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Castle Creek Properties, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR LOS ANGELES

DOMINICK MARTIN, an individual,
Plaintiff,

v.

CASTLE CREEK PROPERTIES, INC., a California corporation; and DOES 1-10, inclusive,
Defendants.

CASE NO.: 23STCV14734

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO STRIKE REQUEST FOR INJUNCTIVE RELIEF

Hearing Date: December 11, 2023
Time: 08:30 a.m.
Dept.: 71
Reservation ID: **440325733810**

Action Filed: June 26, 2023
Trial Date: None Set

Hon. Daniel M. Crowley

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INTRODUCTION

By his complaint, Plaintiff pursues causes of action for the alleged violation of the Unruh Civil Rights Act § 51 *et seq*. Plaintiff doesn't allege when he visited Defendant's website https://rosenthalestatewines.com/ (the "Website"), only that he was deterred due to supposed barriers on the website. Complaint, ¶¶ 4-7. He further alleges that he was supposedly deterred by Website barriers including missing alternative text, empty or missing labels, multiple form labels, empty links, broken slip link, broken ARIA references, broken ARIA menu, *Id.*, ¶ 22.

Plaintiff seeks injunctive relief to compel defendant to take action to remediate the Website to conform to his demands. Plaintiff requests affirmative injunctive relief requiring modification of the Website. Compl., Prayer for Relief, ¶ 2; Compl., ¶ 31.

> Section 51(b) of the Unruh Act provides:
> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Section 51 does not state any remedy for the violation of access regulations. The remedies for the violation of § 51 are set forth in § 52. Section 52(c)(3) provides only *preventive* injunctive relief as a remedy for violation of § 51, not affirmative (or mandatory) injunctive relief. Preventive injunctive relief applies only to maintain the *status quo*. Here, Plaintiff seeks to change in the *status quo*.

As a matter of law, plaintiff is not entitled under the Unruh Act to injunctive relief compelling defendant to take any action to modify their Website. This does not mean plaintiff is without recourse to pursue mandatory injunctive relief. The Legislature enacted and amended the Disabled Persons Act (DPA), Civil Code §§ 54 to 55, to provide remedies for access to places and things open to the public and forward-looking injunctive relief similar to the remedy provided in the

ADA.[1] At the same time, the Legislature amended the Unruh Act, continuing its purpose to protect the exercise of rights of all the classes of persons listed in § 51 from discriminatory conduct but excluding from it any obligation to construct or modify Website to meet compliance with access regulations. While the DPA and Unruh both concern the rights and remedies available to the disabled, they co-exist on separate and different paths. As such, the allegations listed in the prayer for injunctive relief should be stricken.

DISCUSSION

I.

A MOTION TO STRIKE MAY PROPERLY BE GRANTED BY THE COURT WHERE THE ALLEGATIONS ARE IRRELEVANT OR IMPROPER

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." Code Civ. P. § 436.

As shown below, affirmative injunctive relief cannot be pursued by Plaintiff in this action because Unruh does not allow for such relief. This motion to strike is proper to remove that claim for relief, which is irrelevant and an improper matter inserted in the complaint. A "motion to strike is appropriate vehicle to attack allegations requesting improper relief." *Satz v. Superior Court* (1990) 225 Cal.App.3d 1525, 1533, fn. 9. Mr. Martin must not be allowed to move forward with this improper prayer for affirmative injunctive relief. If he wishes to proceed forward with this demand, he must amend his complaint to utilize Disabled Persons Act, Civ. Code §54 as his cause of action and subject himself to the mutual attorney's fees provision and reduced statutory damages provisions there.

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II.

AS A MATTER OF LAW, PLAINTIFF IS NOT ENTITLED TO INJUNCTIVE RELIEF TO REQUIRE REMEDIATION OF THE WEBSITE AS UNRUH ONLY PERMITS PREVENTIVE INJUNCTIVE RELIEF; THE INJUNCTIVE RELIEF ALLEGATION SHOULD BE STRICKEN

Civil Code § 52 provides the remedies that may be imposed for the violation of Unruh. In addition to the remedy of damages contained in subdivision (a), subdivision (c) of section 52 provides in relevant part:

> "Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights described in this section, and that conduct is of that nature and is intended to deny the full exercise of those rights, … any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint. The complaint shall contain the following:
>
> "…
>
> "…
>
> "(3) A request for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the complainant deems necessary to ensure the full enjoyment of the rights described in this section." (Emphasis added.)

Section 52 does not define "preventive relief." But, preventive relief cannot be understood as the affirmative relief compelling defendant to remediate Website. Civil Code § 3368 defines preventive relief as relief "given by prohibiting a party from doing that which ought not to be done."

> Section 3368 is preceded by section 3366 which provides:
> "Specific or preventive relief may be given as provided by the laws of this state." (Emphasis added.) "Specific relief is given: 1. By taking possession of a thing, and delivering it to a claimant; 2. By compelling a party himself to do that which ought to be done; or, 3. By declaring and determining the rights of parties, otherwise than by an award of damages." (Emphasis added.)

Section 3367. By the definition of § 3367, injunctive relief that seeks remediation and other affirmative action is specific, mandatory injunctive relief – the opposite of preventive relief.

Thus, § 3368 defines preventive or prohibitory relief for all state laws, including § 52(c) as established in the language in section 3366—"by the laws of this state." Section 52(c)(3) only allows for prohibitory injunctions.

The rules of statutory construction support the application of the definition in § 3368 to § 52(c) (3). "[I]f a word or phrase has a particular meaning in one part of a law, we give it the same meaning in other parts of the law. [Citation.]" *Scottsdale Ins. Co. v. State Farm Mutual Automobile Ins. Co.* (2005) 130 Cal.App.4th 890, 899; *see also, Balasubramanian v. San Diego Community College Dist.* (2000) 80 Cal.App.4th 977, 988 ["We must construe identical words in different parts of the same act or in different statutes relating to the same subject matter as having the same meaning"]. And, "enactments with the same general purpose must be construed together to achieve a uniform and consistent legislative purpose, even though they may have been enacted at different times." *Klarfeld v. Berg* (1981) 29 Cal.3d 893, 901.

Thus, preventive relief in § 52(c)(3) means prohibitory injunctive relief as defined by § 3368. This conclusion also follows from case authority. The Supreme Court has explained, "As a general rule, we think we may say that when the injunction merely grants preventive relief it is prohibitive, but when it directly or indirectly grants affirmative relief it is mandatory." *Ohaver v. Fenech* (1928) 206 Cal. 118, 122. ""It is a generally accepted principle that in adopting legislation the Legislature is presumed to have had knowledge of existing domestic judicial decisions and to have enacted and amended statutes in the light of such decisions as have a direct bearing upon them. [Citations.]" [Citations.]' [Citations.]" *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 854. *Ohaver* additionally defines preventive relief as prohibitory injunctive relief. The Legislature is presumed to know the Supreme Court's definition of preventive relief and to have intended that meaning in § 52(c).

Preventive relief does not include physical changes to the Website or the affirmative obligations that plaintiff seeks as the order from this Court. The court in *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435 provides analysis of the difference between a prohibitory injunction and a mandatory injunction. In that case, the plaintiff secured an order requiring Blue

Cross to pay certain claims. The Court of Appeal rejected plaintiff's contention that the preliminary injunction issued by the trial court was prohibitory, not mandatory:

> "[T]he general rule is that an injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties. [Citations.] The substance of the injunction, not the form, determines whether it is mandatory or prohibitory. [Citation.]
>
> "Blue Cross argues the preliminary injunction in this case, though framed in prohibitory language, was mandatory because it required Blue Cross to perform affirmative acts of authorizing and paying for the treatment, thereby changing the status quo. Plaintiff argues it was merely a prohibitory injunction because it enjoined Blue Cross from persisting in an anticipatory breach of its contract, which threatened plaintiff's 'very existence,' and her health was the 'status quo' which required preservation.
>
> "We agree with Blue Cross. The injunction plainly ordered Blue Cross to perform affirmative acts which would change the position of the parties, by compelling Blue Cross to authorize and pay for plaintiff's treatment. It has been held an injunction which compels a party to perform some physical act or surrender property is mandatory. [Citation.]…"

Id. at 446-447, citing *Kettenhofen v. Superior Court of Marin County* (1961) 55 Cal.2d 189, 191.

In this case, Plaintiff seeks an injunction requiring defendant to affirmatively alter (remediate) the Website to conform to Plaintiff's demands including changing various aspects of the Website including text, links, and labels. Compl., ¶ 22. He seeks mandatory injunctive relief. *Davenport v. Blue Cross of California, supra*. Section 52(c)(3) does not permit the mandatory injunction sought by Plaintiff. As seen recently in this court on January 20, 2023, in *Brian Whitaker v Hugo Boss Retail Inc.*, defendant's motion to strike plaintiff's mandatory injunctive relief was granted by the court following the exact arguments that Defendant brings today.

> "Plaintiff seeks Defendant to remove all presently existing architectural barriers as required by the Americans with Disabilities Act and the Unruh Civil Rights Act, obtain biennial Certified Access Specialist architectural inspections of the subject facility to verify on-going ADA compliance and follow those inspection's recommendations of all readily achievable barrier removal, and implementation of accessibility [*9] policies and requiring annual employee training on providing full and equal access to clients or customers with disabilities. (Compl. Prayer ¶¶1-3.) This is mandatory injunctive relief, not preventive relief."

Whitaker v. Hugo Boss Retail, 2023 Cal. Super. LEXIS 14327, *9. Similarly in *Shayler*, the court agrees that,

> "Section 52 does not define the term "preventive relief." However, Civil Code § 3368 states: "Preventive relief is given by prohibiting a party from doing that which ought not to be done." (Bold Added.) The Court concludes that it is proper to apply the Civil Code § 3368 definition as providing the meaning of "preventive relief" in Civil Code § 52. (See, *Balasubramanian v. San Diego Community College Dist*. (2000) 80 Cal.App.4th 977, 988 ["We must construe identical words in different parts of the same act or in different statutes relating to the same subject matter as having the same meaning"].) Where, as here, the Legislature has chosen to use a statutorily defined term, the Court must assume that the Legislature intended that the courts use that statutory definition in construing this statute. Therefore, the Court shall apply the definition provided by Civil Code § 3368."

see also, Whitaker v. Fed. Express Corp., 2023 Cal. Super. LEXIS 3910 (LA Sup. Ct. Feb. 9, 2023) (Moreton, J.).

Further, in *Whitaker v California Pizza Kitchen, Inc.*, the court found yet again that the Unruh Act does not allow for mandatory injunctive relief,

> "Applying the definition of section 3368 to the express language of section 52(c) leads the Court to conclude that section 52(c) permits a plaintiff to seek a prohibitory injunction requiring a defendant to refrain from a particular act but does not authorize the imposition of mandatory injunctive relief that compels the performance of an affirmative act that changes the position of the parties."

Whitaker v. Cal. Pizza Kitchen, 2023 Cal. Super. LEXIS 30687, *8. Finally, in a very recent Order given on July 12, 2023, in *Fernandez v. Bellfower Liquor Alhosry, Inc.*, the court found that plaintiff could not seek mandatory injunctive relief based on § 52(c),

> "The Court thus finds the reference to "preventative relief" in section 52 as relief which prohibits a party from doing that which ought not to be done. Thus, applying the definition of section 3368 to the express language of section 52(c), CC § 52(c) permits a plaintiff to seek a prohibitory injunction requiring a defendant to refrain from a particular act but does not authorize the imposition of mandatory injunctive relief that compels the performance of an affirmative act that changes the position of the parties. Therefore, Plaintiff may not seek a mandatory injunction such as the ones included in his prayer for relief."

Fernandez v. Bellfower Liquor Alhosry, Inc., Case No. 22NWCV01248 (LA Superior Court July 12,

2023). As seen above, courts have repeatedly found that Plaintiff's request for mandatory injunctive relief is improper under § 52(c), as such, the motion to strike should be granted as a matter of course.

III.

IF THE COURT HAS ANY DOUBT "PREVENTIVE" RELIEF CANNOT REQUIRE MODIFICATION OF WEBSITE, THE PLAIN MEANING OF §51(D) AND § 52(G) OF UNRUH DEMONSTRATE A WEBSITE OWNER CANNOT BE ORDERED TO MODIFY WEBSITE

Section 51(d) and section 52(g) plainly establish that the Unruh Act does not require construction or modification of Website in any way:

> "(d) **Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever**, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws." [Quoting section 51]
> * **
> "(g) **This section does not require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever**, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor does this section augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws." [Quoting section 52.]

(Emphasis added.)

The plain words of sections 51(d) and 52(g) state that the Unruh Act does not require construction, alteration, repair, structural or otherwise, or modification of any kind in any building or facility. This language can be directly applied to websites as well, because Plaintiff is demanding there be physical alterations to Defendant's Website. "If [as here] the statutory language is unambiguous, we presume the Legislature meant what it said, and the plain meaning of the statute controls." *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 888.

"The plain meaning of the words of a statute may be disregarded only when the application of their literal meaning would inevitably (1) produce absurd consequences which the Legislature clearly did not intend or (2) frustrate the manifest purposes which appear from the provisions of the legislation when considered as a whole in light of its legislative history."

*Faria v. San Jacinto Unified Sch. Dist. (*1996) 50 Cal.App.4th 1939, 1945.

Limiting the remedy in Unruh to preventive (not mandatory) relief is neither absurd nor a frustration of the purpose. Rather, the limitation on injunctive relief is by design because the Legislature enacted the DPA for the purpose of providing access to websites. Unruh does not so provide by the express legislative language in §§ 51 and 52.

IV.

CALIFORNIA LAW DOES NOT RECOGNIZE "TESTER" STANDING

Plaintiff states in his Complaint, ¶ 8 that he went to Defendant's Website as a "tester", basically as an advocate for the civil rights of disabled persons to verify whether Defendants comply with the ADA and the UCRA."

In *Thurston v. Omni Hotels Management* (2021) 69 Cal.App.5th 299, just like in the present case, plaintiff set forth conclusory allegations that she intended to "avail herself to the good and services" of the hotels' website. *See* Compl., ¶ 8. However, the jury returned a verdict against her because it did not find that she had not used the website "for the purpose of making a hotel reservation (or to ascertain Omni's prices and accommodations for the purpose of considering whether to make a hotel reservation)." *Id.* at 305. On appeal, plaintiff alleged that her motivation for visiting the website was irrelevant, and the court disagreed.

While the court acknowledged that the protections under the URCA are broad, "at the same time, …a plaintiff cannot sue for discrimination in the abstract but must actually suffer the discriminatory conduct." *Thurston v. Omni, supra*, 69 Cal.App.5th at 306. "In essence, an

individual plaintiff has standing under the Act if he or she has been the victim of the defendant's discriminatory act. (Citations omitted.) 'Plaintiff must be able to allege injury – that is, some 'invasion of the plaintiff's legally protected interests.'" *Id.* (Emphasis in original.) "'Put another way, the [Unruh Act] is 'confined to discriminations against recipients of the 'business establishment's ... goods, services or facilities.' [Citation.] [Unruh Act] claims are thus 'appropriate where the plaintiff was in a relationship with the offending organization similar to that of the customer in the customer-proprietor relationship.'" *Id.* (Emphasis in original) The court in *Thurston* specifically held that the motivation for visiting the covered public accommodation is relevant to the merits of the claim and relied on *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000, as legal support. *Id.* at 309.

Persons who are not actually aggrieved, meaning they do not suffer a particular harm because they were never truly denied the services of the business do not have standing to bring a claim. *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 998. "Standing 'goes to the existence of a cause of action.'" *Id.* at 1000. "A person who invokes the judicial process lacks standing if he, or those whom he properly represents, 'does not have a real interest in the ultimate adjudication because [he] has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented.'" *Id.* at 1001. "California decisions ... generally require a plaintiff to have a personal interest in the litigation's outcome." *Id.*

"Unruh Act claims are thus 'appropriate where the plaintiff was in a relationship with the offending organization similar to that of the customer in the customer-proprietor relationship.' (Citation.)" *Smith v. BP Lubricants USA Inc.*(2021) 64 Cal. App. 5th 138, 149; *See also Alcorn v. Anbro Eng'g, Inc.*(1970) 2 Cal. 3d 493, 500 ["[T]here is no indication that the Legislature intended to broaden the scope of section 51 to include discriminations other than those made by a

'business establishment' in the course of furnishing goods, services or facilities to its clients, patrons or customers. (Emphasis added.)]

While Plaintiff relies on the portion Civ. Code § 51(f) to incorporate a claim under the ADA into his claim under the UCRA, "tester" standing is not allowed under California state law. "This does not mean we must look to federal law to determine whether a plaintiff has standing to recover monetary damages." *Reycraft v. Lee* (2009) 177 Cal. App. 4th 1211, 1219. "Rather, the differences in the standing requirements of the ADA and [California law] are apparent based on the plain language of the relevant statutes." *Id.* Under California law,

> "A disabled individual has standing to recover monetary damages if he or she was actually denied equal access to a public place. Under the ADA, a disabled individual has standing to seek an injunction to stop or prevent future harm from a discriminatory condition in a public place, whether or not he or she has actually been denied equal access to a public place. Because the requirements are obviously different, we must look to California law on the issue of standing, as well as to the specific statutory language… to determine whether plaintiff in this case has standing to maintain a cause of action against defendants.
>
> Under California law, a plaintiff generally has standing if he or she is able to allege some invasion of a legally protected interest. (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175, 59 Cal.Rptr.3d 142, 158 P.3d 718 (*Angelucci*).) However, '[s]tanding rules for actions based upon statute may vary according to the intent of the Legislature and the purpose of the enactment.' (Ibid.) In *Angelucci*, our Supreme Court granted review to consider the issue of standing on a claim for damages brought under section 52, subdivision (a), of the Unruh Civil Rights Act. (*Angelucci*, at pp. 164–165, 59 Cal.Rptr.3d 142, 158 P.3d 718.) The purpose of the Unruh Civil Rights Act is similar to that of the DPA—it protects an individual's right to 'full and equal access' to 'all business establishments.' (*Angelucci*, at p. 167, 59 Cal.Rptr.3d 142, 158 P.3d 718.)
> In reaching its decision in Angelucci, our Supreme Court stated as follows: '[A] plaintiff must have standing to bring an action under the Act. We do not dispute the Court of Appeal's admonition that 'a plaintiff cannot sue for discrimination in the abstract, but must actually suffer the discriminatory conduct.' In general terms, in order to have standing, the plaintiff must be able to allege injury—that is, some 'invasion of the plaintiff's legally protected interests.' In essence, an individual plaintiff has standing under the Act if he or she has been the victim of the defendant's discriminatory act."

Id. at 1219-1220.

> The DPA and the URCA have "significant areas of overlapping application" and therefore an analysis of the DPA applies to the URCA as well. *Munson v. Del Taco, Inc.*, 46 Cal.4th 661, 675, and see fn. 10 (2009). "Our view [is] that standing ….requires something more than mere awareness of or a reasonable belief about the existence of a discriminatory condition."

Reycraft v. Lee, supra, 177 Cal. App. 4th at 1221.

> "In sum, '[the DPA] imposes the standing requirement that the plaintiff have suffered an actual denial of equal access before any suit for damages can be brought.... [A] plaintiff cannot recover damages under section 54.3 unless the violation actually denied him or her access to some public facility. Plaintiff's attempt to equate a denial of equal access with the presence of a violation of federal or state regulations would nullify the standing requirement of [the DPA], since any disabled person could sue for statutory damages whenever he or she encountered noncompliant facilities, regardless of whether that lack of compliance actually impaired the plaintiff's access to those facilities. Plaintiff's argument would thereby eliminate any distinction between a cause of action for equitable relief under section 55 and a cause of action for damages under" California law.

Id. at 1223.

Simply put, in California, "testers" do not have standing. This is a logical conclusion as if someone has a "bona fide intent" to patronize the business then they have a "real interest in the ultimate adjudication." *Thurston v. Omni Hotels Management, supra*, 69 Cal.App.5th at 299. If the purpose of the visit to the business website is simply to "test" it, there is no "bona fide intent" to use the services. Therefore, pursuant to Code of Civil Procedure §§ 435(b)(i) and 436, Plaintiff's tester allegations in ¶ 8 that set forth "tester" motivations, should be stricken.

V.

THIS COMPLAINT SHOULD BE RECLASSIFIED TO LIMITED JURISDICTION

A defendant "may file a motion for reclassification within the time allowed for that party to respond to the initial pleading. The court, on its own motion, may reclassify a case at any time." *See Leonard v. Superior Court* (2015) 237 Cal. App. 4th 34, 43; *Ytuarte v. Superior Court* (2005) 129 Cal. App. 4th 266, 268. If the Court strikes ¶¶ 31-32 and the Prayer at ¶¶ 1-3, then this matter should be reclassified as a Limited Jurisdiction matter as the amount in controversy is only a

maximum of $4,000.00.

CONCLUSION

For the foregoing reasons, Plaintiff's claim and allegations for mandatory injunctive relief pursuant to the Unruh Act must be stricken and the case reclassified as a Limited Jurisdiction matter.

Respectfully Submitted,

STILLMAN & ASSOCIATES

Dated: September 1, 2023 By:_____
Philip H. Stillman, Esq.
Attorneys for Defendant Castle Creek Properties, Inc.

Case Name: *Martin v. Castle Creek Properties, Inc.*
Case Number: 23STCV14734

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 years and not a party to the within action or proceeding. I have an office in Miami Beach, Florida where the mailing occurred.

On September 3, 2023, I caused to be served the following document(s):

MOTION TO STRIKE INJUNCTIVE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE; DECLARATION OF MATTHEW ARNOLD

on the interested parties in this action by email to:

PACIFIC TRIAL ATTORNEYS, APC
Addressed to:
Scott J. Ferrell (Bar No. 202091)
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at vknowles@pacifictrialattorneys.com, the email address on file with this Court. I did not receive any notice that the documents was not deliverable to the foregoing email address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 3, 2023 at Miami Beach, Florida.

By:_____
Philip H. Stillman, Esq.