Tentative Rulings for July 24, 2024
Department 2

To request oral argument, you must notify Judicial Secretary Charmaine Ligon at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside
of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**
Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 2 at (760) 904-5722 and (2) inform all other parties of the request and
COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1 (833) 568-8864 (Toll Free), 1 (669) 254-5252, 1 (669) 216-1590, 1 (551) 285-1373, or 1 (646) 828-7666
- Meeting Number: 161 143 8184

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php.

Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.

1.

CVRI2000489	CORONA COMMUNITY VILLAS INC vs CORONA POST ACUTE LLC	Motion to Compel Plaintiff's Further Responses to Requests for Production of Documents and Request for Sanctions

Tentative Ruling:

Notice of Settlement of Entire case filed 7/16/2024. All hearings are off calendar.

2.

CVRI2000489	CORONA COMMUNITY VILLAS INC vs CORONA POST ACUTE LLC	Motion to Compel

Tentative Ruling:

Notice of Settlement of Entire case filed 7/16/2024. All hearings are off calendar.

3.

CVRI2000489	CORONA COMMUNITY VILLAS INC vs CORONA POST ACUTE LLC	Motion to Compel

Tentative Ruling:

Notice of Settlement of Entire case filed 7/16/2024. All hearings are off calendar.

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CVRI2000489	CORONA COMMUNITY VILLAS INC vs CORONA POST ACUTE LLC	Motion to Compel

Tentative Ruling:

Notice of Settlement of Entire case filed 7/16/2024. All hearings are off calendar.

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CVRI2000489	CORONA COMMUNITY VILLAS INC vs CORONA POST ACUTE LLC	Motion to Compel

Tentative Ruling:

Notice of Settlement of Entire case filed 7/16/2024. All hearings are off calendar.

6.

CVRI2000489	CORONA COMMUNITY VILLAS INC vs CORONA POST ACUTE LLC	Motion to Compel

Tentative Ruling:

Notice of Settlement of Entire case filed 7/16/2024. All hearings are off calendar.

7.

CVRI2000489	CORONA COMMUNITY VILLAS INC vs CORONA POST ACUTE LLC	Motion for Summary Adjudication on Complaint for Unlawful Detainer - Commercial (Over $25,000) of CORONA COMMUNITY VILLAS INC

Tentative Ruling:

Notice of Settlement of Entire case filed 7/16/2024. All hearings are off calendar.

8.

CVRI2201133	GRIFFITHE vs SAMEC	Motion to Compel

Tentative Ruling:

Plaintiff Guy Griffithe alleges that after a financial transaction with Defendants Joseph Samec and Brenda Samec went bad, they began a campaign of harassment via e-mail and social media against him. Defendant Joseph Samec began to physically stalk him and recruited Defendant Chester Bennett to assist in the campaign. Bennett is a business representative and lawyer for Defendant Local Union 47. Plaintiff filed this action on 3/25/22 and filed the First Amended Complaint (FAC) on 4/20/22. After the court sustained in part Defendant Local Union 47's demurrer, Plaintiff filed the Second Amended Complaint (SAC) on 9/20/22. The SAC asserts: (1) defamation/libel per se; (2) harassment; (3) online impersonation in violation of Penal Code §528.5; (4) fraud; (5) tortious interference; (6) economic interference; (7) intentional misrepresentation; (8) negligent misrepresentation; (9) negligence; (10) intentional infliction of emotional distress; (11) good faith and fair dealing; and (12) intentional infliction of emotional distress. Trial is set for 10/4/24.

Plaintiff's motions are unclear as the titles, memoranda and separate statements do not match. It appears that Plaintiff is seeking to compel further responses to special interrogatories and requests for admissions as to Defendants Joseph and Brenda Samec (based on the separate statements), while only special interrogatories as to Defendant Chester. Plaintiff contends that Defendants served improper objections and is excused from meet and confer due to the court's order at the last IDC.

The Samecs oppose the motion contending that there is no meet and confer, the separate statement is improper, it is unclear what discovery is at issue and there is no support for sanctions. Defendant Chester opposes the motion contending that there was no meet and confer; Plaintiff failed to address the law cited in support of the objections; the interrogatories were compound, conjunctive or disjunctive; there is no declaration in support of the interrogatories in excess of the Rule of 35; and his objections are proper. Chester further asserts that there is no basis for sanctions.

In reply, Plaintiff repeats that the court ordered on 5/10/24 that no meet and confer was required. He contends he only provided 35 interrogatories. There are no subparts, Defendants failed to make proper objections, and there was no meaningful investigation.

Analysis

"Pro. per. litigants are held to the same standards as attorneys." (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

A party may file a motion compelling further answers to interrogatories and requests for admission if it finds that the response is inadequate, incomplete, or evasive, or an objection in the response is without merit or too general. (CCP §§2030.300, 2033.290.) Unless notice of the motion is given within 45 days of the service of the verified response, or any supplemental response, or on or before any specific later date to which the propounding party and the responding party have

agreed in writing, the propounding party waives any right to compel a further response. (CCP §§ 2030.300(c), 2033.290(c).) Here, Plaintiff does not indicate when the Defendants served responses. Thus, it is not clear whether the motions are timely.

The parties are required to meet and confer. (CCP §§2030.300(b), 2033.290(b).) Plaintiff asserts the court excused the meet and confer requirement. The minutes do not indicate such. The court, on 5/10/24, that the parties are not required to engage in an Informal Discovery Conference, i.e. with the court. This does not excuse the requirement of the Civil Discovery Act that requires a meet and confer.

Plaintiff is required to submit a separate statement that includes the text of the interrogatory or request, the response, a statement of the factual and legal reasons for compelling further responses, the text of all definitions, and other discovery responses if the request is reliant on such. (Cal. R. Ct. 3.1345.) Plaintiff's separate statement is confusing because it appears that Defendants created numbers for each objection in response to each interrogatory. This is not the fault of Plaintiff but the fault of Defendants. However, Plaintiff's separate statement fails to include a reason for compelling further responses as to each response.

Finally, to the extent that Plaintiff seeks relief as to requests for admissions, they were not properly in the notice or memorandum—just the caption and separate statement. The notice of motion must state in the first paragraph exactly what relief is sought and why (what grounds). (C.C.P., § 1010; CRC rule 3.1110(a); see *People v. American Sur. Ins. Co*. (1999) 75 Cal.App.4th 719, 726.) The court generally cannot grant different relief, or relief on different grounds, than stated in the notice of motion. (See *People v. American Sur. Ins. Co.*, supra, 75 Cal.App.4th at 726; *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1124.) The court will not consider the motion as to requests for admissions.

1. Interrogatories

Upon a timely motion to compel further, the responding party has the burden to justify any objection or failure to fully respond to the interrogatory. (*Fairmont Ins. Co. v. Superior Court (Stendell)* (2000) 22 Cal.4th 245, 255.) "Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the permits." (CCP §2030.220(a).) "If an interrogatory cannot be answered completely, it shall be answered to the extent possible." (CCP §2030.220(b).) "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information…." (CCP §2030.220(c).)

First, the parties appear to fight over the rule of 35. For special interrogatories and requests for admissions, they are subject to the rule of 35. (CCP §§ 2030.030(a)(1), 2033.030(a).) Plaintiff did not serve more than 35. Thus, this has no application.

Second, Defendants have the burden to justify its objections and responses. The Defendants did not in opposition. The objections consist of the violation of the Rule of 35[1]; boilerplate objections of compound, conjunctive, vague and ambiguous; and confusion of the word "identify." None of these objections have merit, and the motion is granted as to the Defendants.

2. Sanctions

As for sanctions, a pro per litigant cannot recover attorney fees as discovery sanctions. (*Kravitz v. Superior Court* (2001) 91 Cal.App.4th 1015, 1019-1020.) Instead, a pro per litigant can recover costs incurred. (*Id*. at 1020, 1021-1022.) First, Plaintiff does not provide a basis for costs—only

[1] Even if there was a rule of 35 violation, the remedy is to file a motion for protective order. (CCP §2030.040(a).) A party may not merely object on this grounds. (*Cantanese v. Superior Court* (1996) 46 Cal.App.4th 1159, 1165 (disapproved on other grounds in *Lewis v. Superior Court* (1999) 19 Cal.4th 1232).)

in the reply does he state he spent $15,000 with prior counsel, but does not break it down. Second, Plaintiff failed to meet and confer, and therefore, shall not recover sanctions.

9.

CVRI2201133	GRIFFITHE vs SAMEC	Motion to Compel

Tentative Ruling: See above.

10.

CVRI2201133	GRIFFITHE vs SAMEC	Motion to Compel

Tentative Ruling: See above.

11.

CVRI2301581	CABRERA vs CRANE DEVELOPMENT CORPORATION	Motion for Summary Judgment on Complaint for Other Personal Injury/Property Damage/Wrongful Death Tort (Over $25,000) of GUILLERMO CABRERA by CRANE DEVELOPMENT CORPORATION

Tentative Ruling:

On March 29, 2023, Plaintiff Guillermo Cabrera ("Plaintiff") filed a Complaint against Defendant Crane Development Corporation ("Defendant" or "Crane Development") for negligence and premises liability. In the Complaint, Plaintiff alleges that on April 8, 2021, he was working on the roof of the commercial building located at 3777 Mission Avenue, Riverside, California (the "Property") and fell through what appeared to be an elevator shaft on the roof of the Property because it was covered only with waterproof paper and there were no signs designating it a hazard. (Complaint at ¶¶ GN-1, Prem.L.-1.) Defendants negligently owned, maintained, and operated the Property, and willfully and/or maliciously failed to warn of the dangerous condition, causing Plaintiff's injuries. (Complaint at ¶¶ GN-1, Prem.L.-1, Prem.L.-2, Prem.L.-3.)

On November 1, 2023, Crane filed an Answer to the Complaint. Also on November 1, 2023, Plaintiff filed an Amendment to the Complaint adding Defendant Precision Framing Systems, Inc. ("Precision Framing") as DOE # 1.

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Defendant now moves for summary judgment on the ground that pursuant to the Privette Doctrine, set forth in *Privette v. Superior Court* (1993) 5 Cal.4th 689, and its progeny, as the hirer of independent contractor, Savin Enterprises, Inc. ("Savin"), it cannot be liable for any alleged injuries to Plaintiff, who was Savin's employee. Defendant argues that this is especially true because Plaintiff has already received worker's compensation benefits from Savin's worker's compensation carrier. In support of this motion, Defendant submits:

- Notice of Motion and Motion;
- Memorandum of Points and Authorities;
- Separate Statement of Undisputed Material Facts;
- Request for Judicial Notice;
- Decl. of Philip Crane;

- Decl. of Scott A. Davis; and
- Notice of Lodgment and Lodged Exhibits, which attaches:
  - the Complaint filed by Plaintiff in this action on 3/29/23;
  - the Amendment to the Complaint adding Precision Framing, filed 11/1/23;
  - the Answer filed by Crane Development, filed 11/1/23;
  - Plaintiff's Responses to Defendants SPROGs, Set 1, dated 1/15/24;
  - Plaintiff's Responses to Defendants FROGs, Set 1, dated 1/15/24
  - Subcontract between Defendant and Savin, dated 7/29/19;
  - Complaint filed by Falls Lake Fire & Casualty Company in Riverside Superior Court case no. CVRI 2301624.

In a late-filed opposition, Plaintiff acknowledges that *Privette*, *supra*, states there is generally no liability for injuries to employees of independent contractors, but there are exceptions to that rule, and if Plaintiff can prove Defendant knew of the dangerous condition and didn't warn Savin, the rule of non-liability does not apply. In support of his opposition, Plaintiff submits the following:

- Memorandum of Points and Authorities; and
- Decl. of Guillermo Cabrera.

In a "reply" filed before receipt of Plaintiff's opposition, Defendant states that it received no opposition to the motion, and to the extent any is filed late, it should not be considered.

Analysis

I. Request for Judicial Notice

Crane Development requests that the Court take judicial notice of the following documents: (1) the Complaint filed by Plaintiff in this action on March 29, 2023; (2) the Amendment to the Complaint adding Precision Framing, filed November 1, 2023; (3) the Answer filed by Crane Development, filed November 1, 2023; and (4) the Complaint filed by Falls Lake Fire & Casualty Company in Riverside Superior Court case no. CVRI 2301624. Plaintiff does not object to the request for judicial notice.

The Court grants the request and takes judicial notice of the above documents pursuant to Evid. Code § 452(d).

II. MSJ Standard

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (C.C.P. § 437c(c).) A defendant moving for summary judgment bears the initial burden of proving that there is no merit to a cause of action by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (C.C.P. § 437c(p)(2); *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037.) Importantly, a moving defendant establishes a right to summary judgment by showing that the plaintiff lacks the evidence to support at least one element of the cause(s) of action pleaded. (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 756. *See also Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855.)

Once the defendant has made such a showing, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (*Aguilar, supra*, 25 Cal.4th at 849.) The opposing party may not rely upon the allegations or denials in its pleadings but must "set forth the specific facts showing that a triable issue of material fact exists." (C.C.P. § 437c(p)(2).) Claims and theories not supported by

admissible evidence do not raise triable issues of fact. (*Rochlis v. Walt Disney Co*. (1993) 19 Cal.App.4th 201, 219, disapproved on another ground in *Turner v. Anheuser–Busch, Inc*. (1994) 7 Cal.4th 1238.) However, while summary judgment is no longer considered a "disfavored" procedure, the moving party's evidence must be strictly construed, while the opposing party's evidence must be liberally construed. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) If the plaintiff does not meet his burden of establishing a triable issue of material fact, summary judgment in favor of the defendant is appropriate.

III. Plaintiff's Opposition Was Late and He Failed to File a Separate Statement

Plaintiff filed his opposition to the present motion on July 17, 2024, 7 days prior to the hearing on the motion. Pursuant to C.C.P. § 1005(b), any motion must be served 9 court days prior to the date set for hearing. Thus, Plaintiff's opposition was untimely.

In addition, Plaintiff failed to submit a separate statement with his opposition. Pursuant to CRC Rule 3.1350, a party opposing a motion for summary judgment must submit a separate statement that, among other things, identifies "[e]ach supporting material fact claimed to be without dispute with respect to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion." (CRC Rule 1.1350(d)(1)(B).) The separate statement requirement "serves two functions: to give the parties notice of the material facts at issue in the motion and to permit the trial court to focus on whether those facts are truly undisputed." (*Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 569.)

While the Court could disregard Plaintiff's opposition entirely based on the above, because this is a dispositive motion, and the outcome is the same either way, the Court exercises its discretion to consider Plaintiff's opposition. (See, CRC 3.1300(d); *Slayton v. Superior Court* (2006) 146 Cal.App.4th 55, 58, n. 2; *Kapitanski v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29.)

IV. Elements of Plaintiff's Negligence/Premises Liability Claims

To support a cause of action for negligence, a plaintiff must establish: "(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach was a proximate or legal cause of the resulting injury." (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.) "The elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages." (*McIntyre v. The Colonies-Pacific, LLC* (2014) 228 Cal.App.4th 664, 671, quoting *Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998.) In an action for personal injuries sustained by a plaintiff in a fall, no inference of negligence arises simply from the plaintiff falling. (*Harpke v. Hanker Shim Estates* (1951) 103 Cal.App.2d 143.) Without a duty of care owed by the alleged wrongdoer to the person injured, no negligence is established. (*Jean Hamilton v. Gage Bowl, Inc.* (1992) 6 Cal.App.4th 1706, 1711.) Where a defendant demonstrates that a plaintiff cannot reasonably present specific facts to establish an essential element of this cause of action, summary judgment in favor of defendant is appropriate. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763.)

V. Defendant Had No Duty to Plaintiff and Is Therefore Entitled to Summary Judgment

A. General rule of nonliability

"[A] person who hire[s] an independent contractor generally [is] not liable to third parties for injuries caused by the contractor's negligence in performing work." (*Seabright Ins. Co. v. US Airways, Inc.* (2011) 52 Cal.4th 590, 598, citing *Privette v. Superior Court* (1993) 5 Cal.4th 689, 693.) There is an exception to this general rule, called the peculiar risk doctrine, wherein "a person who hires an independent contractor to perform work that is inherently dangerous can be held liable for tort damages when the contractor's negligent performance of the work causes injuries to others." (*Privette*, *supra*, 5 Cal.4th at 691-692.) However, the peculiar risk doctrine does not apply to employees of the contractor because applying the doctrine to these employees would conflict with

worker's compensation law. Instead, the Court in *Privette* held that where a contractor's employee's injury is already compensable under the Workers' Compensation scheme, there is no tort remedy for those same injuries against the person who hired the contractor. (*Privette*, *supra*, 5 Cal.4th at p. 696; see also, *Bell v. Greg Agee Construction, Inc.* (2004) 125 Cal.App.4th 453, 466-468 [applying the *Privette* rule even when no Workers' Compensation is available].) The rationale underlying this decision is that allowing the contractor's employee to bring an action for damages against the hirer could lead to the hirer's liability exceeding that of the negligent employer, which would penalize the hirer who retains expert contractors rather than using its own inexperienced employees to perform specialized work. (*Privette, supra*, 5 Cal.4th at 700-702 [roofing employee of the independent contractor precluded from suing the property owner for injuries compensable under the workers' compensation system].)

While there are exceptions to the general rule of a hirer's non-liability to a contractor's employee when (1) there is a concealed hazard, or (2) the hirer retains control, as discussed below, these exceptions do not apply here.

B. Concealed Hazard

A landowner who hires an independent contractor to perform work on its property is not exempted from liability to the contractor's employee if: (1) the hirer knew or reasonably should have known of a concealed, pre-existing hazardous condition on its premises, (2) the contractor did not know and could not reasonably ascertain the condition, and (3) the hirer failed to warn the contractor. *(Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 674.) But "the landowner who has delegated job safety to the independent contractor only has a duty to the employee if the condition is concealed." (*Id.* at 682.) Also, a hirer is not liable to a contractor's employee injured by hazard where the employee could have reasonably discovered and avoided the hazard. (*Johnson v. Raytheon Co., Inc.* (2019) 33 Cal.App.5th 617, 631-632 [hirer could not be liable for hazardous condition of a partial extension ladder with "caution" sticker which could have been reasonably discovered through inspection by the contractor's employee].)

In the present case, it is undisputed that Defendant was the general contractor on the Property; it hired Savin as a subcontractor; and Plaintiff was an employee of Savin when he was injured. (UMF ## 6-9.) Therefore, Defendant met its burden of establishing, under *Privette*, *supra*, it is not liable for Plaintiff's injuries. It is further undisputed that, pursuant to the Subcontract between Defendant and Savin, Savin was required to perform inspections of the Property to ensure the safety of the Property and its employees. (UMF # 10.) Plaintiff argues his injuries were caused when he fell through an uncovered opening to the HVAC shaft. (Opposition, p. 3:27-4:1.) However, he presents no evidence that (1) Defendant knew or reasonably should have known of this condition, or that (2) Savin didn't know, and could not have reasonably ascertained it. Accordingly, Plaintiff failed to establish the concealed hazard exception to nonliability applies. (See, *Kinsman*, *supra*, 37 Cal.4th at 674.)[2]

C. Retained Control

A hirer who retains control of any part of an independent contractor's work may be liable for physical harm to others, including the employee of a subcontractor, caused by the failure to exercise that control with reasonable care. (*Hooker v. Department of Transp.* (2002) 27 Cal.4th 198, 206.) However, for hirer to be liable for harm suffered by an employee of a hired contractor, the mere failure to exercise a retained control, without more, is not enough. (*Ibid*.) "The imposition of tort liability on a hirer for injuries to an independent contractor's employee depends

[2] While Plaintiff argues in his opposition that *if* he could prove that Defendant knew about the dangerous condition and didn't warn Savin, the exception would apply, there is no evidence to show Defendant's knowledge, and claims and theories not supported by admissible evidence do not raise triable issues of fact. (*Rochlis*, *supra*, 19 Cal.App.4th at 219.)

on whether the hirer exercised the retained control in a manner that *affirmatively contributed* to the injuries." (*Id*. at 209, italics added.) The "affirmative contribution" requirement can be satisfied only if the hirer in some respect affirmatively induced—not just failed to prevent—the contractor's injury-causing conduct. (See, e.g., *Kinney v. CSB Constr., Inc.* (2001) 87 Cal.App.4th 28, 36 [requiring that the hirer "induc[e] [the contractor's] injurious action or inaction through actual direction, reliance on the hirer, or otherwise"]; *Hooker*, *supra*, 27 Cal.4th 198, 211, 215 [defendant did not affirmatively contributed to the decedent's death by permitting traffic to use the overpass because defendant did not direct the decedent to retract the outrigger that caused the tractor to flip]; *Sandoval v. Qualcomm Incorporated* (2021) 12 Cal.5th 256, 277 [to be liable at all, the hirer must affirmatively contribute to the injury, not merely by passive supervision or derivative of the contractor's negligence].)

As set forth above, Defendant met its burden of establishing, under *Privette*, *supra*, it is not liable for Plaintiff's injuries. Plaintiff has failed to present any evidence to show that Defendant retained any control over his or Savin's work. Accordingly, Plaintiff cannot establish that the retained control exception applies, and Defendant is entitled to judgment as a matter of law. (See, *Hooker*, *supra*, 27 Cal.4th 198, 211, 215; *Kinney*, *supra*, 87 Cal.App.4th at 36.)

Ruling:

Exercise the Court's discretion and consider Plaintiff's opposition. Grant request for judicial notice. Grant the motion. Enter summary judgment in favor of Defendant Crane Development.