

I. MOTION FOR SUMMARY JUDGMENT

MOVING PARTY'S UDISPUTED. MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. The Defendants operate a 600 room hotel in downtown Los Angeles called Stay on Main.</p> <p>(Complaint for Damages, dated September 5, 2013 ("Complaint") ¶1(Exhibit A)</p>	
<p>2. The Hotel is a 15 story building that was originally constructed in the 1920's.</p> <p>(Declaration of Pedro Tovar ("Tovar Decl.") ¶3)</p>	
<p>3. The Hotel is configured in an "E" shape pattern with three separate wings that are connected.</p> <p>(Tovar Decl., ¶3; Deposition of Detective Wallace Tennelle ("Tennelle Depo"), p. 23:10-16.)</p>	
<p>4. The Hotel roof is a restricted area that is off limits to hotel guests.</p> <p>(Declaration of Amy Price ("Price Decl.") ¶11; Tovar Decl. ¶4)</p>	
<p>5. It is not marked nor indicated on any Hotel marketing material as a common service area for guests.</p> <p>(Price Decl., ¶11.)</p>	
<p>6. It is not represented to any guests as a common service area, and it is not made available to guests even upon request.</p> <p>(Price Decl. ¶11; Tovar Decl. ¶4)</p>	
<p>7. There are only four ways to gain roof access.</p> <p>(Tovar Decl., ¶¶5-6; Price Decl. ¶12; Tennelle Depo, p. 39:3-5.)</p>	
<p>8. Three of the ways are exterior fire escapes on the sides of the hotel which run the entire height of the building.</p>	

<p>(Tovar Decl., ¶¶5-6; Price Decl. ¶13; Tennelle Depo, p. 23:10-16.)</p>	
<p>9. The fourth and final means of roof access is through an interior staircase leading from the 14th floor to the roof.</p> <p>(Tovar Decl., ¶¶5-6; Price Decl. ¶¶12-13; Tennelle Depo, p. 39:3-5.)</p>	
<p>10. The rooftop access door is equipped with an electronic alarm system which alerts hotel employees when the rooftop access door has been opened.</p> <p>(Tovar Decl., ¶6; Declaration of Santiago Lopez (“Lopez Decl. ¶5; Price Decl. ¶13; Tennelle Depo, pp. 29:22-30:4.)</p>	
<p>11. The electronic alarm is loud enough to be heard on the 14th and 15th floors, and there is a separate alarm which sounds at the front desk.</p> <p>(Tovar Decl., ¶6; Lopez Decl. ¶5; Price Decl. ¶13)</p>	
<p>12. The alarm can only be deactivated or turned off with a key that is maintained by the Hotel maintenance staff.</p> <p>(Tovar Decl., ¶6; Lopez Decl. ¶5; Price Decl. ¶14)</p>	
<p>13. It is the Hotel’s policy that any time the roof top access door alarm is activated, an employee or security guard is immediately dispatched to manually check the roof area and the roof access door.</p> <p>(Price Decl. ¶¶14,15; Lopez Decl. ¶11; Tovar Decl. ¶¶9,10)</p>	
<p>14. The alarm for the roof top access door was not activated at any point in January or February 2013.</p> <p>(Price Decl. ¶16; Lopez Decl. ¶11; Tovar Decl. ¶9)</p>	
<p>15. All fire escape routes and the rooftop access door are clearly labeled that they are for emergency use only.</p>	

<p>(Price Decl. ¶12)</p>	
<p>16. The rooftop of the hotel has four 1000 gallon water tanks which supply the hotel with water using a gravity operated system.</p> <p>(Tovar Decl. ¶7; Price Decl. ¶10)</p>	
<p>17. Water is pumped from a main water line at below street level to these four tanks.</p> <p>(Tovar Decl. ¶7; Price Decl. ¶10)</p>	
<p>18. Each tank is approximately 10 feet high and 6 feet in diameter.</p> <p>(Tovar Decl. ¶7; Price Decl. ¶10)</p>	
<p>19. The tanks are in a difficult to access platform approximately 4 feet above the roof.</p> <p>(Tovar Decl. ¶8; Price Decl. ¶10)</p>	
<p>20. To access the tanks, someone would have to climb a ladder up the platform, and then squeeze through the tanks and plumbing equipment to reach another narrow ladder and climb up the side of the 10 foot tall tank. Alternatively, someone could theoretically access the water tank by climbing to the top of an elevator utility room and jumping down upon the water tank from above.</p> <p>(Tovar Decl. ¶8)</p>	
<p>21. The tanks are all fully covered with heavy metal lids that are approximately 18" by 18".</p> <p>((Tovar Decl. ¶8; Tennelle Depo, pp. 34:14-35:4.)</p>	
<p>22. On or about January 26, 2013, Elisa made reservations on the internet for a shared room at Stay on Main for a three (3) night stay, check in on January 28, 2013 and check out on January 31, 2013. It is believed that Elisa was traveling alone from Vancouver, Canada to California. It is further believed her trip began in San</p>	

<p>Diego and her eventual final destination was Santa Cruz.</p> <p>(Price Decl. ¶5; Tennelle Depo, p. 27:3-10.)</p>	
<p>23. Elisa Lam was not, nor has she ever been an employee of the Cecil/Stay on Main Hotel</p> <p>(Price Decl. ¶3)</p>	
<p>24. Elisa checked into Stay on Main on January 28, 2013 and was assigned a shared room on the 5th floor.</p> <p>(Price Decl. ¶¶5-6; Tennelle Depo, pp. 20:24-21:1.)</p>	
<p>25. However, two days into her stay, Elisa's roommates complained about certain odd behavior by Elisa and she was then moved to a private room, also on the 5th floor.</p> <p>(Price Decl. ¶¶6-7; Tennelle Depo, pp. 20:24-21:1.)</p>	
<p>26. An extensive and exhaustive search of the entire hotel, including the roof, was performed by the LAPD over the course of multiple days starting on February 5, 2013.</p> <p>(Tovar Decl. ¶¶13-15; Price Decl.¶8; Tennelle Depo, pp. 41:23-43:7.)</p>	
<p>27. Particular attention was paid by the LAPD because it involved a foreign national. The LAPD set up a command post in the lobby of the Hotel and organized numerous search teams who were paired with a Hotel employee with a master key.</p> <p>(Tovar Decl. ¶¶13-15; Lopez Decl. ¶10; Price Decl.¶8; Tennelle Depo, pp. 13:10-15:17, 41:23-43:7.)</p>	
<p>28. The teams then searched "every nook and cranny" of the Hotel, including the roof.</p> <p>(Tovar Decl. ¶¶13-15; Price Decl.¶8; Tennelle Depo, pp. 14:7-15:17, 41:23-43:7.)</p>	

<p>29. The LAPD did not approach or inspect the water tanks during their searches.</p> <p>(Tennelle Depo, p. 43:3-14.)</p>	
<p>30. The Hotel roof access door was checked to make sure it was functioning.</p> <p>(Tovar Decl. ¶¶11, 12; Tennelle Depo, pp. 29:25-30:21.)</p>	
<p>31. After the LAPD detectives found nothing during their search, a second search of the entire Hotel, including the roof, was conducted by numerous K9 (canine) units.</p> <p>(Tovar Decl. ¶¶13-15; Price Decl.¶8; Tennelle Depo, pp. 14:7-15:17, 41:23-43:7.)</p>	
<p>32. Unfortunately, Elisa was not found during the LAPD searches.</p> <p>(Tovar Decl. ¶¶13-15; Price Decl.¶8; Tennelle Depo, pp. 14:7-15:17, 41:23-43:7.)</p>	
<p>33. On February 19, 2013 a Hotel guest complained about the water pressure while taking a shower and also about a strange odor.</p> <p>(Price Decl. ¶9; Lopez Decl. ¶3; Tovar Decl.¶16)</p>	
<p>34. At that point, maintenance employee Santiago Lopez went to the roof of the hotel to check on the water system. Mr. Lopez took one of the two elevators to the 15th floor, then preceded up the stairway to the roof top access door. He then deactivated the alarm on the door, entered the roof and walked to the area where the water tanks for the hotel are located.</p> <p>(Price Decl. ¶10; Lopez Decl. ¶6; Tovar Decl. ¶16)</p>	
<p>35. Next, he climbed up the platform upon which the water tanks sat and finally climbed a ladder up onto the main water tank. Mr. Lopez noticed that the hatch to the main water tank was open and he</p>	

<p>looked inside. It was there he found Elisa's body floating in the tank.</p> <p>(Lopez Decl. ¶¶6,7)</p>	
<p>36. After discovering the body Mr. Lopez immediately contacted his supervisor, Pedro Tovar, by walkie-talkie. The two went down to the first floor office to advise Amy Price, the general manager, of the discovery and to notify the authorities.</p> <p>(Lopez Decl. ¶8; Tovar Decl. ¶17)</p>	
<p>37. Elisa's body was extracted from the water tank by the Los Angeles Fire Department who had to cut a hole in the bottom of the water tank.</p> <p>(Tennelle Depo, p. 37:1-11.)</p>	
<p>38. The Los Angeles County Coroner's Office investigated and determined that Elisa's death did not involve any "foul play." Further, an autopsy was performed and the subsequent report identified the cause and manner of death as an accidental drowning with Bipolar Disorder as a contributing, but not related condition. Among Elisa's possessions found at the hotel were the prescription medications Lamotrigine, Quetiapine, Venlafaxine XR, and Wellbutrin XL.</p> <p>(Deposition of Kelly Yagerlener ("Yagerlener Depo"), p. 7:14:8:4; County of Los Angeles, Department of Coroner Investigator's Narrative for Case No. 2013-01364)</p>	
<p>39. The LAPD eventually concluded their investigation of Elisa's death but could not conclusively determine how she reached the roof or accessed the water tank.</p> <p>(Tennelle Depo, pp. 38:22-39:9, 43:17-44:22.)</p>	
<p>40. Defendants had no prior knowledge or observation of any prior instances of anyone being injured at or by the rooftop water tanks before February 19, 2013.</p>	

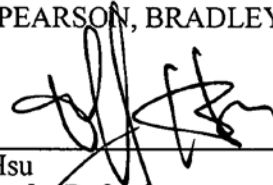
<p>(Tovar Decl. ¶¶18-20; Lopez Decl. ¶¶12-14; Price Decl. ¶¶19-21)</p>	
<p>41. In fact, Defendants had no prior knowledge or observation of any instances of trespass or unauthorized access to the rooftop water tanks before February 19, 2013.</p> <p>(Tovar Decl. ¶¶18-20; Lopez Decl. ¶¶12-14; Price Decl. ¶¶18-21)</p>	
<p>42. In addition to there being no other instances of injury by means of unauthorized rooftop water tank access, Defendants are unaware of any CAL/OSHA violations/citations regarding any of the roof top water tanks.</p> <p>(Price Decl. ¶¶4, 22-24)</p>	
<p>43. Since at least 2010, the Hotel has passed all Los Angeles Fire Department Chief's Regulation 4 testing of fire protection equipment, which includes the three (3) exterior fire escapes.</p> <p>(Price Decl. ¶24)</p>	
<p>44. Aside from the instance with Elisa, the Hotel has never had any other injuries to guests due to the roof top water tanks and there have been no citations by The City of Los Angeles Department of Building and Safety regarding the water tanks on the roof.</p> <p>(Price Decl. ¶¶22, 23, 24)</p>	
<p>45. Between January 28, 2013 and February 19, 2013, the alarm to the roof top access door was functioning properly.</p> <p>(Tovar Decl. ¶¶11, 12; Tennelle Depo, pp. 29:25-30:21.)</p>	
<p>46. Defendants were not aware of any instances between January 28, 2013 and February 19, 2013, where the roof top access door alarm was unintentionally activated.</p>	

(Price Decl. ¶16; Tovar Decl. ¶9; Lopez Decl. ¶11)	
47. Defendants never expressly or impliedly approved, authorized, consented, endorsed, invited or permitted guests or third parties to access the rooftop water tanks. (Price Decl. ¶11; Tovar Decl. ¶4)	
48. Defendants never advertised or marketed the roof, nonetheless the water tanks, as places available for guest access. (Price Decl. ¶11)	
49. Despite the best efforts of investigators, there are no witnesses and no evidence to identify the exact means of when, why or how Ms. Lam accessed the roof and water tanks. (Price Decl. 17; Tonnelle Depo, pp. 38:22-39:9, 43:17-44:22.)	

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By



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 HOTEL MANAGEMENT