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10 Attorneys for Plaintiffs DAVID LAM and YINNA LAM

**FILED**  
Superior Court of California  
County of Los Angeles

NOV 30 2015  
Sherri R. Carter, Executive Officer/Clerk  
By *Natasha Rose*, Deputy  
Natasha Rose

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

13 DAVID LAM, an individual; YINNA LAM, )  
14 an individual; )

15 Plaintiffs, )

16 vs. )

17 CECIL HOTEL MANAGEMENT, INC., a )  
18 California Corporation; DOES 1 through 25, )  
19 inclusive, )

20 Defendants. )

CASE NO. BC521927

**DECLARATION OF BRAD P. AVRIT IN  
SUPPORT OF OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**[Plaintiff's Opposition to Defendant's  
Statement of Undisputed Material Facts  
and Opposition to Motion for Summary  
Judgment and Exhibits in Support of  
Opposition To Motion For Summary  
Judgment filed concurrently herewith]**

Date: December 14, 2015

Time: 1:30 p.m.

Dept.: 93

Trial Date: February 11, 2016

Complaint Filed: September 19, 2013



1           5.     I have reviewed the documents relative to the subject litigation including,  
2 but not limited to the following: Depositions of Amy Price, Jose Tovar, and Santiago  
3 Lopez; Declarations of Amy Price, Jose Tovar, and Santiago Lopez; Defendant's Motion  
4 for Summary Judgment and associated supporting documents; EEAP Job Safety  
5 Handbook; Photographs and video clips from an inspection of the subject rooftop area,  
6 dated November 12, 2014; Building Codes and various industry standards. Based upon  
7 my review of these materials, I am familiar with the facts of this case.

8           6.     Based on my education, background and training in safety engineering,  
9 civil engineering, and human factors, my extensive experience in analyzing similar cases,  
10 and my review of the evidence stated above, I have formulated the following  
11 observations and opinions.

12           7.     It is the responsibility of every building owner, and/or their designated  
13 agent to maintain their building in a reasonably safe condition at all times. The duty to  
14 ensure a building is maintained in a safe condition is of increased importance when a  
15 building, such as the subject building, is intended to be occupied and utilized by a wide  
16 variety of members of the general public. It is my opinion that in failing to properly  
17 eliminate, mitigate, or protect patrons from the unreasonably dangerous condition of the  
18 subject rooftop water tanks, Defendant Cecil Hotel failed to meet this duty, and that the  
19 actions of Defendant Cecil Hotel were well below the standard of care in the safety,  
20 building maintenance, and building management industries.

21           8.     The subject roof and rooftop water tank posed a significant dangerous  
22 condition to hotel patrons, at the time of the subject incident, and that it was reasonably  
23 foreseeable that an incident, such as that of Ms. Elisa Lam, was likely to occur. It was  
24 demonstrated over time, via graffiti and guests being found on the rooftop area over the  
25 years (Deposition of Amy Price, pages 16-17; Deposition of Jose Tovar, pages 33-34),  
26 that access to the subject roof was readily available to hotel guests and patrons, and it was  
27 reasonable to expect that patrons would utilize the various access methods to utilize the  
28 rooftop area.

29           9.     The access point for the subject rooftop water tanks was maintained in a

1 configuration that was readily accessible to anyone at the roof level, where the access  
2 hatch door was not secured via any sort of locking mechanism (Deposition of Jose Tovar,  
3 page 33). As such, Defendant was unable to ensure that only properly trained personnel  
4 would access the tank, with the necessary safety precautions in place prior to entering the  
5 tank. Once a person, whether intentionally or inadvertently, were to go into the subject  
6 rooftop water tank, there were no grab bars, access ladder, etc., essentially creating a  
7 confined space area in which there was no reasonable means of safe exit available.

8 10. Defendant Cecil Hotel knew, or should have known, of the lack of proper  
9 safety measures within the subject water tank, and the failure to properly secure the  
10 access hatch of the water tank from unauthorized access. Allowing the access hatch of  
11 the subject water tank to unsecured, and readily accessible, also created a potential safety  
12 hazard to all occupants of the entire building, in allowing for intentional contamination of  
13 the water supply being utilized by all guest rooms. As such, Defendant Cecil Hotel failed  
14 to properly secure a significant safety hazard for anyone that accessed the rooftop area, as  
15 well as failing to ensure the safety of the water supply to all guests in the hotel.

16 11. Access to the main rooftop surface to the platform of the four (4) rooftop  
17 water tanks was readily achievable by way of a set of access stairs (circled in the two (2)  
18 photographs attached hereto as Exhibit 'B'), which was apparently left in place at all  
19 times, and was in place at the time of the subject incident. Additionally, access from the  
20 water tank platform to the top of the water tank, and the access hatch was also readily  
21 achievable through a wooden ladder that was also left in place at all times, and was in  
22 place at the time of the incident. A proper evaluation of the safety of the subject rooftop  
23 area and specifically the rooftop water tanks, would have identified that the presence of  
24 these access ladders/stairs caused the unreasonably hazardous condition of the unlocked  
25 and unguarded water tank access hatch to be readily accessible by anyone at the rooftop  
26 area. The potential risk of harm that such access would most likely pose to hotel patrons  
27 as known, or should have been known, to Defendant Cecil Hotel, particularly where  
28 Defendant Cecil Hotel was aware of the periodic access of patrons to the rooftop area.

29 12. Defendant Cecil Hotel failed to properly secure the rooftop area, which was

1 not safe for untrained personnel, hotel patrons and members of the general public, from  
2 unauthorized access. As described by Defendant Cecil Hotel, Defendant was aware that  
3 there were four (4) means of access to the rooftop area, consisting of a door from the  
4 main hotel stairwell, as well as 3 separate fire escape access points. Defendant had failed  
5 to place any means of visual surveillance (e.g. video cameras) at any of the access points,  
6 and had placed an audible alarm only on the door from the main hotel stairway. Given  
7 the numerous instances of hotel patrons gaining access to the rooftop area over an  
8 extended period of time (apparently without activating an alarm), as well as the access by  
9 Ms. Elisa Lam without the triggering of an alarm, it is my opinion that Defendant Cecil  
10 Hotel knew, or should have known, that hotel patrons were either utilizing the fire  
11 escapes that contained no alarm (access available at each level of the hotel), or that the  
12 stairwell door alarm was consistently not functioning properly.

13 13. Given the knowledge of the various means of rooftop access, the known  
14 history of guests accessing the rooftop area, the failure of Defendant Cecil Hotel to  
15 properly monitor (i.e. surveillance, alarms, etc.) the known access points, and the failure  
16 of Defendant Cecil Hotel to protect those hotel patrons that did access the rooftop area  
17 from unreasonably hazardous conditions such as the unguarded water tanks, it is my  
18 opinion that Defendant Cecil Hotel failed to own, operate, manage, and maintain the  
19 subject property in a reasonably safe condition. I am of the opinion that the failures of  
20 Defendant Cecil Hotel, relative to the significant safety hazard of the subject water tank  
21 and rooftop access, was a substantial factor in the death of Ms. Elisa Lam.

22  
23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct. Executed on November 23, 2015, at Marina del Rey, California.

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**BRAD P. AVRIT, P.E.**

12/02/2015



BRAD P. AVRIT, PE
President

EDUCATION

BSCE Bachelor of Science in Civil Engineering
University of California, Los Angeles, 1991

PROFESSIONAL REGISTRATIONS/CERTIFICATIONS

PE Licensed Civil Engineer
California Registration No.: C058387

CXLT Certified XL Tribometrist
International Safety Academy

HONORS

Chi Epsilon - Civil Engineering Honor Society

CORPORATE MEMBERSHIPS

- American Association of Cost Engineers
American Concrete Institute
American Society of Civil Engineers
Forensic Engineering Technical Group
American Society of Professional Estimators
American Society of Safety Engineers
Construction Div. & Risk Mgt/Insurance Div.
American National Standards Institute (ANSI)
American Society for Testing & Materials
F13 Pedestrian/Walkway Safety and Footwear
F14 Fences
F15 Consumer Products
Americas Glass Association
Calif. Association of Accident Reconstruction Specialists (CA^2RS)
California Apartment Association
California Society of Professional Engineers
Construction Management Association of America
Construction Safety Association of America
Construction Specifications Institute
Human Factors Society - Safety Technical Group
Insurance Dispute Resolution Center
International Code Council
National Academy of Forensic Engineers
National Fire Protection Association
National Safety Council & California Safety Council
National Society of Professional Engineers
Professional Engineers in Const. (PEC) Division
Scaffold Industry Association
Society of Automotive Engineers



COURT TESTIMONY AS EXPERT

- Construction Management
Construction Defects
Cost to Repair Estimating
Construction Accidents
Safety Engineering
Slip, Trip and Fall Expert
Accident Reconstruction
Building and Safety Codes

CONTINUING PROFESSIONAL TRAINING

- American Society of Civil Engineers - Forensic Group
California Safety Council
CA Mandatory Injury Prevention Program (SB198)
National Safety Council
The Training Institute, Greater LA Chapter
Western Safety Congress
American Society for Testing and Materials
Biomechanics of Slip and Falls

WORK EXPERIENCE RECORD

Mr. Avrit is responsible for the management of WEXCO's Consulting and Litigation Support Services. For WEXCO's Expert Witness/Consulting assignments, Mr. Avrit's duties include initial site investigation and analysis, safety inspections of property for compliance with Building Codes and Safety Regulations, and drafting of technical reports.

For WEXCO's Consulting Operations Division, Mr. Avrit is a senior consultant who provides technical expertise for work in Construction, Construction Management, Engineering, Estimating, Scheduling, and Project Control Systems.

Mr. Avrit has experience on a wide variety of Construction Projects, including residential, commercial, and industrial facilities. Mr. Avrit has conducted safety inspections and/or investigated more than 7000 projects in the State of California. Mr. Avrit has worked on a daily basis with a licensed Civil Engineer, Safety Engineer, Architect, and General Contractor. Mr. Avrit also works directly with licensed Geotechnical and Structural Engineers, Materials Science Engineers, Mechanical and Electrical Engineers, and Building Inspectors.

Mr. Avrit has forensically investigated more than 6000 litigation cases including Premises Liability, Slips, Trips & Falls, Construction Accidents, Construction Defects, Earthquake, Fire, and Flood Damage Assessments, Contract Disputes, Construction Delay Claims Insurance Coverage Analysis, Product Liability, and Accident Reconstruction.

Mr. Avrit is also the Managing Principal of Multivista LA and San Diego, a Service Company that provides photograph and video documentation of Construction Projects.

FEE AND REIMBURSABLES SCHEDULE

Retainer is required of \$2,500 to \$10,000, depending on scope. [ALL CHECKS ARE TO BE MADE PAYABLE TO WEXCO INTERNATIONAL CORPORATION].

Research and Preparation Fee Rates

Table with 2 columns: Fee Category, Rate. Includes Brad Avrit, PE (\$300/hr), Senior Consultants (\$150-200/hr), Research Assistants (\$135-150/hr).

Deposition and Trial Appearance Fee Rates

Table with 2 columns: Fee Category, Rate. Includes Expert Testimony by Mr. Brad P. Avrit, PE (\$3,200), Full Day Rate (5-8 hours) (\$3,200), \$400 per hour - 2 hr min.

Reimbursables - Major reimbursables and travel/lodging costs are to be paid in advance by the Attorney/Client.

Direct reimbursables are combined and billed at 10% of the total billing and include: mileage, meals, postage, telephone, facsimile, copies, blueprints, binders, and other miscellaneous supplies. 3/6/13

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website: wexco.net • e-mail: wexco@wexco.net

San Francisco (415) 281-3877 • California (800) 559-3877 • San Diego (619) 234-3877

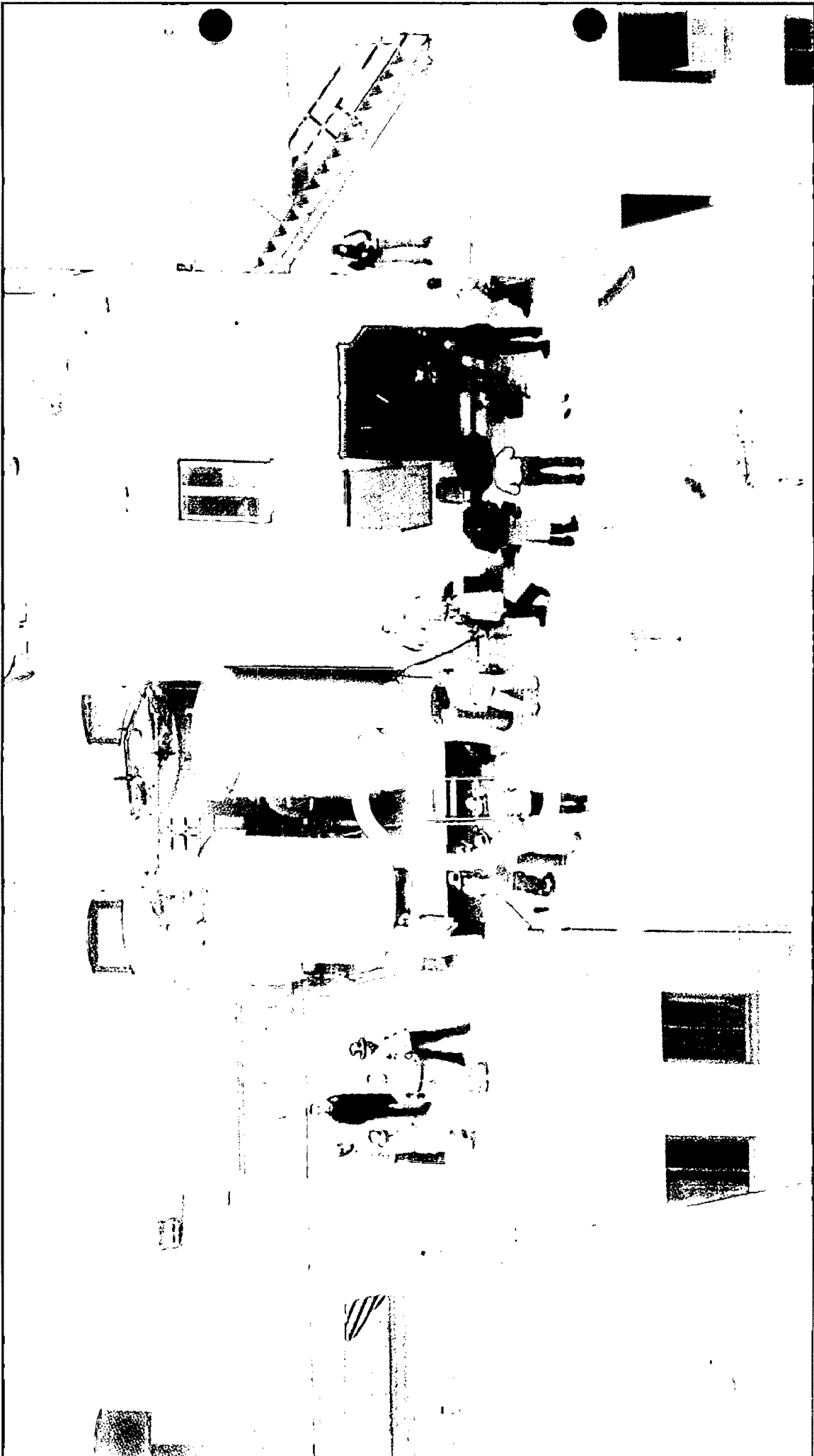
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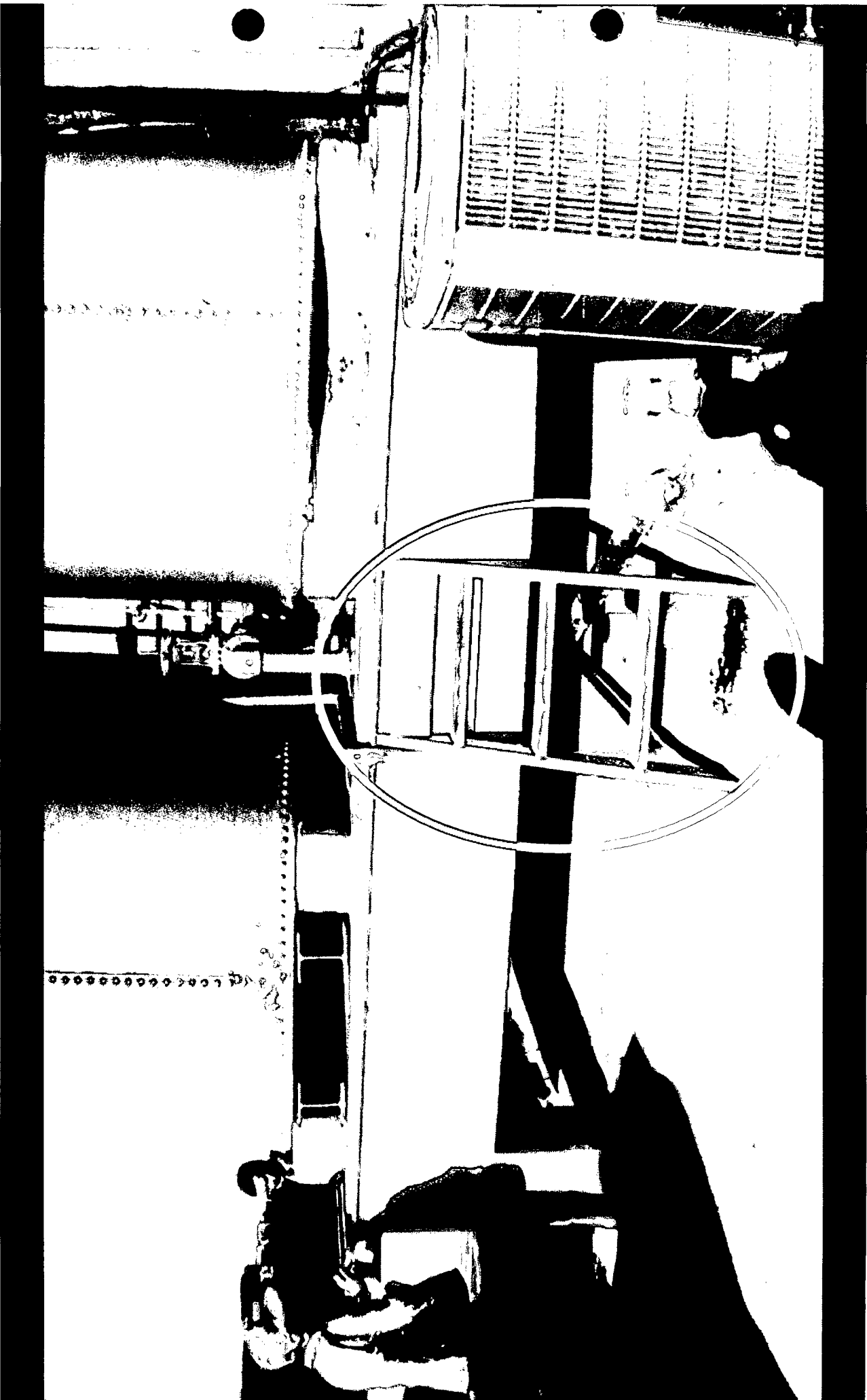
EXHIBIT B





12/02/2015

ExB



12/02/2015

1 **PROOF OF SERVICE**

2 *STATE OF CALIFORNIA, COUNTY OF LOS ANGELES*

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a  
4 party to the within action; my business address is 601 W. 5<sup>th</sup> St., Suite 210, Los Angeles, CA 90071.

5 On **November 30, 2015** I served the foregoing documents described as **DECLARATION OF**  
6 **BRAD P. AVRITT, P.E IN SUPPORT OF OPPOSITION TO DEFENDANT'S MOTION**  
7 **FOR SUMMARY JUDGMENT** on all interested parties in this action in the following manner:

8  **BY U.S. MAIL:** I am familiar with this firm's practice of collection and processing correspondence  
9 for mailing. Under that practice it would be deposited with U.S. postal service on that same day with  
10 postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am  
11 aware that on motion of the party, service is presumed invalid if postal cancellation date or postage  
12 meter date is more than one day after date of deposit for mailing in affidavit.

13  **BY FACSIMILE:** In addition to service by mail as set forth above, a copy of said document(s) was  
14 also delivered by facsimile transmission to the addressee(s) pursuant to Code of Civil Procedure  
15 §1013(e).

16  **BY OVERNIGHT MAIL:** I caused said document(s) to be picked up by an overnight delivery  
17 service company for delivery to the addressee(s) on the next business day.

18  **BY PERSONAL SERVICE:** By causing personal delivery by \_\_\_\_\_ of the document(s)  
19 listed above to the person(s) at the address(es) set forth on the attached service list.

20  **BY ELECTRONIC SERVICE:** Pursuant to Court Order, I caused the above document to be sent  
21 to the listed addressee(s) in the attached service list via LexisNexis File & Serve.

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

24  (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at  
25 whose direction the service was made.

26 Executed on **November 30, 2015**, at Los Angeles, California.

27   
28 KATHERINE DWYER

SERVICE LIST

1  
2 James A. Murphy, Esq.  
3 MURPHY, PEARSON, BRADLEY & FEENEY  
4 550 South Hope Street, Suite 650  
5 Los Angeles, CA 90071

6 T: (213) 327-3500  
7 F: (213) 627-2445

8 Attorneys for Defendant MAIN STREET MANAGEMENT LLC and CECIL MAIN STREET  
9 LLC