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| DISTRICT COURT, ADAMS COUNTY, COLORADODATE  FILING | FILED: February 4, 2019 3:41 PM  ID: B15A8A72B06B5 |
| CASE | UMBER: 2018CV30347 |
| 1100 Judicial Center Drive |  |
| Brighton, Colorado 80601 |  |
| **Plaintiff:** |  |
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|  | ▲ **COURT USE ONLY ▲** |
| **v.** | Case No: 18CV030347 |
| **Defendants:** | Division: |
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| *Attorneys for Defendants:* |  |
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| **DEFENDANTS’ MOTION IN LIMINE RE SPECULATION ABOUT CONDITION OF THE STAIRS PURSUANT TO C.R.E. 602** | |

Defendants FPA5 Washington Park, LLC a/k/a The Oslo Apartments and Trinity Property Consultants, LLC, by and through their attorneys of record, Jachimiak Peterson, LLC, in support of their Motion state as follows:

1. This matter arises out of a fall suffered by the decedent, Edward Makowski, on February 2, 2017 at The Oslo Apartments located at 11501 North Washington Street in Northglenn, Colorado. Plaintiff raises only one cause of action against Defendants: wrongful death grounded in the Colorado Premises Liability Act (“PLA”). The First Amended Complaint alleges:

“Edward J. Makowski slipped on icy unmaintained stairs on the property and fell resulting in his death.”

1. In her deposition, Plaintiff testified that she does not have any knowledge about the condition of the property at the time of the incident (Exhibit A, Plaintiff Judith Makowski’s

deposition at 56:23–57:1).

1. Plaintiff testified at her deposition that she does not know what caused Mr.

Makowski to fall, how the incident happened, or which step Mr. Makowski was on at the time of his fall (Ex. A at 57:18-24; 61:9-11; 80:8-11; 82:15-17).

1. Plaintiff also testified that she is not aware of any witnesses to the condition of the property at the time of the incident or anyone who would know which step Mr. Makowski was on at the time of the fall other than employees of the Defendants (Ex. A at 57:13-17; 80:12-14).
2. Plaintiff’s son, Greg Makowski, and nephew were not able to determine the cause of Mr. Makowski’s fall when they inspected the property on the day of the incident (Ex. A at

56:18-22; Exhibit B, Greg Makowski’s deposition at 36:20-22).

1. Plaintiff’s expert, Mr. DiNicola, also conceded at his deposition that he did not know the condition of the stairs at the time of the incident, only what he observed during his site inspection on January 9, 2019, almost two years after the incident (Exhibit C, Tony DiNicola’s

deposition at 68:17-69:3).

1. Colorado Rule of Evidence 602 states:

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter.

Plaintiff, her son Greg Makowski, whom Plaintiff has named as a lay witness for trial, and Mr. DiNicola have all stated under oath during their depositions that they do not know the condition of the subject stairs at the time of the incident. Allowing them to speculate on this critical issue at trial would be contrary to C.R.E. 602 and extremely prejudicial to the Defendants. There is no question that the only information Plaintiff, Greg Makowski, or Plaintiff’s expert (if he is allowed to testify) could offer regarding the condition of the stairs at the time of the incident would be anything more than speculation and, therefore, any testimony from Plaintiff or her witnesses regarding the condition of the stairs at the time of the incident must be excluded.

WHEREFORE, Defendants respectfully request an Order granting their Motion in Limine and excluding plaintiff, Greg Makowski, or Tony DiNicola from offering any testimony relating to the condition of the stairs at the time of the incident, and for any other relief this Court deems just and proper.

Dated this 4th day of February, 2019.

COMPANY NAME

*Pursuant to C.R.C.P. 121 §1-26 the duly signed original remains on file at the office of the undersigned*

*/s/*

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of February, 2019, a true and correct copy of the foregoing **DEFENDANTS’ MOTION IN LIMINE RE SPECULATION ABOUT**

**CONDITION OF THE STAIRS PURSUANT TO C.R.E. 602** was electronically filed with the Court and served via Colorado Courts E-Filing upon all counsel of record.

*Pursuant to C.R.C.P. 121 §1-26 the duly signed original remains on file at the office of*

*/s/*