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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN MATEO**

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 )  
**Plaintiffs,** )  
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v. )  
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, )  
 )  
**Defendants.** )  
 )  
\_\_\_\_\_ )  
 )  
**and cross-complaints** )  
 )  
\_\_\_\_\_ )

Case No.:  
**TENTATIVE RULINGS ON MOTIONS  
IN LIMINE AND OTHER MATTERS**  
PTC Date: October 28, 2024  
Time: 2:00 p.m.  
Dept. 4  
Trial Date: December 4, 2024  
Assigned to Hon. Nancy L. Fineman

1 **MOTIONS IN LIMINE**

2 The court rules on the parties’ motions in limine as follows. These rulings are tentative  
3 and can be changed any time before or during trial. (*Scott v. C.R. Bard, Inc.* (2014) 231  
4 Cal.App.4th 763, 784; *Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th  
5 659, 669-671.)

6 **PLAINTIFF’S MOTIONS IN LIMINE**

7 **No. 1**

8 Defendants do not oppose this motion. Thus, it is GRANTED.

9 **No. 2**

10 Defendants do not oppose this motion. Thus, it is GRANTED.

11 **No. 3**

12 This motion is too general for the court to rule. (*Kelly v. New West Federal Savings*  
13 (1996) 49 Cal.App.4th 659.) DENIED WITHOUT PREJUDICE to object to specific  
14 testimony. The motion does not identify the specific persons most knowledgeable who are the  
15 subject of the motion or the information not provided. When the court raised at an informal  
16 conference that this motion did not seek to exclude any specific testimony, plaintiffs’ counsel  
17 replied that the declaration in support provided the supporting information. The declaration  
18 provides facts and refers to exhibits without specifically identifying the evidence that plaintiffs  
19 seek to exclude. The court is not required to comb through the exhibits to find this  
20 information.

21 The cases cited by plaintiffs are not limited to cases where a person most qualified was  
22 prohibited from testifying. For example, in *Reales Investment, LLC v. Johnson* (2020) 55  
23 Cal.App.5th 463, 470, the first case cited by plaintiffs (MIL at p. 4), the trial court excluded the  
24 evidence because the party failed to comply with a local rule requiring “parties to exchange  
25 certain documents and information at least 14 days before trial, including witness lists, exhibit  
26 lists, and a statement of undisputed facts and issues of law.” If plaintiffs contest this ruling,  
27 they shall in their email identify the cases they cited where the court discussed a person most  
28 knowledgeable deposition.

1 Weil & Brown, which both parties cite, states that the Discovery Act does not specify  
2 the sanctions that can be imposed against someone who is lacking knowledge, but suggests that  
3 a motion to compel would be appropriate, sanctions would be appropriate, and if no witness  
4 was produced, the party could be precluded from introducing evidence at trial on the topics.  
5 (*Cal. Prac. Guide Civ. Pro. Before Trial* § 8:476 (TRG June 2024 update).) Here, it appears  
6 witnesses were produced, did not have as much information as plaintiffs would like, but  
7 plaintiffs did not bring a motion to compel. Plaintiffs can vigorously cross-examine these  
8 witnesses, can try to impeach them if they provide different testimony, but the court sees no  
9 basis to exclude their testimony. The court also sees no basis, either legally or factually, to  
10 preclude other witnesses in providing testimony on the subject of the person most  
11 knowledgeable topics. The noticing of a person most knowledgeable deposition does not  
12 foreclose other witnesses on the same subject. Issue sanctions, which is what in essence  
13 plaintiffs seek, are not appropriate. (*Maldonado v. Superior Court* (2002) 94 Cal.App.4th  
14 1390, 1396-1399 [decided on a motion to compel].)

15 **No. 4**

16 See the court's tentative on Brandsafway Services, Inc.'s motion in limine no. 1

17 **DEFENDANTS' MOTIONS IN LIMINE**

18 The court GRANTS the joinders.

19 **Brandsafway Services**

20 **No. 1**

21 Brandsafway Services, Inc. (Brandsafway) requests that the jury view a reconstructed  
22 scaffold at the site arguing that the photographs do not adequately show the scope of the  
23 scaffolding, its conspicuity, and the "nuisance" that Mr. Grytsayenko testified about. (MIL at  
24 p. 5.) Trials occur all the time without a site visit. Defendant makes no showing (perhaps  
25 because of the page limits imposed by the court on motions in limine) that this case is different.  
26 The fact that defense experts were surprised at the small area (*id.* at p. 3) is not sufficient to  
27 justify a site visit. Their testimony along with demonstratives and photographs could convey  
28 that information. (See *People v. Price* (1991) 1 Cal.4th 324, 422 (*Price*) [when veracity of

1 witness at issue, not abuse of discretion for trial court in criminal case to deny a request for a  
2 view of the scene; there were other means in testing the witness' veracity].) ]

3 Before the jury could visit the site, Brandsafway would have to establish a proper  
4 foundation. This foundation would include witnesses with personal knowledge of how the  
5 scaffolding was put up at the time of the accident and then testimony establishing how the  
6 recreated scaffolding was designed and built. Plaintiffs would have the opportunity to cross-  
7 examine each of these witnesses. The jury, as the trier of fact, would decide if the  
8 reconstruction is accurate. This evidence would not be necessary if there is not a site visit.

9 Further, Brandsafway would have to establish that the conditions at the property are  
10 similar conditions of the property existed at the time of the accident, which occurred in October  
11 2019. Brandsafway does not provide any specifics about what will occur at the site visit.  
12 Where will the jury stand, will they walk around, will someone the same height as Lyudmyla  
13 Grystayenko walk near the scaffolding etc.?

14 Further, while the court appreciates Brandsafway's offer to charter a bus (MIL at p. 5),  
15 there are many other administrative issues that need to be considered and worked out. (*Cal.*  
16 *Prac. Guide Civ. Trials & Ev.* §§ 7:37 *et seq.*, 8:555 *et seq.*) The movement of over twenty  
17 people to Mountain View and keeping the site secure, without any questions or comments by  
18 people passing by, will be difficult.

19 Accordingly, balancing the factors of Evidence Code section 352, the court finds that  
20 while a view of an accurate depiction of the site is relevant, the relevance is outweighed by the  
21 inconvenience to the court and jury (*Price, supra*, 1 Cal.4th at p. 422) and the undue  
22 consumption of time, the substantial danger of undue prejudice by having the recreation have  
23 more weight than other evidence because of the nature of the view, the inability to control the  
24 environment, and confusing the issues, or of misleading the jury. (Evid. Code., § 352.)  
25 Therefore, the court DENIES the motion.

1           **Core General/Midpen Housing**

2                   **No. 1**

3           The court GRANTS the motion to prohibit “‘reptile theory’ arguments, which are  
4 improper appeals to a jury's emotions by arguing a defendant's conduct threatens the  
5 community's safety.” (*Russell v. Department of Corrections and Rehabilitation* (2021) 72  
6 Cal.App.5th 916, 941, reh'g denied (Jan. 13, 2022), review denied (Mar. 9, 2022) citing  
7 *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 599; *Burchell v. Faculty Physicians &*  
8 *Surgeons of Loma Linda University School of Medicine* (2020) 54 Cal.App.5th 515, 530  
9 [improper for counsel to appeal to jury’s self-interest and ask them to use their verdict to  
10 protect the community generally].)

11           The court GRANTS to preclude any Golden Rule argument. (Cotchett & Fineman,  
12 *Persuasive Opening Statements and Closing Arguments*, § 3.7 (CEB 2023).) The ruling  
13 includes any statement that the jury acts as the conscience or voice of the community.  
14 (*Regalado v. Callaghan, supra*, 3 Cal.App.5th at p. 599.)

15           The court DENIES the motion as to any effort to stop closing argument from being  
16 vigorous. The court expects that the parties know the outer bounds of advocacy and that they  
17 will conduct their voir dire, make their opening statement and closing arguments within the  
18 law’s parameters. (See Cotchett & Fineman at Chapter 3.)

19                   **No. 2**

20           This motion is too general for the court to rule. (*Kelly v. New West Federal Savings*  
21 (1996) 49 Cal.App.4th 659.) DENIED WITHOUT PREJUDICE to object to specific  
22 testimony.

23           To the extent that the evidence relates to a matter beyond common experience and will  
24 assist the trier of fact, for example cause of accident or construction of building, expert  
25 testimony is required. (Evidence Code § 801, subd. (a); 1 Witkin, *California Evidence*,  
26 Opinion § 22 (June 2024 update).)

27           To the extent, however, that the injury is based upon common experience or rationally  
28 based on the perception of the witness, expert testimony is not necessary. (Evidence Code §

1 800; see e.g. *Martin v. Siller* (1936) 17 Cal.App.2d 153, 158 [“Where the eye strikes the pipe  
2 end and an injury to the eye results, expert testimony is required to determine the exact  
3 character of the injury before it can be decided that the pipe end produced the injury.’ Neither  
4 authority nor logic supports this statement. Common reasoning tells us that if the eye strikes the  
5 end of a pipe, and an injury to the eye results, expert testimony is unnecessary.”]; *Latky v.*  
6 *Wolfe* (1927) 85 Cal.App. 332, 343 [plaintiff could testify about her “physical condition prior  
7 to and following the accident as indicative of the effect that the injuries she received in the  
8 accident had upon her body or her mind.”].)

9 It is unclear who the plaintiffs seek to have provide opinions, the extent of the testimony,  
10 and whether those witnesses have been disclosed (or need to be disclosed) as experts. (Code  
11 Civ. Proc., § 2034.260, subd. (b)(1) [party must provide list setting forth the name and address  
12 of a person whose expert opinion that party expects to offer in evidence at the trial”]; *Cal.*  
13 *Prac. Guide Civ. Pro. Before Trial* § 8:1668 (TRG June 2024 update); *Hurtado v. Western*  
14 *Medical Center* (1990) 222 Cal.App.3d 1198, 1203.) The parties are to meet-and-confer to  
15 make sure that any issues regarding undisclosed witnesses providing opinions is brought to the  
16 court’s attention prior to trial.

### 17 **No. 3**

18 This motion is too general for the court to rule. (*Kelly v. New West Federal Savings*  
19 (1996) 49 Cal.App.4th 659.) DENIED WITHOUT PREJUDICE to object to specific  
20 testimony.

21 The parties are not to discuss the law in voir dire, opening statement or witness  
22 testimony. The court rather than the attorney or witnesses supply the jury with the law. For  
23 example for voir dire, Code of Civil Procedure section 222.5 subsection (b)(3) provides: “For  
24 purposes of this section, an “improper question” is any question that, as its dominant purpose,  
25 attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or  
26 question the prospective jurors concerning the pleadings or the applicable law.”

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**No. 4**

The court GRANTS the motion to exclude evidence that after the accident Core’s safety consultant Andrew Myovich placed yellow caution tape on the metal structure. The court finds that its relevance is substantially outweighed by Evidence Code section 352 factors and Evidence Code section 1151.

**No. 5**

The court GRANTS the motion. The court sees no facts only speculation that suggest that Core willfully suppressed evidence. The fact that it did not conduct an investigation afterwards does not tend to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, §§ 210, 350.) Any relevance of the information is substantially outweighed by the Evidence Code section 352 factors. Plaintiffs are not prohibited from asking if witnesses took pictures or interviewed witnesses, but cannot make any reference to Core’s policy to require an incident report.

**KBI Painting**

**No. 1**

DENIED. Plaintiffs may refer to themselves as a victim in argument or in testimony. Opening statement is not argument.

**No. 2**

KBI Painting does not suggest a different word for its employees to be called. Plaintiffs and others can testify as to their perceptions of the workers. KBI Painting can demonstrate that it is a misnomer for its employees to be called construction workers.

**No. 3**

In voir dire, the law allows questions about whether the parties can award a certain amount in damages. (Wegner, Fairbank and Epstein, *Cal. Prac. Guide Civ. Trials & Ev.* § 5:312. (TRG Oct. 2023 update).) However, the parties are not to pre-try their case or precondition the potential jurors in voir dire. The law allows broad questioning by the lawyers in voir dire to discover bias or prejudice. (Code of Civ. Proc., § 222.5, subd. (b)(1). There

1 must be a good faith belief that the damage amounts will come into evidence. The court  
2 expects the parties to know the bounds of permissible advocacy and stay within those bounds.

3 **By 10:00 a.m. on Friday, October 25, 2024, the parties shall email Department 4**  
4 **and each other as to any tentative rulings that they wish to contest. If the court and the**  
5 **opposing party do not receive notice by that time, the tentative ruling will be adopted at**  
6 **the pretrial conference.**

### 7 **JURY INSTRUCTIONS AND VERDICT FORMS**

8 The parties are to continue to work on jury instructions and verdict forms. The court will  
9 not discuss them at the first pretrial conference.

### 10 **STATEMENT OF THE CASE**

11 Statements of the case are to be neutral and short. (See *Cal. Prac. Guide Civ. Trials &*  
12 *Ev.* § 5:118 (TRG Oct. 2023 update).) The parties are to meet and confer and email to  
13 Department 4 a neutral statement of no longer than one page in Word by 10:00 a.m. on  
14 Monday, October 28, 2024.

### 15 **VOIR DIRE**

16 The court agrees that plaintiffs have eight preemptory challenges and defendants have  
17 eight preemptory challenges. (Code of Civ. Proc., § 231, subd. (c).) The court will impose  
18 reasonable time limits on voir dire. (*Cal. Judges Benchbook Civ. Proc. Trial* § 3.66 (July 2024  
19 update).)

20 The parties have requested a questionnaire. As discussed at the informal conference on  
21 October 21, 2024 and in emails, the court will consider a questionnaire, but the questionnaire  
22 needs to make voir dire more efficient and effective than oral voir dire. (See *Cal. Judges*  
23 *Benchbook Civ. Proc. Trial* § 3.66 (July 2024 update).) The parties shall submit their proposed  
24 joint questionnaire in Word by 10:00 a.m. on Monday, October 28, 2024. If the parties  
25 disagree on the questions, they should use different colors to indicate the questions they want,  
26 e.g. blue for plaintiffs; red for defendants.

1 **WITNESSES**

2 The court has the parties' joint witness list. The parties have estimated over one hundred  
3 and twenty hours, which is more than twenty court days for direct and cross. Assuming that  
4 there is re-direct and re-cross, the number of hours will be even higher. At the pretrial  
5 conference on December 19, 2023, the parties estimated a fourteen day jury trial. The court set  
6 a twelve day jury trial. The parties are to explain at the pretrial conference why they need over  
7 one hundred hours of testimony to presents their cases.

8 If any witness will be testifying by Zoom, the parties shall so indicate at the pretrial  
9 conference and if any party objects to the witness testifying by Zoom, the party shall indicate  
10 the reason for the objection.

11 The parties are to notify the other side no later than 4:30 p.m. the court day before the  
12 next court day of the witnesses who will be called the next court day.

13 If a party does not have a witness ready to testify, the court, in its discretion, may find  
14 that the party has rested.

15 **EXHIBITS**

16 The court encourages the parties to stipulate to the admissibility of documents for  
17 which there is no objection. Please file a stipulation based on the exhibit list, of exhibits  
18 stipulated into evidence by November 13, 2024 and email a Word copy to Department 4. The  
19 court suggests the parties consider stipulating to a *Howell* number if plaintiffs are pursuing past  
20 medical expenses (if they are not, plaintiffs shall so inform the court and other parties at the  
21 pretrial conference), redactions to medical records, e.g. exhibits 102-125, 433, and whether  
22 expert reports and CVs will be admitted into evidence (generally they are not).

23 The court will not admit into evidence exhibits such as all discovery requests, all  
24 discovery responses, all documents produced by a party or non-party. (Ex. 275-279.) These  
25 descriptions are unmanageable. Specific documents must be identified and redaction to  
26 discovery requests and responses are generally necessary.

27 Exhibits 250-274 are depositions with exhibits. If the exhibits are going to be admitted  
28 into evidence, they will need their own number rather than being part of the deposition

1 transcript. Depositions are not allowed into the jury room. (Code of Civ. Proc., § 612.) The  
2 jury can request that the deposition testimony can be reread to them. (*Cal. Prac. Guide Civ.*  
3 *Trials & Ev.* § 15:61 (TRG Oct. 2023 update).) Therefore, the parties shall make sure that the  
4 court reporter has the specific deposition testimony presented at trial. If the deposition is more  
5 than a few lines, the court generally asks the parties to waive the reporting of the deposition  
6 testimony. The court needs page and line designations, any objections and counter-  
7 designations for all non-impeachment testimony. They shall jointly submit one binder with a  
8 joint pleading that has the designations, objections and responses followed by tabs for each  
9 witness with the designation highlighted in yellow and any objections bracketed in red. Unless  
10 a party can demonstrate good cause, the deposition of each witness shall be introduced only  
11 once, *i.e.*, all parties' designations will be presented together rather than in each party's case.  
12 The court will discuss the timing of the submittal at the pretrial conference. The court also  
13 needs to know the purpose of the depositions. The deposition of a party can be used for any  
14 purpose. (Code of Civ. Proc., § 2025.620, subd. (b)) while the depositions of non-parties can  
15 only be used at trial for impeachment (*id.*, subd. (a)), if the deponent is unavailable to testify at  
16 trial (*id.*, subd. (c),) or to refresh recollection (but then the testimony is not read). There are  
17 certain rules regarding the depositions of physicians or experts. (*Cal. Prac. Guide Civ. Trials*  
18 *& Ev.* § 8:814 (TRG Oct. 2023 update).)

19 The court needs three sets of exhibits to be provided to Department 4 by the deadline in  
20 the pretrial order—one original, one for the judge, and one for the witness. The parties are to  
21 affix the exhibit labels on the documents. The format of the labels can be obtained from the  
22 Department 4 clerk.

### 23 **OPENING STATEMENT**

24 If the parties believe that they will need more than thirty minutes for opening statement,  
25 they should indicate the estimate at the pretrial conference. The court will include the time for  
26 opening and closing in any time limits imposed.

27 Any demonstratives that a party intends to use in opening shall be exchanged before  
28 voir dire.

1 **TRIAL SCHEDULE**

2 The court has scheduled this case, based upon the estimate at the pretrial conference, for  
3 twelve days, which time estimate includes voir dire and jury deliberations. It appears from the  
4 pretrial submissions that the trial will be longer. Based upon the descriptions in the joint  
5 witness list, there is duplication of testimony and the estimates appear longer than necessary.  
6 The court understands that the parties estimate time to make sure that they have sufficient time,  
7 but the court needs to tell the jury when the case will end.

8 The court will discuss the trial schedule with the parties at the pretrial conference. The  
9 court is considering setting reasonable time limits. (*People v. ConAgra Grocery Products Co.*  
10 (2017) 17 Cal.App.5th 51, 149-151.) As the Court of Appeal has explained:

11 “Some litigants are of the mistaken opinion that when they are assigned to a court for  
12 trial they have camping rights. This view presumes that the trial judge must defer to the  
13 lawyers’ time estimates for the conduct of the trial such that, for example, when  
14 examining witnesses, unless a valid objection is made by one's opponent, a party is  
15 entitled to take whatever time it believes necessary to question each witness. This view is  
16 not only contrary to law but undermines a trial judge's obligation to be protective of the  
17 court's time and resources as well as the time and interests of trial witnesses, jurors and  
18 other litigants waiting in line to have their cases assigned to a courtroom. [Fn. omitted.]  
19 The Evidence Code expressly empowers trial judges to limit the presentation of  
20 evidence, even evidence that is relevant and probative. Evidence Code section 352  
21 authorizes the court to exclude evidence if its probative value is substantially outweighed  
22 by the probability that its admission will necessitate *undue consumption of time*.  
23 Evidence Code section 765, subdivision (a) provides that the court *shall* exercise control  
24 over the mode of interrogation of witnesses ‘so as to make interrogation as rapid, as  
25 distinct, and as effective for the ascertainment of truth.’ Both statutes describe powers  
26 that the court may exercise on its own initiative. [¶] It is incumbent upon trial judges to  
27 manage trials efficiently. Efficiency is not necessarily measured by comparing the actual  
28 length of a trial with the parties’ original time estimate because parties often  
overestimate or underestimate a trial's length. Judges need to be proactive from the start  
in both assessing what a reasonable trial time estimate is and in monitoring the trial's  
progress so that the case proceeds smoothly without delay. ... Trial time management is  
an ongoing responsibility of the trial judge, regardless of the case's complexity, the  
number of witnesses called or whether specific time limits have been imposed. [¶] ... [¶]  
(*Id.* at p. 149; *People v. Jackson* (1971) 18 Cal.App.3d 504, 509 [“We would observe that the  
administration of justice would greatly benefit if more trial judges made use of their inherent  
powers as codified in Evidence Code section 352, to control and, if necessary, terminate  
repetitious, time consuming and irrelevant testimony. If they would do so, it would enhance

1 and perhaps restore in the eyes of the public the image of the court as being an institution for  
2 the expeditious, fair and orderly ascertainment of the truth.”].)

3 As the parties know, the court only holds trial on Wednesday, Thursday and Friday.  
4 The court will discuss the schedule at the pretrial conference. The court schedule is 9:00 a.m.  
5 to noon with a twenty minute break and 1:30 p.m. to 4:30 p.m. with a twenty minute break,  
6 except for Fridays where the afternoon schedule is 2:00 p.m. to 4:30 p.m. with a twenty minute  
7 break (the morning schedule on Friday is the same as the other days).

8 The court will not have trial on the afternoon of December 6, 2024; December 13, 20,  
9 25, 2024; and January 1, 24. The court may not have trial on January 10 and will discuss with  
10 counsel whether we will have trial on December 26-27 and January 2-3, 2025. The court’s  
11 preference is to hold trial on December 26-27 and January 2-3, 2025

#### 12 **COURT REPORTER**

13 The parties are reminded of the court’s rule regarding court reporters. If the parties want  
14 a court reporter, they must follow the required procedure.

15 If there is a court reporter, the court will ask the parties at the pretrial conference whether  
16 they will waive reporting of voir dire and put any objections to the process on the record at a  
17 later time.

#### 18 **INTERPRETERS OR ADA ACCOMMODATIONS**

19 If any party or witness needs an interpreter, counsel are to follow the court’s procedure  
20 for requesting an interpreter and should make sure to provide the length of the trial and the  
21 specific times that an interpreter is requested.

22 If any attorney, party or witness needs any accommodations, they are to follow the  
23 court’s procedures for making their request.

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**PRETRIAL CONFERENCE**

The parties are reminded that the pretrial conference is in person and will be held at the Hall of Justice, 400 County Center, Courtroom 4C, Redwood City, CA 94063.

Dated: October 22, 2024

\_\_\_\_\_  
NANCY L. FINEMAN  
Judge of the Superior Court