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

10 ANAVA FRIDMAN,

11 Plaintiff,

12 v.

13 YOUSSEF MAHBOUBIAN FARD;
14 HELEN MAHBOUBIAN FARD;
15 MAHBOUBIAN FARD TRUST; CITY
16 CHECK CASHERS; and DOES 1 to
17 100, Inclusive

18 Defendants.

) CASE NO.: PC032811Y
) (Case Assigned for All Purposes to
) Judge Howard J. Schwab, Dept. "F-48")

) PLAINTIFF'S OPPOSITION TO
) DEFENDANT, MAHBOUBIAN'S,
) MOTION IN LIMINE NO. ONE (1) TO
) EXCLUDE EVIDENCE OF
) SUBSEQUENT REMEDIAL CONDUCT

) FSC: 01/07/05
) TIME: 8:30 a.m.
) DEPT.: "F48"

) TRIAL DATE: 01/18/05

19
20 **TO THE HONORABLE JUDGE, HOWARD J. SCHWAB, DEFENDANTS, THEIR**
21 **ATTORNEYS OF RECORD AND ALL INTERESTED PARTIES HEREIN:**

22
23 Plaintiff hereby opposes Defendant's Motion In Limine No. One (1) on the following
24 grounds:

- 25
26 1. Defendant, Mahboubian's, knew or should have known that the subject sign on their
27 property, which caused Meron Fridman to be electrocuted, was not grounded and
28 that the ballast within the sign was defective;

- 1 2. This motion in limine is overbroad because evidence of subsequent remedial
2 measures may be introduced into evidence under certain exceptions;
- 3
- 4 3. Evidence of defendant's subsequent repairs may be admissible for the limited
5 purpose of showing the *feasibility* of eliminating a hazard. See People v. Lockheed
6 Shipbuilding & Const. Co. (1975) 50 Cal. App.3d Supp. 15, 32; Baldwin Contracting
7 Co. v. Winston Steel Works (1965) 236 Cal. App.2d 565, 573;
- 8
- 9 4. Evidence of subsequent remedial conduct is also admissible for the purpose of
10 attacking the credibility of a witness or otherwise impeaching a witness. Pierce v.
11 JC Penny Co. (1959) 167 Cal. App. 2d 3. Sanchez v. Baques and Sons Mortuaries
12 (1969) 271 Cal. App. 2d 188. (Evidence of subsequent remedial measures is
13 admissible to impeach the testimony of a witness, particularly where the witness
14 testifies that the condition prior to the subsequent remedial measure was safe).
- 15
- 16 5. As set forth in the case of Kelly v. New West Fed. Sav. (1996) 49 Cal. App.4th 659,
17 671, in limine motions lacking factual support and argument are improper. If
18 allowed, such motions would force the court to "rule in a vacuum." *Id.*
- 19

20 This opposition will further be based upon the Memorandum of Points and
21 Authorities, upon all paper and pleadings on file, as well as any oral and documentary
22 evidence which may be presented at or before the hearing.

23

24 DATED: December 29, 2004

LAW OFFICES OF GARY A. DORDICK

26 By:

27 _____
Gary A. Dordick, Esq.
David Azizi, Esq.
Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **INTRODUCTION**

4 This action arises from a tragic incident wherein Plaintiff, Anava Fridman's husband,
5 decedent, Meron Fridman, was electrocuted as a result of coming into contact with an
6 energized sign, mounted on the outside wall, on Defendant, Mahboubian's, property.

7
8 The defect in the subject sign which electrocuted decedent Meron Fridman was
9 created and allowed to exist by Defendants as set forth below.

10
11 Prior to the subject incident, Defendant Mahboubian's leased the store which had
12 the subject sign mounted on the outside wall to Defendant, City Check Cashers. As part
13 of the lease agreement, Defendant, the Mahboubian's allowed Defendant City Check
14 Cashers to conduct construction to convert the store for use as a check cashing store. In
15 conducting construction, Defendant City Check Cashers, has admitted that through it
16 contractors, it performed repair work on the subject sign, whereby the plastic covering for
17 the sign was removed and the ballast as well as the light bulbs were changed.

18
19 Based on witness testimony, during the construction, Defendant, the Mahboubian's
20 not only failed to make sure that a licensed contractor was hired to perform the work, but
21 failed to visit the store to make sure that the construction was being performed in
22 compliance with safety regulations.

23
24 Investigation by the government agencies indicates that the subject sign was not
25 properly grounded and that there was a failure in the ballast. The lack of grounding of the
26 sign was noticeable immediately upon removing of the plastic covering to the subject sign.
27 Therefore, the subject hazard which caused decedent Meron Fridman's untimely death
28 could have been easily eliminated by Defendants.

1 II.

2 **EVIDENCE OF SUBSEQUENT REMEDIAL MEASURE ARE RELEVANT AND**
3 **ADMISSIBLE ON THE ISSUE OF CONTROL AND DUTY TO TAKE SAFETY**
4 **MEASURES**

5 Evidence of defendant's subsequent repairs may be admissible for the limited
6 purpose of showing the *feasibility* of eliminating a hazard. See People v. Lockheed
7 Shipbuilding & Const. Co. (1975) 50 Cal. App.3d Supp. 15, 32; Baldwin Contracting Co.
8 v. Winston Steel Works (1965) 236 Cal.App.2d 565, 573 evidence showing Defendant's
9 remedial action (installment of protective barricade) took less than an hour admissible to
10 show how easily hazard eliminated.

11
12 The court in Morehouse v. Tanubman Co., (1970) 5 Cal. App. 3d 548, 555, held that
13 evidence of subsequent repairs properly received on issue of control of premises and
14 question of duty under contract to take safety measure is admissible.

15
16 III.

17 **EVIDENCE OF SUBSEQUENT REMEDIAL MEASURES ARE RELEVANT AND**
18 **ADMISSIBLE FOR PURPOSES OF ATTACKING THE CREDIBILITY OF A WITNESS**
19 **OR OTHERWISE IMPEACHING A WITNESS**

20 Ordinarily, evidence of subsequent remedial conduct is inadmissible to prove
21 a party's negligence or culpable conduct. Evidence Code § 1151. However, evidence
22 of precautions taken or repairs made after an accident may be admissible to impeach a
23 witness who testifies that the condition was not dangerous. Love v. Wolf, (1967) 249 Cal.
24 App. 2d 822, 831. Moreover, subsequent events offered to prove anything other than
25 negligence or culpable conduct are admissible if relevant. Dincau v. Tamayose (1982)
26 131 Cal. App. 3d 780, 796.

27
28 Evidence of subsequent remedial conduct is admissible for the purpose of attacking

1 the credibility of a witness or otherwise impeaching a witness. Pierce v. JC Penny Co.
2 (1959) 167 Cal. App. 2d 3; Sanchez v. Bagues and Sons Mortuarys (1969) 271 Cal. App.
3 2d 188. (Evidence of subsequent remedial measures is admissible to impeach the
4 testimony of a witness, particularly where the witness testifies that the condition prior to the
5 subsequent remedial measure was safe).

6
7 The court in Pierce v. JC Penny stated:

8 "An exception to the general rule of inadmissibility recognized in California is that
9 in appropriate circumstances evidence of subsequent precautions or repairs may properly
10 be admitted when it tends to impeach the testimony of a witness." (Citations omitted)

11 The court in Pierce pointed out two recognized methods of impeachment which
12 include (1) proof that a witness has conducted himself in a manner evidencing a belief
13 inconsistent with a fact or belief asserted on the witness stand, or (2) by contradictory
14 evidence.

15 Such evidence is also permitted to be used to impeach an expert. Daggett v.
16 Atchison, T. and S. F. Ry. Co. (1957) 48 Cal.2d 655; Laird v. T. W. Mather, Inc. (1958) 51
17 Cal.2d 210.

18 **IV.**

19 **CONCLUSION**

20 Based upon the foregoing, it is respectfully requested that the Court deny
21 Defendants', the Mahboubian's, Motion In Limine # 1 to exclude evidence of post-accident
22 remedial conduct.

23
24 DATED: December 29, 2004

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25
26 By:

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