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MAIN STREET MANAGEMENT LLC and
6 CECIL MAIN STREET LLC, erroneously
sued as CECIL HOTEL MANAGEMENT
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FILED
Superior Court of California
County of Los Angeles

DEC 09 2015

Sherri R. Carter, Executive Officer/Clerk
By Natasha Rose, Deputy
Natasha Rose

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 DAVID LAM, an individual; YINNA LAM, an
individual,

12 Plaintiffs,

13 v.

14 CECIL HOTEL MANAGEMENT, INC. a
15 California Corporation; DOES 1 through 25,
inclusive,

16 Defendants.
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Case No.: BC521927

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' SEPARATE STATEMENT
OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

Reservation No: 140902025798

Date: December 14, 2015
Time: 1:30 p.m.
Dept.: 93

Trial Date: February 11, 2016

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21 **I. PRELIMINARY COMMENTS**

22 Pursuant to Cal. Rules of Court, rule 3.1350(d), defendants MAIN STREET MANAGEMENT
23 LLC and CECIL MAIN STREET LLC, erroneously sued as CECIL HOTEL MANAGEMENT
24 submits the following response to plaintiffs DAVID LAM and YINNA LAM separate statement of
25 disputed and undisputed material facts in support of their Opposition to Defendant's Motion for
26 Summary Judgment.
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	<u>Plaintiffs' Undisputed Material Facts and Supporting Evidence</u>		<u>Defendants' Response</u>
1	On the hotel rooftop was a "mechanical room" that was kept locked by two different locks because it was dangerous for others, specifically hotel employees. (Tovar Depo 42:25, 43:1-18.)	1	Undisputed for the purposes of this motion.
2	The hotel fire escapes which accessed the roof also connected to the hotel corridor. (Tennelle Depo 23:25-26:4)	2	Undisputed for the purposes of this motion.
3	The four foot platform containing the water tanks was accessible through a set of wooden stairs. (Avrit Decl. Ex. B)	3	Objection: lacks personal knowledge
4	Hotel employees used a portable wooden ladder to access the rooftop tanks when they needed to repair the tanks. (Tovar Depo 33:18-34:1.)	4	Undisputed for the purposes of this motion.
5	The wooden ladder was kept next to the water tanks at all times for approximately 10 years. (Tovar Depo 33:13-22.)	5	Undisputed for the purposes of this motion.
6	Each tank had a hatch on top so that the interior of the tank could be accessed. (Avrit Decl. 11.)	6	Undisputed for the purposes of this motion.
7	The access hatches were capable of being locked by a simple padlock. (Lopez Depo 13:5-17; Tovar Depo 35:17-20.)	7	Objection. Evidence of subsequent "remedial or precautionary measures" is inadmissible to prove negligence or culpable conduct in connection with the event. Evid. Code § 1151; <u>Ault v. International Harvester Co.</u> (1975) 13 Cal.3d 113, 116-117. Disputed. The proffered evidence does not support the "fact" asserted. Also, prior to the incident, the lid was not on hinges so that it could be simply secured by padlock. It could be completely removed and set aside. (Tennelle Depo., p. 34:23-25.)
8	The access hatches were never padlocked before Ms. Lam's death. (Lopez Depo 13:5-17; Tovar Depo 35:17-20.)	8	Objection. Evidence of subsequent "remedial or precautionary measures" is inadmissible to prove negligence or culpable conduct in connection with the event. Evid. Code § 1151; <u>Ault v. International Harvester Co.</u> (1975) 13

1			Cal.3d 113, 116-117.	
2			Disputed. The lid was not on hinges so that it could be simply secured by padlock. It could be completely removed and set aside.	
3			(Tennelle Depo., p. 34:23-25.)	
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6	9	Inside the water tanks, there were no grab bars, ladders, or other devices a person could use to escape the tanks. (Avrit Decl ¶9)	9	Objection. Lacks foundation as there is no evidence in the record which depicts or describes the interior of the tank to support this statement.
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9	10	The hotel catered to young, single adults between the ages of 18 and 32. (Price 12:15-17.)	10	Undisputed for the purposes of this motion.
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11	11	People would be found on the hotel roof every 5 to 6 months, often without any alarm going off. (Tovar Depo 38: 8-11, 39:10-20)	11	Disputed as to the frequency. The actual testimony was an estimate that perhaps someone would be found every five or six months, but you don't find a lot of people there.
12				(Tovar Depo 38: 8-11, 39:10-20)
13				
14	12	These people on the roof would usually be drinking or taking pictures. (Tovar Depo. 39:3-4.)	12	Undisputed for the purposes of this motion.
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16	13	Hotel employees would often find graffiti on the roof (Price Depo 19: 1-6; Tovar Depo 41:10-17.)	13	Objection and disputed as to "often." Pedro Tovar testified that he would maybe only see graffiti perhaps every two or three years.
17				(Tovar Depo 41:10-17.)
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20	14	On the night Ms. Lam accessed the Cecil Hotel's rooftop water tanks, no hotel employees responded to any alarm, if one went off. (Defendants Undisputed Material Facts 13, 46; Tovar Depo 32:9-11)	14	Objection. Speculation and lacks foundation as to when Ms. Lam accessed the rooftop water tank. There is no evidence in the record of the date or time when Ms. Lam accessed either the roof or the rooftop water tanks.
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24	15	After the body was found, the hotel began locking its water tanks using common padlocks (Price Depo 34:7-14)	15	Objection. Evidence of subsequent "remedial or precautionary measures" is inadmissible to prove negligence or culpable conduct in connection with the event. Evid. Code § 1151; <u>Ault v. International Harvester Co. (1975) 13 Cal.3d 113, 116-117.</u>
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28	16	Defendants distributed training manuals to	16	Objection. Lacks foundation and the

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	<p>their employees explaining the dangers posed by confined spaces including entrapment and engulfment hazards. (Johnston Decl. ¶6, Ex. 5)</p>		<p>exhibit lacks proper authentication.</p> <p>The statement and accompanying exhibit lack foundation and are speculative because the declarant does not state any facts upon which his purported knowledge is based. Cal. Evid. Code §702.</p> <p>Lacks authentication: the attached exhibit lacks authentication because it has not been properly verified.</p>
17	<p>The unsecured access ladders and unlocked hatch were unreasonably dangerous conditions and the Cecil Hotel breached the standard of care in the safety, building maintenance, and building management industries by allowing the conditions to exist, and that Defendants' breach of the standard of care was a substantial factor in Elisa Lam' death. (Avrit Decl. ¶1-13.)</p>	17	<p>Objection: Lacks foundation, conclusory and speculative.</p> <p>Disputed. Defendants' Objections to Avrit Declaration demonstrates that Avrit's opinions are inadmissible, and they are not facts.</p>

DATED: December 9, 2015

MURPHY, PEARSON, BRADLEY & FEENEY

By _____
 Jeff C. Hsu
 Attorneys for Defendants
 MAIN STREET MANAGEMENT LLC and
 CECIL MAIN STREET LLC, erroneously sued as
 CECIL HOTEL MANAGEMENT

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CERTIFICATE OF SERVICE

I, Teresa Harris, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 550 S. Hope Street, Suite 650, Los Angeles, CA 90071.

On December 9, 2015, I served the following document(s) on the parties in the within action:

DEFENDANTS' RESPONSE TO PLAINTIFF'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Table with 2 columns: Selection (X) and Description of service method (BY MAIL, BY HAND, VIA FACSIMILE, VIA OVERNIGHT SERVICE).

Thomas S. Johnston
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Attorney For Plaintiffs
DAVID LAM AND YINNA LAM

D. Scott Warmuth
Law Offices of Scott Warmuth APC
17700 Castleton Street
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Attorney For Plaintiffs
DAVID LAM AND YINNA LAM

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on December 9, 2015.

Handwritten signature of Teresa Harris over a horizontal line.

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