS'**
8 **NOTICE OF MOTION AND MOTION TO AMEND THE COMPLAINT TO INCLUDE**
9 **ALLEGATIONS IN SUPPORT OF CLAIMS FOR PUNITIVE DAMAGES AGAINST**
10 **DEFENDANTS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION**
11 **OF MOLLY McKIBBEN AND EXHIBITS** on the interested parties in this action.

12 X by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the
13 attached mailing list.

14 X **BY MAIL.**

15 I deposited such envelope in the mail at Santa Monica, California. The
16 envelope was mailed with postage thereon fully prepaid.

17 X As follows: I am "readily familiar" with the firm's practice of collection and
18 processing correspondence for mailing. Under that practice it would be deposited with
19 U.S. postal service on that same day with postage thereon fully prepaid at Santa
20 Monica, California in the ordinary course of business. I am aware that on motion of the
21 party served, service is presumed invalid if postal cancellation date or postage meter
22 date is more than one day after date of deposit for mailing in affidavit.

23 **BY PERSONAL SERVICE.** I delivered such envelope by hand to the offices of the
24 addressee.

25 **BY OVERNIGHT DELIVERY.** I caused such envelope to be deposited with a delivery
26 service (Federal Express) in Santa Monica, California, for overnight delivery to the addresses set
27 forth on the attached mailing list.

28 **BY FACSIMILE.** I faxed a copy of the above-described document to the interested
parties as set forth [above/on the attached mailing list].

 BY E-MAIL OR ELECTRONIC TRANSMISSION. I caused the document(s) to be
sent to the person(s) at the e-mail address(es) listed on the Service List. I did not receive, within a
reasonable time after transmission, any electronic message or other indication that the
transmission was unsuccessful.

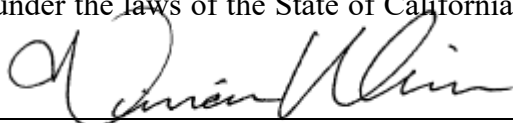
Executed on November 14, 2018 at Santa Monica, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

26 **Vivian Winn**

27 **Name**

28 **Signature**



SERVICE LIST

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Gina Bazaz, Esq. Christine V. Nitoff, Esq. Murchison & Cumming LLP 801 South Grand Avenue, Ninth Floor Los Angeles, CA 90017-4613	T: 213.623.7400 F: 213.623.6336 Email: gbazaz@murchisonlaw.com cnitoff@murchisonlaw.com Attorneys for Defendants, Brighton Management, LLC, Urban Commons Frontera, LLC and UCF 1, LLC
Anthony Guenther, Esq. Law Offices of Anthony Guenther, Esq. 3261 E. Warm Springs Road Las Vegas, NV 89120	T: 702.589.5170 Email: adg@adguentherlaw.com Co-Counsel for Plaintiff