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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

RAUL CAMACHO, an individual by and through his Guardian Ad Litem LUCIA R. MATURRANO; and LUCIA R. MATURRANO, an individual, Plaintiffs, vs. JLG INDUSTRIES, INC. a California Corporation; SUNBELT RENTALS, INC. a California Corporation; and DOES 1-50 inclusive, Defendants.	Case No.: 30-2017-00902499-CU-PO-CJC [*Assigned to Hon. Robert J. Moss, Dept. C-14*] **PLAINTIFFS' OPPOSITION TO DEFENDANT JLG INDUSTRIES, INC.'S MOTION FOR DIRECTED VERDICT** Action Filed: February 09, 2017 Trial Date: August 16, 2021
AND ALL RELATED ACTIONS	

TO THE COURT, DEFENDANT JLG INDUSTRIES, INC., AND ITS RESPECTIVE ATTORNEYS OF RECORD:

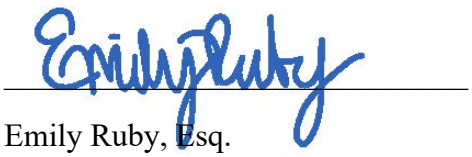
Plaintiffs, RAUL CAMACHO, by and through his guardian ad litem, and LUCIA MATURRANO (jointly "Plaintiffs"), hereby oppose the motion of Defendant, JLG INDUSTRIES, INC., for a directed verdict as to Plaintiffs' claims for strict liability and negligent failure to warn, negligent failure to retrofit, and strict liability design defect and negligent design.

This Opposition is based upon the ground that Plaintiffs have provided more than sufficient evidence in support of each of their causes of action as to which a directed verdict is sought, and entry of verdict in favor of Defendant would be improper.

This Opposition is further based upon the complete file and records in this action, the attached Memorandum of Points and Authorities, the Declaration of Emily A. Ruby, the exhibits admitted into evidence by the opposing party and the transcript of all relevant trial testimony, and any and all documentary or oral evidence as may be presented at the time of the hearing on this Motion.

DATED: September 17, 2021

GREENBERG AND RUBY INJURY ATTORNEYS, APC

By: 

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant's motion for directed verdict on causation is improper and must be denied due to the court granting Defendant's motion to bifurcate the trial into liability and damages phases. Plaintiffs were precluded from referencing or offering any evidence of Plaintiff Camacho's injuries. Further, even if the trial had not been bifurcated, injury causation and the fact that Plaintiff Camacho fell through the entrance of the JLG 1930ES scissor lift as he and Mr. Figueroa were attempting to lift a piece of glass to install are stipulated facts.

Defendant's motion also fails to establish that Defendant is entitled to a directed verdict on any of Plaintiff Camacho's causes of action. Plaintiffs presented substantial evidence in support of each element of Plaintiff Camacho's causes of action for negligent and strict liability design defect and warning/instruction, as well as negligent failure to retrofit. As such, Defendant's motion must be denied in its entirety. The overwhelming evidence in support of Plaintiffs' causes of action cannot all be summarized in this opposition. However, the following alone is far more than sufficient to defeat defendant's motion.

II. A DIRECTED VERDICT ON CAUSATION CANNOT BE GRANTED DURING THE LIABILITY PHASE OF THIS BIFURCATED TRIAL

Defendant's motion for directed verdict on causation is improper and must be denied due to the court granting Defendant's motion to bifurcate the trial into liability and damages phases. Plaintiffs were precluded from referencing or offering any evidence of Plaintiff Camacho's injuries. (See, Trial 8/18/2021 at 55:23-26). Further, even if the trial had not been bifurcated, injury causation and the fact that Plaintiff Camacho fell through the entrance of the JLG 1930ES scissor lift as he and Mr. Figueroa were attempting to lift a piece of glass to install are stipulated facts. (Joint List of Stipulated Facts, Nos. 1 and 12 [Exhibit 1]).

Additionally, in arguing Plaintiffs failed to present substantial evidence as to why the chain was not latched, Defendant's motion improperly points to the fact that Plaintiff Camacho did not testify (Motion at 21:3-4), without stating why, which is precisely one of the reasons why bifurcation in this case was unfair and unduly prejudicial to Plaintiffs. (See, Trial 8/18/2021 at 55:2-10).

III. PLAINTIFF HAS SUBMITTED MORE THAN SUFFICIENT EVIDENCE IN SUPPORT OF EACH CAUSE OF ACTION

California Code of Civil Procedure § 630 authorizes motions for directed verdicts, providing in relevant part as follows:

> (a) Unless the court specified an earlier time for making a motion for directed verdict, after all parties have completed the presentation of all of their evidence in a trial by jury, any party may, without waiving his or her right to trial by jury in the event the motion is not granted, move for an order directing entry of a verdict in its favor.

A directed verdict "is proper only when, after disregarding conflicting evidence and giving the opposing party's evidence every legitimate inference which may be drawn therefrom, there remains no evidence of sufficient substantiality to support a verdict in favor of the opposing party." (*Aetna Life & Casualty Co. v. City of Los Angeles* (2d Dist. 1985) 170 Cal. App. 3d 865). In ruling on a motion for directed verdict, trial courts may not weigh the evidence, consider conflicting evidence, or judge the credibility of witnesses. (*Guillory v. Hill* (4th Dist. 2015) 233 Cal. App. 4th 240, as modified on denial of reh'g, (Feb. 10, 2015).

A party may use circumstantial evidence to support the inference of a product defect. (*Restat. 3d of Torts: Products Liability*, § 3). "When reasonable minds could differ on the issue, courts hold that the judge should give the case to the jury." (*Id*.) "[T]he plaintiff is not required to exclude all other possible conclusions beyond a reasonable doubt, and it is enough that he makes out a case from which the jury may reasonably conclude that the negligence was, more probably than not, that of the defendant." (*Restat. 3d of Torts: Products Liability*, § 3).

Under the above standards, directed verdict in this case would be improper, and Defendant's motion should be denied.

IV. PLAINTIFF HAS SUBMITTED MORE THAN SUFFICIENT EVIDENCE IN SUPPORT OF HIS STRICT LIABILITY AND NEGLIGENT FAILURE TO WARN CLAIMS

A. Plaintiff Has Submitted More Than Sufficient Evidence That JLG Failed to Adequately Warn or Instruct of Potential Risks of The Scissor Lift

To establish his claim for Strict Liability Failure to Warn, Plaintiff Camacho must prove by substantial evidence the following:

1) Ordinary consumers would not have recognized the potential risks of the scissor lift when used or misused in an intended or reasonably foreseeable way;

2) JLG failed to adequately warn or instruct of the potential risks; and

3) The lack of sufficient instructions or warnings was a substantial factor in causing Camacho's harm.[1]

(CACI 1205)

1. Ordinary consumers would not have recognized the potential risks of the scissor lift when used or misused in an intended or reasonably foreseeable way

Plaintiffs have submitted substantial evidence that ordinary consumers would not recognize the potential risks of JLG's 1930ES scissor lift when used or misused in a reasonably foreseeable way.

Plaintiffs presented substantial evidence that JLG knew that users of the 1930ES would not realize that the scissor lift was dangerous if a harness and lanyard were not worn at all times. For example, Mr. Hoover testified that after JLG began putting the 1930ES scissor lift on the market, enough people were calling JLG for clarification regarding the fall protection section of the JLG Operation and Safety Manual that JLG's Safety and Reliability Department created a clarification letter. (Hoover Deposition 120:1-121:17). The letter, created in 2007 (the year before the subject scissor lift was manufactured), reiterated that neither OSHA or ANSI require a harness and lanyard be worn at all times on scissor lifts, and while some companies JLG recommended it. (Exhibit 16).

Additionally, R.D. Olson Director of Risk Management (Karel Taska) and Superintendent responsible for the area of the Pasea Hotel project where Mr. Camacho was injured (Rob Evans), AGS' foreman (Robert Gillette), and Camacho's coworker (Tito Figueroa) all testified at trial that they did not believe a harness and lanyard were required on scissor lifts and thus there was no rule on the jobsite requiring them be worn. (See, Trial 9/1/2021 p.m. at 1332:17-26, 1403:19-1404:16; Trial 9/8/2021 a.m. at 1591:26-1592:9; Trial 9/7/2021 p.m., 1454:11-13, 1455:5-11).

Plaintiffs also presented substantial evidence that ordinary consumers would not recognize the potential danger of material such as sheet rock being used on the platform to protect items, such as the

[1] Although causation should not be put to the jury in the liability phase, Plaintiffs will address it in an abundance of caution

glass AGS was installing. For example, R.D. Olson's superintendent responsible for the area of the Pasea Hotel where Mr. Camacho was injured, Rob Evans, testified that he would not consider the sheetrock extending off the platform to be dangerous. (Trial 9/1/2021 at 1382:12-1382:22, 1389:20-23). Mr. Gillette testified that the reason AGS' standard practice is to use 2x4 pieces of wood and not sheet rock to protect the glass on the scissor lift platform is because it's easier to pick up when the glass is elevated on the wood, not for safety reasons. (Trial 9/8/2021 at 1601:17-1603:8).

Plaintiffs also submitted substantial evidence that people working on scissor lifts do not always understand that the chain is meant to be fall protection or appreciate the potential danger of falling through the opening. Plaintiffs' expert, Kevin Smith, testified that that he's seen more scissor lifts without chains attached than he's seen with attached during operations. (Trial 9/13/2021 a.m. at 1807:17-1808:3). Sometimes when he confronts people he sees working on scissor lifts with the chain latched and tells them to latch it, they laugh and say the chain's not doing anything. (Trial 9/13/2021 a.m. at 1808:8-26). In fact, in spite of Mr. Gillette claiming to have "trained" Mr. Camacho in accordance with JLG's instructions, Mr. Gillette admitted he does not know if Mr. Camacho appreciated that the chain was a safety feature that needed to be engaged when they were inside the scissor lift platform. (Trial 9/8/2021 at 1608:1-6)

In addition, Mr. Evans testified that one of the common issues that he comes across on job sites is workers on scissor lifts without the chain latched, and that he sees this on every jobsite. (Trial 9/1/2021 p.m. at 1337:4-10). When Mr. Evans sees this, he tells the person to latch it, takes a picture of it, and sends it to the worker's foreman to address it. (Trial 9/1/2021 p.m. at 1337:4-10). He also has conversations with workers in these situations where he tells them that he wants them to go home safely that night just like everybody else. (Trial 9/1/2021 p.m. at 1337:18-23).

Similarly, R.D. Olson's Director of Risk Management, Karel Taska, testified that when he's doing jobsite inspections he looks for workers on scissor lifts with unlatched chains and with missing chains. (Trial 9/1/2021 p.m. at 1410:24-1411:7). R.D. Olson's Director of Risk Management, Karel Taska, testified that when he observes workers on projects using scissor lifts without the chain latched he has them amend it, and then talks to their foreman. (Trial 9/1/2021 p.m. 1398:23-1399:2). He has explained to workers why the chain needs to be latched in reference to construction safety standards.

(Trial 9/1/2021 p.m. at 1399:21-1400:1).

2. JLG Industries, Inc. failed to adequately warn or instruct of the potential risks

Mr. Forgas admitted that instructions and warnings should be clear and unambiguous, and if they are not, someone can get hurt. (Trial 8/31/2021 at 1061:24-1062:3, 1062:11-17).

Plaintiffs' human factors and warnings expert, Alison Vredenburgh, Ph.D., testified that any time there is confusion or ambiguity regarding warnings, for example, whether something is recommended or required, it will reduce safety for the workers because they will not know how to best protect themselves. (Trial 9/1/2021 at 1250:12-22)

There is substantial evidence that JLG's recommendation in its 1930ES manual that a harness and lanyard be worn on the 1930ES scissor lift was not clear, was ambiguous, and did not provide adequate warning or instruction to occupants of the scissor lift. In spite of JLG knowing that its manual was not clear with respect to whether to wear personal fall protection and that customers were confused, and taken the step of creating a clarification letter to provide to people who called JLG asking for clarification on this topic, JLG never issued any bulletin or warning stating that JLG required a harness and lanyard at all times on scissor lifts or updated its scissor lift manuals or on product decals with this information. (Hoover Deposition at 120:1-121:17, 123:12-124:5, 125:17-126:2).

JLG also was aware that the ANSI Manual of Responsibilities that was provided in the manual box on each model 1930ES scissor lift says to use a harness and lanyard when "required" by the manufacturer. However, Mr. Hoover testified that in all his years being on ANSI committees relevant to scissor lifts, he never identified the fact that JLG's manual uses the word "recommended" instead of "required" as potentially being a source of confusion for users. (Hoover Deposition at 70:13-21). Even with the direct customer feedback from people confused by JLG's manual only recommending a harness and lanyard, JLG never addressed the discrepancy in the language between the ANSI manual and JLG's manual. (*Ibid.*)

Plaintiffs also presented substantial evidence that JLG failed to adequately warn and instruct regarding using materials on the platform to protect items, such as glass. JLG's manual says to not allow accumulation of debris on the platform deck, and to keep mud, oil, grease, and other slippery substances from footwear and the platform deck. (Trial 8/31/2021 p.m. at 1158:24-1159:3). JLG's

expert, Brian Boggess, testified that the sheet rock and box of glazing materials on the platform deck constituted debris in violation of JLG's warnings and instructions. (Trial 9/14/2021 p.m. at 2233:9-23). However, as Mr. Evans and Mr. Gillette testified, they did not consider the sheet rock or the glazing materials on the platform to be unsafe or a violation of JLG's warnings and instructions.

3. The lack of sufficient instructions or warnings was a substantial factor in causing Camacho's fall

JLG's expert, Brian Boggess, testified that the proximate causes of Mr. Camacho's fall was Mr. Camacho and Mr. Figueroa not operating the lift safety by leaving the chain open, not wearing fall protection, and allowing debris to accumulate, which created unsafe practices that caused Mr. Camacho to ultimately fall. (Trial 9/14/2021 p.m. at 2235:19-2236:6). Each of the circumstances identified by Mr. Boggess were the result of JLG's failure to adequately warn and instruct regarding the potential dangers and how to protect against them.

First, Mr. Taska, R.D. Olson's Director of Risk Management, testified that under R.D. Olson's Written Fall Protection Program, neither the chain nor a harness and lanyard are required on a scissor lift unless a worker's feet are seven and a half feet above ground or higher. (Trial 9/1/2021 p.m. at 1403:19-1404:16). Likewise, Rob Evans, R.D. Olson's superintendent, does not believe that personal fall protection equipment is necessary on indoor scissor lifts like JLG's model 1930ES lift, based on his experience in the field. (Trial 9/1/2021 p.m. at 1332:17-26). JLG could have, but chose not to, inform users through its manual and/or on-product decals that a harness and lanyard are required at all times while on the scissor lift. Instead, JLG left it up to the customer and jobsite supervisors to decide whether to require it. Thus, JLG's inadequate warnings and instructions were a substantial factor in causing Mr. Camacho's fall.

Additionally, Mr. Gillette testified that if JLG's manual said a harness and lanyard were required at all times on the 1930ES scissor lift, he would have required Mr. Camacho and Mr. Figueroa to wear it. (Trial 9/8/2021 a.m. at 1609:22-1610:2). Thus, JLG's failure to provide this instruction was a substantial factor in causing Plaintiff's harm.

Likewise, the evidence is clear that JLG failed to provide adequate warnings and instructions regarding placing materials on the platform. If JLG had provided clear and unambiguous instructions

prohibiting placing materials on the scissor lift platform, then those responsible for supervising Mr. Camacho and Mr. Gillette (i.e., Mr. Evans and Mr. Gillette) would have recognized the danger of using sheetrock on the platform and prohibited it.

Additionally, if JLG provided adequate warnings and instructions, particularly on the 1930ES lift itself, there would not be ambiguity regarding whether Mr. Camacho did or should have understood the critical safety information regarding the necessity of using the chain.

B. Plaintiff Submitted More Than Sufficient Evidence in Support of His Negligent Failure to Warn Claim

To establish his claim for Negligent Failure to Warn, Plaintiff Camacho must prove the following (omitting the elements that have been stipulated to):

1) That JLG knew or reasonably should have known that users would not realize that the scissor lift was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner;

2) That JLG failed to adequately warn of the danger or instruct on the safe use of the scissor lift;

3) That a reasonable manufacturer under the same or similar circumstances would have warned of the danger or instructed on the safe use of the scissor lift;

4) That JLG's failure to warn or instruct was a substantial factor in causing Camacho's harm.

(CACI 1222).

The first, second, and fourth elements are discussed in the above section regarding strict liability failure to warn. Plaintiffs have also presented substantial evidence that a reasonable manufacturer under the same or similar circumstances would have warned of the dangers or instructed on the safe use of the scissor lift.

Mr. Hoover testified that a user of a scissor lift is anybody who needs to gain elevation to perform some sort of work task. (Hoover Deposition at 41:10-13) JLG's expert, Brian Boggess, admitted that any person can rent a scissor lift, and that scissor lifts are used for home repairs, by football coaches to film games, and by business owners to clean their windows. (Trial 9/15/2021 a.m. at 2297:21-2298:7).

Given that anybody can rent and use a scissor lift, combined with severity of the potential harm from falling from an elevated scissor lift, a reasonable manufacturer would make every effort to ensure

that its warnings and instructions were clear and unambiguous and effectively relayed critical safety information. Dr. Vredenburgh testified that it's important to test labels and decals to make sure what they convey to foreseeable users, and that the decal on the 1930ES scissor lift intended to show where the lanyard anchorage point is not clear and unambiguous. (Trial 9/1/2021 a.m. at 1278:3-9, 1278:19-1279:11). However, JLG did not provide any evidence of such testing with respect to the 1930ES scissor lift. (Trial 9/1/2021 a.m. at 1280:3-10)

Additionally, Mr. Forgas admits that falls from height are one of the top, if not the top, cause of injuries on construction sites. (Trial 8/31/2021 a.m. 1083:3-7, 15-19). Plaintiffs presented substantial evidence that ordinary users of scissor lifts on construction sites do not receive adequate training in safe operation of JLG's 1930ES scissor lifts. Even R.D. Olson's superintendent responsible for the area of the Pasea Hotel where Mr. Camacho was injured, Rob Evans, testified that a person should have training before operating a scissor, but he has used them many times and never received training. (Trial 9/1/2021 p.m. at 1338:14-22)

Once JLG became aware that people were confused about whether a harness and lanyard were required on its scissor lifts, JLG knew that it needed to provide customers with some clarification. JLG created the letter that reiterated that a harness and lanyard are not required by ANSI, OSHA, or JLG. If JLG felt that personal fall protection equipment was necessary to protect against the known danger of falling from the scissor lift platform, a reasonable manufacturer would have changed its warnings and instructions from saying JLG "recommended" them, to saying JLG "required" them be worn at all times while using the scissor lift.

C. JLG Failed to Present Substantial Evidence That the Potential Hazards Were Open and Obvious

JLG has the burden of proof on its open and obvious affirmative defense to Plaintiffs' failure to warn claims, and failed to present substantial evidence to shield it from liability.

Plaintiffs' human factors expert, Alison Vredenburgh, Ph.D., testified that if you're up in the air on a lift, the hazard of falling is open and obvious, but how to safely protect yourself from that fall hazard is not. (Trial Testimony 9/1/2021 a.m., at 1258:16 – 1259:2). She further testified that due to the harness and lanyard only being recommended as opposed to required, the danger associated with

not wearing them on the scissor lift is not open and obvious. (Trial Testimony 9/1/2021 a.m., at 1258:16 – 1259:2). Additionally, the fact that the entrance was inadequately guarded was not obvious. Dr. Vredenburgh testified that from a human factors perspective, on the 1930ES scissor lift with the chain design, it appears to the occupant as though there is a guardrail in place because it has the fixed top rail, and the occupant may perceive that it is an adequate barrier to protect them. (Trial 9/1/2021 a.m. at 1315:14-24).

JLG failed to present any evidence that these dangers were open and obvious, and in fact, the testimony by AGS and R.D. Olson's employees indicate that the dangers associated with placing sheet rock on the platform, not wearing a harness and lanyard, and not latching the chain were not obvious, even to experienced construction workers.

V. PLAINTIFF HAS SUBMITTED MORE THAN SUFFICIENT EVIDENCE IN SUPPORT OF HIS CLAIM FOR NEGLIGENT FAILURE TO RETROFIT

In order to establish his claim for negligent failure to retrofit, Plaintiff must establish by substantial evidence the following:

1) That JLG knew or reasonably should have known that the model 1930ES scissor lift was dangerous or was likely to be dangerous when used in a reasonably foreseeable manner;

2) That JLG became aware of this defect after the product was sold;

3) That JLG failed to retrofit or warn of the danger of the Model 1930ES scissor lift;

4) That a reasonable manufacturer/distributor/seller under the same or similar circumstances would have retrofitted the product.

"Failure to conduct an adequate retrofit campaign may constitute negligence apart from the issue of defective design." (*Hernandez v. Badger Construction Equipment Co.* (1994) 28 Cal.App.4th 1791, 1827, internal citation omitted.)

This case is analogous to *Hernandez v. Badger Constr. Equip. Co.* (1994) 28 Cal. App. 4th 1791, 1828. In *Hernandez v. Badger Constr. Equip. Co*., defendant Carde, a lessor of construction equipment, including mobile hydraulic cranes, bought a crane manufactured by defendant Badger in 1981. Although Badger offered an "anti-two-blocking safety device" (ATBD) as an option, Carde bought a crane that did not have an ATBD. In October 1988, Badger made audio-visual ATBD's

standard equipment on all its newly manufactured cranes. However, Badger decided not to try to retrofit cranes it had already sold or notify owners of previously sold cranes about its decision to make ATBD's standard equipment.

Plaintiff Hernandez, an experienced crane operator, was employed by a company that built and repaired ships. When one of his employer's 100 cranes broke down, the employer rented the crane without the ATBD from Carde. Plaintiff was injured by the crane while working. Plaintiff brought strict liability design defect and failure to warn claims against Badger, as well as a negligence claim for Badger's failure to equip the crane with the safety device, not giving adequate warning of the danger of operating the crane without the device, and not conducting an adequate retrofit campaign after beginning to equip its new cranes with the device as standard equipment. The jury rejected the strict liability claim, but found that Badger negligently injured plaintiff.

The court of appeal affirmed, holding that from the evidence, the jury could have properly concluded that the manufacturer did not do everything reasonable within its power to prevent plaintiff's injuries. Such evidence was sufficient to support the jury's finding of Badger's negligence based on its failure to take adequate steps to retrofit cranes sold before it made the safety equipment standard. Evidence that Badger had begun adding the device to new cranes, but had decided not to retrofit older cranes, was sufficient to establish negligence. The fact that Crane did not seek the safety device did not relieve Badger of liability for failure to conduct a retrofitting campaign. (*Hernandez, supra,* at 1826-1828. As discussed below, this case is analogous to *Hernandez*, and Plaintiffs presented more than sufficient evidence in support of their negligent failure to retrofit or warn cause of action.

A. Plaintiff Presented Substantial Evidence In Support of His Cause of Action for Negligent Failure to Retrofit or Warn

1. <u>After JLG sold the subject scissor lift, JLG knew or reasonably should have known that it was dangerous or likely to be dangerous when used in a reasonably foreseeable way</u>

Plaintiffs presented substantial evidence that after JLG sold the subject model 1930ES scissor lift in March, 2008, JLG knew or reasonably should have known that the model 1930ES scissor lift was dangerous or was likely to be dangerous when used in a reasonably foreseeable manner.

Mr. Forgas admitted that well before Mr. Camacho's injury, JLG became aware that the aerial

lift industry was discussing updating the ANSI standards to meet the international standards that prohibited the chain design and required the self-latching gate with toeboard. (Trial 8/31/2021 a.m. at 1037:25-1038:9, 1040:1-5). JLG also knew or should have known that other manufacturers had stopped manufacturing scissor lifts with chains after JLG sold the subject lift. (Trial 9/8/2021 p.m. at 1726:9-20). Once the chain design was banned and self-closing gates with toeboards were standard around the world, and some manufacturers in the U.S. had stopped manufacturing scissor lifts with the chain design, JLG should have known that it was because the chain design was dangerous or likely to be dangerous when used in an intended or reasonably foreseeable way.

In addition, JLG knew or reasonably should have known that people used the 1930ES without a harness and lanyard, and that people forgot to always latch the chain across the entrance after entering the lift platform. Thus, once JLG knew that people using its model 1930ES scissor lifts did not understand that a harness and lanyard were required to prevent serious bodily injury or death from falling from the lift platform, JLG knew or should have known that the chain design was dangerous or likely to be dangerous when used in a reasonably foreseeable manner.

2. A reasonable manufacturer under the same or similar circumstances would have retrofitted the product or warned of the danger, but JLG did not

Plaintiffs have presented substantial evidence that a reasonable aerial lift manufacturer under the same or similar circumstances would have retrofitted the 1930ES scissor lift with a self-latching gate with a toeboard, or warned rental companies and customers of the dangers of the chain design and the availability of an affordable and easy retrofit option.

Mr. Forgas testified that JLG continued to manufacture the 1930ES with the chain based on customer feedback, knowledge what the product is in the field, how its being used, and compliance with standards and regulations. (Trial 8/31/2021 a.m. at 1085:25-1086:4) However, customer feedback indicated that there was confusion over whether personal fall protection was required, and the way that rental customers were using JLG's model 1930ES scissor lifts led to frequently breaking chains.

JLG's former Director of Product Reliability and Safety, Brent Hoover, testified that it is possible to retrofit a gate option to a scissor lift that was manufactured with a chain. (Deposition at 40:9-14). In fact, all of the 1930ES scissor lifts came predrilled with holes to retrofit that gate when

they were manufactured. (Trial 9/15/2021 a.m. 2310:13-19). The gate accessory JLG sold for the 1930ES scissor lift costs approximately $150.00, and takes less than fifteen minutes to install. (Trial 8/31/2021 a.m. at 1085:15-17)

The evidence at trial established that JLG could, and in fact did, offer retrofits to customers. One month after JLG sold the subject scissor lift, JLG issued a bulletin informing customers and rental companies that JLG had begun manufacturing all scissor lifts with lanyard anchorage points, and that older model scissor lifts could be retrofitted with them. (Hoover Deposition at 119:1-16).

However, rather than directly inform customers that its scissor lifts with the chain could be easily and affordably retrofitted with the self-latching gate with toeboard in the context of safety, JLG chose to convey this information through marketing material. (Trial 8/31/2021 a.m. at 1084:17-1085:4).

B. The Court's Evidentiary Rulings Indicate That Plaintiff Introduced Sufficient Evidence In Support of His Negligent Failure To Retrofit Cause of Action

Here, just like in *Hernandez*, when JLG began manufacturing the model 1930ES scissor lifts in 2003, JLG made the chain as the standard design, and the safety device (the self-latching gate with toeboard) was available as an option. (Trial 8/31/2021 a.m. at 1045:13-1046:7).

Throughout trial, JLG objected to any evidence or testimony regarding changes in the design standards after the date the subject scissor lift was manufactured and the court agreed, precluding Plaintiffs from introducing evidence directly in support of their negligent failure to retrofit cause of action. (See, Trial 9/1/2021 a.m. at 1224:19-1225:6). Plaintiffs were precluded from introducing evidence and testimony from JLG's two corporate representatives, Mr. Forgas and Mr. Hoover, JLG's experts, and Plaintiffs' experts directly relevant to Plaintiff's cause of action for negligent failure to retrofit or warn and consistent with the type of evidence the court held was substantial evidence in *Hernandez.* (See, Trial 9/8/2021 p.m. at 1708:2-1712:21).

When Plaintiffs were severely limited in the questions they were permitted to ask their expert, Mr. Smith, Plaintiffs made a detailed record regarding the relevance of this information to support their negligent failure to retrofit cause of action. The court stated that Plaintiffs had already "introduced plenty of evidence that a self-latching gate is a different design and, you can argue, a better design than a chain." The court explained, "[a]ll I'm doing is precluding you from using standards that went into

effect after the date of manufacture, which I think is unfair, so you can't do that. But you will have your cause of action for negligent failure to retrofit based on -- they even manufactured a self-closing gate in 2008. It was an option." (Trial 9/8/2021 p.m. at 1710:2-12).

Plaintiffs were precluded from introducing testimony and evidence regarding the fact that between the subject scissor lift being manufactured in 2008 and Mr. Camacho's injury in December, 2015, the ANSI committees on which JLG's representatives and expert sat, had decided to change the ANSI standards to prohibit the chain design and require a self-closing gate with a toeboard at the entrance of scissor lifts. (See, Trial 8/31/2021 a.m. at 1044:17-1045:12; 9/1/2021 a.m. at 1224:19-1225:6, 1226:2-12). Plaintiffs were also precluded from introducing the testimony of JLG's PMQ, Mr. Hoover regarding the fact that around 2011 (four years before Mr. Camacho's injury) ANSI committees he was on were discussing changing the standard to match the international standards that prohibited the chain design. (Trial 9/1/2021 a.m. at 1227:5-21).

Likewise, Plaintiffs were precluded from introducing evidence that other manufacturers had stopped manufacturing scissor lifts with the chain design before the incident. The court sustained JLG's objection to Plaintiffs questioning Mr. Forgas on this topic. (Trial 8/31/2021 p.m. at 1195:2-19). The court also precluded Plaintiffs from introducing the testimony of Mr. Hoover, JLG's PMQ, admitting that he is aware of other manufacturers claiming to be in compliance with the international standards, including, specifically two competitors of JLG, Genie and Skyjack. (Trial 9/1/2021 a.m. at 1225:7-1226:1) Following the court sustaining all of JLG's objections to Mr. Hoover's testimony, Plaintiffs explained that anything before Mr. Camacho's incident is directly relevant to Plaintiffs' negligent failure to retrofit cause of action. (Trial 9/1/2021 a.m. at 1227:22-1228:2).

Based upon the court's evidentiary rulings, it is clear that the evidence JLG's motion argues is lacking is not necessary for the jury to find in favor of Plaintiff on his cause of action for negligent failure to retrofit or warn.

VI. PLAINTIFF SUBMITTED MORE THAN SUFFICIENT EVIDENCE IN SUPPORT OF HIS STRICT LIABILITY DESIGN DEFECT CLAIM

A. JLG's 1930ES Scissor Lift with A Chain and No Toeboard Was Defective In Design

1. The chain design creates the easily eliminated danger of forgetting to latch it

As discussed previously in this opposition, Plaintiffs presented substantial evidence that the chain design creates the known danger of people forgetting to latch it across the entrance after entering the platform of the scissor lift, and that the self-latching gate eliminates this danger.

Plaintiffs' expert, Mr. Smith, explained that this well-known "forgetfulness factor" should be eliminated by design, if possible, such as by designing something automatic (an engineering control), rather than just relying on human behavior. (Trial 9/8/2021 p.m. at 1720:9-11, 1720:22 – 1722:22). Mr. Smith explained how JLG can and should have designed this hazard out of the 1930ES scissor lift. He testified that when you look at the entry point on a scissor lift, the question is can we design it in such a way that we don't rely on an operator to forget to put a chain in place that could cost them their life or serious injury. (Trial 9/8/2021 p.m. at 1723:7-25). He testified that of course, we can, and it had been done even well before the subject lift was manufactured. The alternative design is not overly expensive, the gate closes automatically, it has a kick plate, you can't slide off the end, and we know it works because JLG had been doing it. (Trial 9/8/2021 p.m. at 1723:14-25).

Similarly, Dr. Vredenburgh explained, using the well-accepted design hierarchy, the best way to address the possibility of errors is through design. Here, if JLG had removed the hazard of having to close the chain 100% of the time, then there is no potential for error. (Trial 9/2/2021 a.m. at 1254:16-21)

JLG's marketing materials advertise that by choosing to purchase a self-latching gate with a toeboard, you would eliminate the risk of a "vulnerable opening." (Trial 8/31/2021 p.m. at 1186:21-25). Mr. Forgas testified that the reason why the gate is designed to swing inward is because when the springs cause the gate to go back, on the off chance that it doesn't latch itself, if someone were to fall into it, it would prevent the doors from opening outward and the person falling out. (Trial 8/30/2021 p.m. at 955:11-20).

Additionally, Mr. Boggess testified that he, "never once said [the chain] was safer." (Trial 9/15/2021 a.m. at 2354:6-13). Mr. Boggess also testified that a bad thing about the chain is that you have to latch it. (Trial 9/15/2021 a.m. at 2354:24-2355:2)

2. Chains on JLG scissor lifts frequently break while being used by rental customers

JLG knew or should have known that the chains on its 1930ES scissor lifts commonly broke

while being used by rental customers, and had to be replaced by the rental companies after the lift was returned from the rental. Sunbelt's mechanic, Conrado Palominos, testified that Sunbelt's scissor lifts with gates were manufactured by Genie and its scissor lifts with chains were manufactured by JLG. (Trial 9/13/2021 p.m. at 1944:26-1945:3). He testified that JLG's scissor lifts would be returned from rentals with damaged chains a few times a month, and he would have to replace the chain. (Trial 9/13/2021 at 1943:1-1944:2, 1944:15-1945:3) He testified that it was very rare for something to be wrong with the door on the Genie scissor lifts, and when there was it was just replacing a hinge. (Trial 9/13/2021 at 1943:1-1944:3, 1944:15-1945:3) Thus, JLG knew or should have known that people were using its 1930ES with broken chains.

3. The chain design may create a false sense of security for the occupant

Dr. Vredenburgh testified that from a human factors perspective, on the 1930ES scissor lift with the chain design, it appears to the occupant as though there is a guardrail in place because it has the fixed top rail, and the occupant may perceive that its an adequate barrier to protect them. (Trial 9/1/2021 a.m. at 1315:14-24).

4. The chain design increases the need for training, warnings, and supervision

Mr. Evans, Mr. Taska, and Mr. Smith all testified that it's a common occurrence for people to not latch the chain across the entrance of scissor lifts, which increases the need for supervision, warnings, and instructions on jobsites. (See, Trial 9/1/2021 p.m. at 1337:4-10, 1337:18-23, 1398:23-1399:2, 1399:21-1400:1, 1410:24-1411:7; Trial 9/8/2021 p.m. at 1721:10-18). In addition, Mr. Forgas conceded that the self-closing gate may reduce the need for supervision of workers on scissor lifts. (See, Trial 8/31/2021 p.m. 1197:11-1198:5).

As Dr. Vredenbrugh explained, from a hazard management perspective, if JLG had replaced the chain with the self-closing gate, the hazard would have been designed out, and there would be no need for training or warnings regarding the need to latch the chain every time. (Trial 9/1/2021 a.m. at 1315:25 – 1316:11). In fact, Mr. Forgas conceded that if JLG sent out the model 1930ES scissor lift with the gate design for customer feedback, people might say 1) they really like it and it's a lot safer than the chain; 2) it's a lot easier to use without having to remember to latch the chain all the time; 3) they are so happy JLG is finally doing this so they don't need to constantly remind their workers to

latch the chain; or 4) that the new design is going to improve jobsite safety. (Trial 8/31/2021 p.m. 1197:11-1198:5). He further testified that if JLG did get this feedback, it would have switched to the gate as the standard design. (Trial 8/31/2021 p.m. at 1198:6-24).

5. The chain design is dangerous because there is no toeboard

Plaintiffs' biomechanics expert, John Brault, explained that one purpose of the toe board is if you're stepping towards the open side of an opening, it would prevent your foot from passing through. Or if you accidentally slip, your foot would hit the toe board and not continue off the opening and lead to a fall. (Trial 9/7/2021 p.m. at 1516:18-23). Mr. Brault testified that if there had been a toeboard at the subject scissor lift's entrance and Mr. Camacho stepped left his foot would have hit the toeboard and would not have come through the opening, and there would be no fall. (Trial 9/7/2021 p.m. at 1517:23-1518:2). Likewise, if there was some kind of left-sided lateral loading from Mr. Figueroa, the toeboard would also be there to prevent the left foot from sliding off and then consequently prevent Mr. Camacho from falling off. (Trial 9/7/2021 p.m. at 1518:3-8)

Mr. Brault further testified that one of the bases for his opinion that Mr. Camacho could have fallen from the subject scissor lift with the chain latched is his experience with cases involving scaffolds that have a top rail about the same height as the subject lift, a mid-rail, and no toeboard, and the person just stepped a little too far to the side and fell through the opening. (Trial 9/7/2021 at 1514:21-1516:2).

JLG's expert, Barris Evulich, testified that having a toeboard with the chain design creates a tripping hazard. (Trial 9/13/2021 a.m. at 1963:4-17). Mr. Evulich conceded that because the chain design only has three sides with a toeboard, it still has the potential for items falling off the platform. (Trial 9/14/2021 a.m. at 2035:2-24, 2037:4-8). Mr. Evulich conceded that the toeboard reduces this risk. (Trial 9/14/2021 a.m. at 2037:9-12).

B. Plaintiff Would Not Have Fallen Off the Scissor Lift Platform If It Was Equipped with A Gate and A Toeboard

Mr. Brault testified that based upon his background, training, and experience, if there was a spring-loaded, self-latching gate with a toe board on this specific 1930ES scissor lift, the fall would not have happened. (Trial 9/7/2021 p.m. at 1518:9-14)

JLG did not present a single witness to testify that Mr. Camacho would have or could have fallen through the entrance opening that was equipped with the gate and toeboard. JLG failed to present any evidence at trial of a benefit of the chain design over the self-latching gate. In fact, from the time JLG began manufacturing its 1930ES scissor lifts, JLG was manufacturing them for international markets with the exact design that Plaintiffs contend JLG should have used instead of the chain design. (Hoover Deposition at 54:3-7).

At trial, Mr. Forgas and Mr. Boggess both conceded a list of benefits of the self-latching gate during trial. ((Trial 8/31/2021 p.m. at 1198:6-24; Trial 9/15/2021 a.m. at 2308:8-2310:12).

Mr. Boggess testified that good things about the gate are 1) its got a solid midrail; 2) there's a toeboard which would do a better job at stopping a tool from falling from the platform than the chain design; 3) it's a 1" solid steel tube that might take abuse better than the chain; 4) it's a bright color; 5) it shuts itself so its one less thing to think about; and 6) its structurally sound and a good solid piece of gate that would do its job. (Trial 9/15/2021 a.m. at 2308:8-2310:12)

C. JLG Failed to Present Credible Evidence the Chain Would Have Prevented The Fall

Mr. Hoover is not aware of there being any studies with respect to the level of fall protection afforded by chain versus self-latching gate. (Hoover Deposition at 20:22-25) In spite of this, JLG claims that the chain design is as safe as a self-latching gate with a toeboard and that a chain provides equivalent protection from falls. (See Trial 8/30/2021 p.m. at 955:7-9).

JLG's only evidence to support its claim that the chain would have prevented the fall is "surrogate testing" performed by JLG's retained engineering expert, Brian Boggess, and other engineers from his firm. However, Mr. Boggess admitted that the reason he created his videos was actually to "***prove the point*** that if the chain was latched the incident doesn't happen." (Trial 9/15/2021 a.m. at 2325:21-2326:1). In other words, it was not a test at all, but a demonstration created to support JLG's defense in this case. The lack of scientific value of Mr. Boggess' videos is confirmed by the fact that he is not aware of any similar testing in the entire history of aerial lifts. (Trial 9/15/2021 a.m. at 2326:2-16).

Mr. Boggess testified he got a platform with the "***same basic*** opening in construction" as the 1930ES platform, got a chain that is "***the same basic*** length" as the one on the subject lift at the time of

the incident. (Trial 9/14/2021 p.m. at 2210:11-26). Mr. Boggess does not know if the platform he used was a JLG 1930ES scissor lift. (Trial 9/15/2021 a.m. at 2336:19-25). He does know that it did not have the extension platform that was extended on the subject 1930ES scissor lift at the time Mr. Camacho fell. (Trial 9/15/2021 a.m. at 2335:23-25). Mr. Boggess had a wooden base structure built and toe strapped the platform on top of it rather than keeping it on the chassis, scissors, and tires. (Trial 9/15/2021 a.m. at 2336:12-2237:25). Mr. Boggess also testified that for purposes of his "testing", it made no difference whether the platform was 4' or 14' in the air. (Trial 9/15/2021 a.m. at 2338:23-25).

Mr. Boggess' "testing" and all related videos and testimony should not be admitted into evidence upon the court's evidentiary rulings precluding Plaintiffs from introducing any evidence as to any work platform other than a model 1930ES scissor lift. For example, the court refused to allow Plaintiffs' expert, Kevin Smith, to testify regarding prior incidents involving people falling through the entrance of JLG scissor lifts with chains latched across the entrance, even after Mr. Smith during a 402 hearing that the scissor lifts in those cases had identical openings to the 1930ES scissor lift involved in the incident. (Trial 9/13/2021 a.m. at 1770:17-25).

Mr. Smith also testified during the 402 hearing that, contrary to what JLG's witnesses testified, a fixed toeboard can be and is used at the entrance of work platforms. Mr. Smith explained:

> I'm not looking at it as a scissor lift. My analysis is, you have a work platform you're standing on and what protects the person at the access opening from falling through. Those are consistent.
> (Trial 9/13/2021 a.m. at 1787:8-15)

JLG objected, and the court refused to allow Mr. Smith's testimony on this topic as well. (Trial 9/13/2021 a.m. at 1787:8-15)

Likewise, the court sustained JLG's objections to Plaintiffs questioning Mr. Forgas regarding other JLG products that had a permanent toeboard. (Trial 8/31/2021 at 1025:4-16).

Because Mr. Boggess' "testing" was not on a JLG model 1930ES scissor lift, and was in fact, just a work platform, none of the testimony or evidence regarding Mr. Boggess' "testing" should have come in at trial based on the court's rulings precluding Plaintiffs' evidence.

VII. PLAINTIFF PRESENTED SUBSTANTIAL EVIDENCE IN SUPPORT OF STRICT LIABILITY DESIGN DEFECT UNDER THE CONSUMER EXPECTATION TEST

It has recently been held that the consumer expectation test can be applied to determine whether an unguarded wheel and placement of a warning light on a forklift constituted design defects. "Although the overall design of a forklift may be technical and complex, the circumstances that resulted in the injury—running over a worker's foot while the forklift was operated by another worker—were not so complex as to preclude jurors from using their own judgment to determine whether the forklift's design fell below the minimum safety expectations of ordinary persons working with or around the forklift." (*Demara v. Raymond Corp.* (2017) 13 Cal. 5th 545, 557-561).

Plaintiff Camacho and Mr. Figueroa were using the subject scissor lift in an intended or reasonably foreseeable way at the time of the incident. Mr. Figueroa, the only one present when Mr. Camacho fell, testified that the sheetrock was already broken when they placed the glass. (Trial 9/7/2021 p.m. at 1476:13-1477:5).

JLG relies on Mr. Evans' trial testimony regarding his interview with Mr. Figueroa on the date of the incident. However, Mr. Evans' testimony was directly rebutted by the actual audio recording and transcript. (Exhibit 128). The following is directly from the transcript of the interview:

> MR. EVANS: Did Raul maybe step on that when he picked up the glass and that's what made him fall?
> …
> MR. FIGUEROA: In the drywall. In the drywall. In the drywall that he thought he's going to stand there. ***Because we were the two of us inside like this***… ***In the -- the lift.*** (Exhibit 128, at p. 12, lines 18-25).

Thus, the only evidence and testimony from trial establishes that the sheetrock was already broken and not extending off the platform when Mr. Camacho fell, and JLG has failed to meet its burden of proof that the subject scissor lift was being misused in an unforeseeable way.

The circumstances that resulted in the injury – Plaintiff falling through the entrance of the scissor lift that lacked a gate and a toeboard – are not so complex as to preclude jurors from using their own judgment to determine whether the scissor lift's design fell below the minimum safety expectations of ordinary persons using scissor lifts.

VIII. PLAINTIFF SUBMITTED SUBSTANTIAL EVIDENCE IN SUPPORT OF HIS NEGLIGENT DESIGN CLAIM

In addition to the testimony and evidence discussed previously in this memorandum, Plaintiffs

submitted substantial evidence through their experts Dr. Vredenburgh and Mr. Smith regarding hazard management, the design hierarchy, and the process by which a reasonable manufacturer designs products. Both experts are highly qualified to testify on these subjects, and in no uncertain terms testified that JLG did not follow well-established design and hazard management procedures with respect to the 1930ES, and did not adequately design out known dangers created by the chain design. (See, e.g., Trial 9/1/2021 a.m. at 1316:16-1317:15; Trial 9/8/2021 p.m. at 1725:22-1726:20).

As Mr. Smith testified, even if the risk of falling might be low, or the number of times this has happened might be low, you still need to guard against this type of injury or incident. (Trial 9/8/2021 p.m. at 1726:21-1727:18). With respect to designing the 1930ES scissor lift, Mr. Smith explained that people are standing next to the rails millions of times daily, so the exposure to falling is very high, and if they do fall on a lift that can go 19 feet up in the air, it's serious injury or death every time. (Trial 9/8/2021 p.m. at 1726:21-1727:18). He further testified that no one falls from those heights that doesn't receive either a serious injury or death, and there are lots of those kind of cases. (*Ibid.*)

Mr. Smith testified that the standard for engineering design is to design to as safe as reasonably practicable, and that JLG failed to reduce the risk of falling to as low as reasonably practicable with the chain design. (Trial 9/8/2021 p.m. at 1723:7-1724:3). Not only was JLG manufacturing the model 1930ES scissor lift from day one with the self-latching gate and toeboard for international markets that required that design, some manufacturers voluntarily transitioned away from using the chain design on scissor lifts decades ago. (Trial 9/8/2021 p.m. at 1726:4-20, 1728:21-1729:1).

Mr. Forgas testified that when a new JLG product is in the prototype phase, JLG sends it out to its dealers or customers to have them try it out in order to gain valuable information about how the potential end user of the product feels about it, right. (Trial 8/31/2021 p.m. at 1196:1 – 1196:9). Then JLG uses the information in deciding what potential changes to make to the product to make it safer, more efficient, etc. (Trial 8/31/2021 p.m. at 1196:10-17) He concedes that if JLG had done that with the gate design, customers and dealers may have felt the gate was safer than the chain for numerous reasons, and JLG would have begun manufacturing the 1930ES scissor lift with the gate as standard instead of the chain. (Trial 8/31/2021 p.m. at 1197:3-1198:14).

IX. JLG'S SPECIAL RECORD DESTRUCTION POLICY FOR "ACCIDENT RECORDS"

WARRANTS AN ADVERSE INFERENCE AND SPOLIATION INSTRUCTION

Mr. Forgas testified that the basis for JLG's position that the chain is as good as the gate is customer feedback, what's happening in the field, analysis within JLG engineering and product safety, and accidents and lawsuits. (Trial 8/31/2021 a.m. at 1018:22-1019:8). Mr. Forgas also testified that for each new design or change in design on products, JLG looks for publicly available information on injury statistics to see what is going on in the industry beyond what JLG already knows from that standpoint, but he cannot remember doing that for the 1930ES model. (Trial 8/31/2021 a.m. at 1083:20-1084:16).

Mr. Forgas testified when JLG is informed that an injury occurred on a JLG product, JLG's special record retention policy for "accident records" is to retain records from only five years prior to the date of the incident to the date of the incident. (Trial 8/31/2021 a.m. at 1047:20-1048:11). In responding to discovery requests in this case for prior similar incidents, incidents involving the same types of alleged misuses in this case, and other relevant information, JLG limited its search to 2010-2015. (Trial 8/31/2021 a.m. at 1047:10-22). Mr. Forgas admitted that he personally did not perform the search for the records sought prior to signing the discovery responses under penalty of perjury and does not remember if he spoke with anyone about the search. (Trial 8/31/2021 a.m. at 1050:1-12). Mr. Forgas further testified that JLG's in-house counsel made the decision to not report accidents involving JLG's products to IPAF after all manufacturers were asked to report them. (Trial 8/31/2021 p.m. at 1201:4-26).

The court sustained JLG's objection to asking if there had been prior lawsuits against JLG for people falling at height with the chain design. (Trial 8/31/2021 a.m. at 1018:22-1019:13) The court also sustained JLG's objection to Plaintiffs introducing the testimony of Mr. Hoover, JLG's PMQ, regarding how many prior depositions he had given in lawsuits against JLG involving scissor lifts. (Trial 9/1/2021 a.m. at 1226:15-1227:4). Likewise, the court sustained JLG's objection to questioning Mr. Forgas regarding the number of times he has investigated incidents involving someone falling from a JLG scissor lift and whether Mr. Forgas had ever investigated an incident involving someone falling from a scissor lift with the chain latched. (Trial 8/31/2021 a.m. at 1012:18-1013:17)

Based upon the foregoing, the jury should be instructed on spoliation of evidence: "You may

consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party." (CACI 204).

X. CONCLUSION

Defendant's motion also fails to establish that Defendant is entitled to a directed verdict on any of Plaintiff Camacho's causes of action. Plaintiffs presented substantial evidence in support of each element of Plaintiff Camacho's causes of action for negligent and strict liability design defect and warning/instruction, as well as negligent failure to retrofit. As such, Defendant's motion must be denied in its entirety. The overwhelming evidence in support of Plaintiffs' causes of action cannot all be summarized in this opposition. However, the following alone is far more than sufficient to defeat defendant's motion.

DATED: September 17, 2021

GREENBERG AND RUBY INJURY ATTORNEYS, APC

By: 

Emily Ruby, Esq.
Attorneys for Plaintiffs,
RAUL CAMACHO and
LUCIA MATURRANO

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 6100 Wilshire Blvd., Suite 1170, Los Angeles, CA 90048. My business fax number is (323) 782-0543.

On **September 19, 2021,** I served true copies of the following document(s) on the interested party(ies) in this action described as: **NOTICE OF FILING VIDEOTAPED DEPOSITION TESTIMONY OF BRENT HOOVER TO BE MADE PART OF THE OFFICIAL COURT RECORD.**

SEE SERVICE LIST

[] BY MAIL: I placed said documents in a sealed envelope or package addressed to the persons at the addresses on the attached Service List. I placed the sealed envelope for collection and mailing, following our ordinary business practices, at Los Angeles, California.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[xx] BY ELECTRONIC SERVICE: I caused such documents to be electronically served on the eServe Recipients registered in this case with the Superior Court of California pursuant to California Rules of Court, Rule 2.251.

[] BY MESSENGER SERVICE: I served the documents by placing them in an envelope or package addressed to the persons at the addressed listed on the attached Service List and provided them to a professional messenger service for service.

[] BY E-MAIL: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused such document to be delivered electronically to the interested parties at the email address(es) listed on the attached Service List.

STATE [XX] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Executed on **September 19, 2021**, at Los Angeles, California.

EMILY RUBY

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