

12/09/2024

Chad Finke, Executive Officer / Clerk of the Court

By: V. Hutton Deputy

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6 Attorneys for Plaintiffs  
7 Gilbert Acosta and Mary Tran Acosta

8 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA – RENE C. DAVIDSON COURTHOUSE**

11 GILBERT ACOSTA, an individual; MARY  
12 TRAN ACOSTA, an individual,

13 Plaintiffs,

14 vs.

15 MIDTOWN AT HAYWARD HOMEOWNERS  
16 ASSOCIATION, a California corporation; and  
17 DOES 1-20, inclusive,

18 Defendants.

21 AND RELATED CROSS-COMPLAINT.

Case No.: 24CV069886

Assigned for to Honorable Peter Borkon  
Dept. 15

**NOTICE OF RULING RE SETTING OF  
CASE MANAGEMENT CONFERENCE,  
MANDATORY SETTLEMENT  
CONFERENCE, PRE-TRIAL  
CONFERENCE, AND TRIAL DATE**

Complaint filed: April 2, 2024  
Trial date: March 2, 2026

1           **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2           **PLEASE TAKE NOTICE** that on **November 22, 2024**, the Court issued a tentative ruling in  
3 anticipation of the Case Management Conference in the above-entitled action previously scheduled for  
4 December 3, 2024 at 2:00 p.m.

5           A true copy of the Court's tentative ruling, which became the Court's final order (including trial  
6 setting orders), is attached and served herewith as **Exhibit A**.

8  
9 Dated: December 9, 2024

**MBK CHAPMAN PC**

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11 By: 

12 JESSICA GRAZUL, ESQ.

13 JASON K. BOSS, ESQ.

14 Attorneys for Plaintiffs

15 Gilbert Acosta and Mary Tran Acosta  
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## **EXHIBIT A**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA**

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ASSOCIATION, A CALIFORNIA CORPORATION  
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Tentative Ruling - 11/22/2024 Peter Borkon

**ORDER RE: CASE MANAGEMENT AND TRIAL SETTING ORDER WITH NOTICE**

The Court has ordered the following after review of the case, including timely filed Case Management Statements, without a conference.

This case is at issue. The matter is set for jury trial. If not yet deposited, jury fees must be deposited within 30 days of this order or jury is deemed waived.

**TRIAL SETTING ORDERS**

Jury Trial is scheduled for 03/02/2026 at 09:00 AM in Department 15.

The parties are ordered to comply with the Standing Pre-Trial Orders for Civil Cases, Local Rule of Court 3.35.

Jury is demanded by Plaintiff(s) .

Jury is demanded by Defendant(s) .

Jury is demanded by Cross-Complainant(s) .

Estimated length of trial: 5-7 court days.

**FURTHER CONFERENCE**

A Pre-Trial Conference is scheduled for 02/18/2026 at 02:30 PM in Department 15.

**PRETRIAL ORDER**

For purposes of this Order, unless otherwise noted, references to "counsel" means any attorney of record in this action, and also means any party representing themselves. All counsel, and any self-represented litigant, must be fully familiar with the law applicable to the issues raised by the pleadings and any matters to be addressed at trial, including the applicable rules and provisions set forth or referred to in the Civil Code, Code of Civil Procedure (CCP), California Rules of Court (CRC), Evidence Code (EC), and Local Rules (LR).

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**MEET AND CONFER**

Unless a different deadline is noted below, at least ten days prior to the Conference, the parties are ORDERED to meet-and-confer in good faith regarding trial preparation, including the following subjects and tasks:

1. which of the parties' exhibits can be admitted without objection, the elimination of duplicative exhibits, and the admissibility of evidence to be offered at trial, including the admissibility of any writing as defined by EC section 250;
2. whether any issue in the trial should be bifurcated;
3. the length of the trial;
4. whether the parties stipulate to an expedited jury trial pursuant to CCP section 630.01 et seq.;
5. any outstanding discovery and completion dates;
6. deposition designations, counter-designations and objections - counsel shall exchange proposed page and line designations of deposition testimony of witnesses who will not be appearing live at trial; at least five court-days before trial, counsel shall exchange objections and counter-designations and shall meet and confer regarding the designations prior to the trial;
7. jury instructions on which the parties agree, and the list of those in dispute;
8. the utility of a jury questionnaire;
9. arranging for a court reporter if desired;
10. the benefit of additional alternative dispute resolution prior to trial;
11. the need for an interpreter for any witness;
12. the content of the joint, neutral statement of the case;
13. whether counsel wants to present "mini-openings" to the jury;
14. the cause(s) of action to be dismissed prior to trial, if any;
15. each affirmative defense to be withdrawn prior to trial, if any;
16. the list of undisputed facts to be used at trial;
17. each item that is required to be addressed in this Trial Readiness order;
18. stipulated orders, including in limine orders;
19. whether the parties stipulate to a reduced number of peremptory challenges; and
20. any other trial readiness issues.

**MOTIONS IN LIMINE**

All motions in limine must be filed, personally served on all other parties, and courtesy copies (electronic) delivered to Department 15, at least ten days prior to the Trial Readiness Conference. All briefs in opposition to the motions must be filed, personally served on all parties, and courtesy copies (electronic) delivered to Department 15, no later than five court-days before the Conference.

The following in limine motions shall NOT be filed but shall be deemed ORDERED unless the parties stipulate otherwise or take exception in a motion.

1. There will be no reference to or evidence of: settlement discussions or mediation; insurance; other claims/suits/actions against a party; and the financial condition of any party except in the punitive damages phase of a case, if applicable.
2. All non-party witnesses are to be excluded from the courtroom until they testify, and their

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testimony concludes.

No party may file more than *three motions in limine* without leave of court.

Do NOT file generic motions unrelated to the specific facts of the case. For example, a "motion to exclude evidence not disclosed in discovery" is not helpful unless the motion references specific, objectionable evidence that the opponent is expected to offer.

**THE PRETRIAL CONFERENCE**

At least **five court-days prior** to the Pretrial Conference the parties must file, serve on all other parties, and deliver electronic courtesy copies to Department 15, each of the following:

JOINT Exhibit List - Each party shall provide an exhibit list, styled in the following column format:

# or letter /Title/Description/ Witness/ Date/ Stipulated/ Admitted/ Notes

JOINT Jury Instructions and Verdict Forms - Stipulated (meaning fully agreed upon): form jury instructions with all blanks filled in; all specially prepared jury instructions with all blanks or information filled in; and the verdict forms. All of these items must be in a form that can be given to the jurors at the beginning or conclusion of the trial. This means the packet must be collated, in order, with no identifying marking other than the CACI, must be tailored to the case with all blanks filled in with the correct identifying information, must have all extraneous portions deleted, and have all brackets removed. If any instruction has been modified, a separate copy of the instruction with all modifications clearly identified through track changes. Any proposed jury instructions or verdict forms not agreed to by the parties must be separately filed (with a proposed version using track changes, and a clean version), with an electronic courtesy copy delivered to Department 15 at least five court-days prior to the Trial Readiness Conference. See also LR 3.35(i)-(j).

Jury Questionnaire - A jury questionnaire that contains a blank line for the name and badge number of the juror, and includes a list of counsel who will appear, and all witnesses (in alphabetical order) who may testify at the trial. Any proposed jury questionnaire not agreed to by the parties must be separately filed with a courtesy copy (hard copy) delivered to Department 15 at least five court-days prior to the Trial Readiness Conference.

JOINT Statement of the Case - A joint, neutral, brief, proposed statement of the case that will be read to the jury panel before voir dire. See LR 3.35(h). If there are any areas of disagreement then the parties shall indicate within the joint statement the portions that are agreed upon, and those that are not using track changes, with each party providing a clean version if the track changes were accepted as proposed by them. If each party agrees to present a brief "mini-opening" (up to 5 minutes) to the jury panel, please indicate that request to the Court when filing the proposed joint statement of the case.

Trial Briefs - A succinct trial brief (not to exceed ten pages) setting forth the undisputed facts, disputed facts, and law upon which that party will rely. The trial brief will also address (a)

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whether there are evidentiary issues that will require a Trial Readiness hearing; (b) a good faith, accurate trial time estimate for that party's activities during the trial (the total time estimate should take into account the opening statement, all of that party's anticipated direct testimony and cross examination, and closing argument); (c) whether a party will be arranging for an interpreter for any witness; and (d) any other trial readiness issues.

**JOINT Witness List** - A comprehensive list of all witnesses the party intends to call in the case. The list should be in alphabetical order and should generally identify the anticipated subject matter of each witness's testimony. See LR 3.35(f). The witness list will also identify the length of time each witness is expected to testify in hours on direct, cross-examination and redirect.

The parties must also electronically lodge by the time of the Pretrial Conference the following:

**Deposition Transcripts** - Lodge all original deposition transcripts. LR 3.35(c)(1).

**Deposition Designations** - Deposition designations and counter-designations are not to be filed with the Court nor advance copies sent to the Court. All deposition designations must be provided to the Court at the Trial Readiness Conference in the following format: (a) page and line designations and counter-designations, (b) objections to the designations, if any (c) response(s) to the objections, if any, and (d) boxes for the Court to check whether any objection(s) to the designated page(s)/line(s) are sustained or overruled.

**Expedited Jury Trial** - If the parties agree to the expedited jury trial procedures contained in CCP 630.01 et seq., parties must provide the Court with a proposed consent order pursuant to CCP§ 630.03(a).

**Trial Exhibits** - Both parties shall use numbers to identify exhibits. If there is more than one Defendant, or if the parties have a high volume of exhibits, counsel shall meet and confer to assign a range of exhibit numbers to each party. There should be no duplicative exhibits for the parties. The parties shall be prepared to discuss presentation of exhibits electronically at the Trial Readiness Conference. All exhibits will be marked for identification by Department 15 on the first day of trial. See also LR 3.35(b) and (g).

**USE OF PRETRIAL DISCOVERY AT TRIAL**

All parties shall meet and confer prior to the first day of trial about the admissibility of any excerpts from any business records, deposition transcripts, video depositions and audio recordings and their transcripts, and responses from any interrogatories, requests for production, or requests for admission, to be used at trial other than for impeachment or rebuttal. See also LR 3.35(c)(1)-(2), and (d).

**WITNESSES**

Witnesses, including experts, must be ready to testify in court when called. Absent exceptional circumstances, a party who fails to present a witness to testify will be deemed to have rested.

**COURT REPORTERS**

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The parties are advised, pursuant to CRC 2.956(b), that a court reporter is not provided by the Court for general civil proceedings, including the Trial Readiness Conference, motions in limine, specially set trial hearings, or any other proceeding. Counsel must meet and confer in advance to reach any agreement or arrangement for the presence of a certified shorthand reporter to serve as an official pro tempore reporter at the trial. It will be the responsibility of the litigant(s) to pay the reporter's fee for the attendance at the proceedings, but the expense may be recoverable as part of the costs of suit. See CRC 2.956(c).

If selected, a court reporter must be available during the entirety of the Court's schedule as set by the judge, including the Trial Readiness Conference. The court reporter should be available at least 15 minutes prior to the scheduled start time for each trial day or session. Unless otherwise authorized by the judge, all trial testimony must be reported by the same court reporter, who must also be present in the courthouse during jury deliberations in case a read back of testimony is needed. See also LR 3.95.

Any court reporter working within the Alameda County Superior Court shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, the Court and others with whom they come into contact.

**USE OF EXHIBITS / PLEADING / DEMONSTRATIVE AIDS / SIMULATIONS, ETC.**

No counsel, party or witness may show any document, chart, graph, map, picture, model, video, slide presentation, pleading, demonstrative aid, video, simulation, or any other document (other than a stipulated exhibit) to the jury at any point in the trial, including voir dire, except by stipulation of counsel, or with prior court approval. If any counsel, party or witness intends to use such an item during trial, it must be provided to all counsel and the court no later than four court days prior to use. No later than three court days prior to use, all opposing counsel or parties must meet and confer to resolve any objections. If the parties are unable to resolve the dispute, no later than noon 2 court days prior to proposed use (e.g., if the item is expected to be used on trial on Thursday, then by noon on Tuesday), counsel must inform the court of the dispute so the court can make a ruling. FAILURE TO COMPLY WITH ANY PART OF THIS PROVISION MAY RESULT IN THE ITEM NOT BEING DISPLAYED TO THE JURY OR OTHERWISE USED AT TRIAL.

**DISMISSAL OF PARTIES**

On the first day of trial, all remaining unnamed "DOE" parties will be dismissed.

**DAILY SETTLED STATEMENTS**

If the parties choose not to retain a court reporter for trial, then counsel shall meet and confer at the end of each day's proceedings and prepare a joint settled statement of what occurred at trial for that day, including a summary of each witness's testimony, the arguments of counsel (if any) and rulings by the court.

**NO SURPRISES!**

Keep the court and opposing counsel informed of any issues regarding witnesses, motions,



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scheduling problems, etc. Any motions for non-suit or directed verdict shall be filed in writing.

**MANDATORY SETTLEMENT CONFERENCE (CRC section 3.1380)**

The Court orders the parties to a Mandatory Settlement Conference (MSC) on 02/04/2026 9:00 AM Lee, Jo-Lynne (Judge) in GEM / Department 302.

Lead negotiating counsel, trial counsel, party representatives, insurance carrier representatives with full settlement authority from each insurance policy implicated by plaintiff's demand, and all other persons necessary to consent to settlement must **PERSONALLY ATTEND** the MSC, unless excused by the court for good cause.

Parties must comply with all applicable rules and code provisions regarding MSCs, including California Rule of Court (CRC) 3.1380. No later than five court days before the MSC, each party must serve on opposing parties, and **DELIVER DIRECTLY TO THE SETTLEMENT DEPARTMENT** a hard copy Settlement Conference Statement (SCS) that includes a detailed discussion of liability and damages. The SCS must also contain a good faith settlement demand or offer as of the date the settlement conference statement is signed.

**DO NOT E-MAIL OR FILE, INCLUDING BY FAX, THE SCS WITH THE COURT.**

Any person seeking to appear at the MSC by telephone must file with the clerk's office a formal ex parte application with a proposed order and proof of service showing service on all parties. A courtesy copy of the application and proposed order must be delivered directly to the settlement department. The application will not be granted unless the party shows good cause and delivers to the settlement department its SCS that fully complies with CRC 3.1380(c) and includes a good faith settlement demand or offer as of the date the settlement conference statement is signed. If the application is granted, the person appearing by telephone must be immediately available by telephone throughout the conference until released by the court.

**FAILURE TO BE IMMEDIATELY AVAILABLE, INCLUDING AFTER BUSINESS HOURS, CONSTITUTES A NON-APPEARANCE BY THAT PERSON.**

If the case settles before the MSC, Plaintiff must promptly notify this department and the settlement department.

**FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN SANCTIONS.**

The Mandatory Settlement Conference in Dept. 301/302/303 will be conducted remotely via Zoom Video Conference.

Prior to the scheduled MSC date, the court will send out a Zoom Video Conference Invitation Link that will include a Meeting ID and other pertinent information that will enable

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parties/counsels to participate in the specific conference/hearing. Once received please familiarize yourselves with the software and please conduct a test to make sure your specific electronic equipment that you will be using that day (Smartphone, Laptop, Desktop etc.) is fully updated and both video / audio capabilities are functional.

**Settlement Conference Statements**

To comply with Rule 3.1380(c), each party must email the court at least five court days prior to the conference a settlement conference statement no more than five pages in length. Do not file the settlement conference statement. Send the statement to the court clerk's email address. Your statement must include:

Hearing date for any dispositive motion;  
Summary of remaining discovery;  
Summary of all liability facts and issues;  
List of all economic damages claimed;  
Current good faith settlement offer or demand of each party;  
Name, date, and description of each alternative dispute resolution neutral's attempt to resolve this case.

Because of technical and printing limitations, do not include any attachments or exhibits. Make sure you send a copy of your settlement conference statement to all opposing parties. The statements will not be filed and will be destroyed at the completion of the settlement conference and will be destroyed at the completion of the settlement conference.

Please proceed in sending the required Mandatory Settlement Conference Statement via email to: Dept.301@alameda.courts.ca.gov and rm McGuinness@alameda.courts.ca.gov at least five days prior to your conference or submit directly to Dept. 301's Drop Box located outside of the courtroom.

Please proceed in sending the required Mandatory Settlement Conference Statement via email to: Dept.302@alameda.courts.ca.gov and pherbert@alameda.courts.ca.gov at least five days prior to your conference or submit directly to Dept. 302's Drop Box located outside of the courtroom.

Please proceed in sending the required Mandatory Settlement Conference Statement via email to: Dept.303@alameda.courts.ca.gov and trasch@alameda.courts.ca.gov at least five days prior to your conference or submit directly to Dept. 303's Drop Box located outside of the courtroom.

Please provide all email addresses of all parties/counsels/claims representative etc. that will be active participants at the upcoming settlement conference.

**FURTHER CONFERENCE**

A Case Management Conference is scheduled for 11/04/2025 at 02:30 PM in Department 15.

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Updated Case Management Statements in compliance with Rule of Court 3.725, on Judicial Council Form CM-110, must be filed no later than 10/20/2025. If the foregoing date is a court holiday or a weekend, the time is extended to the next business day.

If no party contests the tentative ruling and appears, the Court will issue a trial-setting order or order consistent with the foregoing. Counsel must carefully review the order which will set forth various pre-trial and mediation deadlines. Counsel must also review Dept. 15's information page, which contains answers to frequently asked questions, and sets forth guidance for communicating with the department and litigating certain motions and proceedings. This information is available on the eCourt Public Portal at [www.eportal.alameda.courts.ca.gov](http://www.eportal.alameda.courts.ca.gov) under the "Direct Calendaring" tab.

If any party contests, the zoom login credentials are:

**Join ZoomGov Meeting**

<https://alameda-courts-ca-gov.zoomgov.com/j/16116905917?pwd=SUQrVFJYbTU0VENvVFdoWlduMVNsUT09>  
Meeting ID: 161 1690 5917  
Passcode: 315

Jessica P. Grazul (Attorney) representing Gilbert Acosta (Cross-Defendant)+ must forthwith serve a copy of this order on all counsel of record and self-represented parties, and file proof of service.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

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**PROOF OF SERVICE**

*Gilbert Acosta v. Midtown at Hayward Homeowners Association*  
Case No. 24CV069886

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 120 Vantis Drive, Suite 500, Aliso Viejo, CA 92656.

On December 9, 2024, I served the foregoing document described as follows:

**NOTICE OF RULING RE SETTING OF CASE MANAGEMENT CONFERENCE, MANDATORY SETTLEMENT CONFERENCE, PRE-TRIAL CONFERENCE, AND TRIAL DATE**

**BY EMAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from email address kgarcia@mbkchapman.com to the person(s) at the email addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 9, 2024, at Aliso Viejo, California.

\_\_\_\_\_  
*/s/ Karla Garcia*  
Karla Garcia

## SERVICE LIST

James S. Han, Esq.

Penny E. Chung, Esq.

Bianca Cortez – Paralegal

Lian Call

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