

RESPONDENT
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**DEFENDANT IRIGOYEN FARMS, INC.'S
SEPARATE STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT,
RELEVANT EXCERPTS
(MAY 24, 2023)**

SUPERIOR COURT – STATE OF CALIFORNIA
COUNTY OF FRESNO – UNLIMITED
JURISDICTION

CHRISTINA CASAREZ AND ESTATE OF OLIVIA
MENDOZA,

Plaintiffs,

v.

ANDRE HILL, et al.,

Defendants.

ALL RELATED CROSS-ACTIONS

Case No. 19CECG03758

[Filed concurrently with: Notice of Motion;
Memorandum of Points and Authorities; Declaration
of Joseph Irigoyen; and Declaration of Alex G. Taheri
and Exhibits]

Date: August 9, 2023

Time: 3:30 p.m.

Dept.: 403

Action Filed: November 25, 2019

Trial Date: July 15, 2024

Before: Hon. Jonathan SKILES, Judge.

**DEFENDANT IRIGOYEN FARMS, INC.’S
SEPARATE STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Pursuant to Code of Civil Procedure section 437c and the Rules of Court, Rule 3.1350(f), defendant IRIGOYEN FARMS, INC. (“Irigoyen Farms”) submits this Separate Statement of Undisputed Material Facts in support of its Motion for Summary Judgment against Christina Casarez, Estate of Olivia Mendoza, and Jamie Mendoza (collectively “Plaintiffs”).

[. . .]

Special Interrogatories, Set One, attached as Exhibit 9 to the Index of Exhibits, at 2:16-3:2, 4:17-26, 7:1-11.

9.

SIO then contracted with DMG to actually transport the produce from point A to point B.

Exhibit 9 to the Index of Exhibits, at 2:16-3:2, 4:17-26.

10.

Irigoyen Farms was not given any written or oral information from any source that DMG generally, or Mr. Hill specifically, was involved in the shipment at issue in advance of the shipment occurring.

Joseph Irigoyen Decl., ¶ 5.

11.

DMG is a motor carrier who hires drivers to transport products in tractor-trailers owned and/or leased by DMG.

Exhibit 7 to the Index of Exhibits, at 5:11-25.

12.

DMG admits that Mr. Hill was an independent contractor hired by DMG acting within the scope of that agency relationship and that Mr. Hill had permission to use the vehicle he was driving at the time of the accident.

Index of Exhibits, Exhibit 5, at 3:21-27, 6:12-16, 6:21-27; Exhibit 6, at 2:17-3:22, 6:5-24; Exhibit 7, at 26:1-27:9; Exhibit 8, at 2:8-18.

13.

At no time was Irigoyen Farms given information by any source that there were any issues with Mr. Hill's performance as a commercial driver.

Joseph Irigoyen Decl., ¶ 6.

14.

Irigoyen Farms was not involved in the hiring, supervision, control, or management of Mr. Hill or how he operated his vehicle on the day of the accident.

Joseph Irigoyen Decl., ¶ 7; Plaintiff Christina Casarez's verified Responses to Irigoyen Farm's Requests for Admission, Set One, attached as Exhibit 10 to the Index of Exhibits, at 3:6:1-8, 3:14-16, 3:26-28; Plaintiff Jamie Mendoza's verified Responses to Irigoyen Farm's Requests for Admission, Set One, attached as Exhibit 13 to the Index of Exhibits, at 4:13-23.

See also Index of Exhibits, Exhibit 5, at 3:21-27, 6:12-16, 6:21-27; Exhibit 6, at 2:17-3:22, 6:5-24; Exhibit 7, at 26:1-27:9; Exhibit 8, at 2:8-18.

15.

Mr. Hill was not an employee or independent contractor of Irigoyen Farms at the time of the accident.

Index of Exhibits, Exhibit 10, at 3:6:1-8, 3:14-16, 3:26-28; Exhibit 13, at;13-23.

See also Index of Exhibits, Exhibit 5, at 3:21-27, 6:12-16, 6:21-27; Exhibit 6, at 2:17-3:22, 6:5-24; Exhibit 7, at 26:1-27:9; Exhibit 8, at 2:8-18.

16.

Irigoyen Farms was not a motor carrier as related to the incident.

Index of Exhibits, Exhibit 10, at 3:18-20; Exhibit 13, at 3:18-4:1.

17.

Irigoyen Farms was not the owner or leaser of the tractor-trailer involved in the accident and had no duty to repair the vehicle.

Index of Exhibits, Exhibit 10, at 4:2-5:8; Exhibit 7, at 26:1-27:9.

18.

Plaintiffs' First Amended Complaint named Irigoyen Farms as "Doe 2" and pleads causes of action for Motor Vehicle, General Negligence and Wrongful Death against Irigoyen Farms.

Plaintiff Christina Casarez's Amendment to Complaint filed on June 18, 2020, attached as Exhibit 2 to the Index of Exhibits; Cross-Complainant Jamie Mendoza's Amendment to Cross-Complaint Naming Roes 2 Through 5 filed on July 9, 2020, attached as Exhibit 3 to the Index of Exhibits.

HUGO PARKER, LLP

By: /s/ Alex G. Taheri

Edward R. Hugo

Alex G. Taheri

Attorneys for Defendant

IRIGOYEN FARMS, INC.

Dated: May 24, 2023

**DEFENDANT IRIGOYEN FARMS, INC.'S
OBJECTIONS TO EVIDENCE IN OPPOSITION
TO MOTION FOR SUMMARY ADJUDICATION
(AUGUST 4, 2023)**

SUPERIOR COURT – STATE OF CALIFORNIA
COUNTY OF FRESNO – UNLIMITED
JURISDICTION

CHRISTINA CASAREZ AND
ESTATE OF OLIVIA MENDOZA,

Plaintiffs,

v.

ANDRE HILL, ET AL.,

Defendants.

ALL RELATED CROSS-ACTIONS

Case No. 19CECG03758

[Filed concurrently with: Reply Brief, Supplemental
Declaration of Alex G. Taheri and Index of Exhibits]

Date: August 9, 2023

Time: 3:30 p.m.

Dept.: 403

Action Filed: November 25, 2019

Trial Date: July 15, 2024

Before: Hon. Jonathan SKILES, Judge.

**DEFENDANT IRIGOYEN FARMS, INC.'S
OBJECTIONS TO EVIDENCE IN OPPOSITION
TO MOTION FOR SUMMARY ADJUDICATION**

Defendant IRIGOYEN FARMS, INC. (“Irigoyen Farms”) makes the following objections to plaintiff CHRISTINA CASAREZ evidence and exhibits submitted in support of Plaintiffs’ Oppositions to Irigoyen Farm’s Motion for Summary Judgment. While Cross-Defendant JAMIE MENDOZA submitted a Separate Statement in Opposition to Irigoyen Farms’ Motion for Summary Judgment that references certain documents, Mr. Mendoza did not submit a supporting attorney declaration or exhibits in support of his Opposition. As such, Irigoyen Farms only addresses the exhibits properly submitted by Plaintiff Casarez in accordance with California Rules of Court, Rule 3.1110(f).

Irigoyen Farms respectfully requests that the Court rule on each and every evidentiary prior to ruling on Irigoyen Farms’ Motion for Summary Judgment. (Code Civ. Proc., § 437c(b)(5), (d); Cal. Rules of Court, Rule 3.1354.)

**IRIGOYEN FARMS’ OBJECTIONS TO
PLAINTIFFS’ EVIDENCE**

1.

Evidence Objected To

Exhibit B to Plaintiff Christina Casarez’s Statement of Evidence in Opposition to Irigoyen Farms’ Motion for Summary Judgment.

Request for Production of Documents discovery responses provided by County of Fresno-California Traffic Collision Report, No. 9435-2019-12654.

Grounds for Objections

Hearsay (Evid. Code §§ 1200, 1291); traffic accident reports are not admissible evidence (Veh. Code § 20013; *Box v. California Date Growers Assn.* (1976) 57 Cal.App.3d 266, 271); discovery responses from the County of Fresno are not attached to exhibit.

2.

Evidence Objected To

Exhibit C to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Grocery Supplier Agreement between Walmart and Irigoyen Farms.

Grounds for Objections

Hearsay (Evid. Code §§ 1200, 1291); lacks authentication (Evid. Code § 1400).

3.

Evidence Objected To

Exhibit G to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Declaration of Jesus Aguayo.

Grounds for Objections

The entire declaration lacks foundation contains speculation and assumes facts (Evid. Code

§§ 702, 801). Declarations which set forth only conclusions, opinions, or ultimate facts are insufficient. (*Kramer v. Barnes* (1963) 212 Cal. App. 2d 440, 446).

No information is set forth regarding Mr. Aguayo's employment history, training, experience, knowledge, or expertise, either as an employee of Irigoyen Farms or more generally. Mr. Arguayo provides no information about his job duties and/or responsibilities as a forklift driver or shipping clerk when working at Irigoyen Farms. Mr. Arguayo provides no information about his supervisor at Irigoyen Farms or the role of his supervisor.

Mr. Arguayo's declaration makes clear he was not an officer, director, manager, or supervisor for Irigoyen Farms at any time. Mr. Arguayo's declaration fails to state that he relayed any information regarding Mr. Hill's purported state to any managerial agent of Irigoyen Farms on the night of the incident, or any time before or after the incident.

4.

Evidence Objected To

Exhibit G to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Declaration of Jesus Aguayo, ¶ 2, "There was no shipping supervisor."

Grounds for Objections

Lacks foundation, speculation, assumes facts (Evid. Code § 702).

The declarant has included no foundational information demonstrating that he has the personal knowledge or experience to attest to the statement made. Declarations which set forth only conclusions, opinions, or ultimate facts are insufficient. (*Kramer v. Barnes* (1963) 212 Cal. App. 2d 440, 446).

5.

Evidence Objected To

Exhibit G to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Declaration of Jesus Aguayo, ¶ 4, "I recall Hill's behavior to be odd, and he was noticeably lethargic and seemed very tired when I dealt with him. Hill mostly remained in his cab while we were loading his truck, and he appeared very sleepy the whole time."

Grounds for Objections

Lacks foundation, speculation, assumes facts (Evid. Code §§ 702, 801).

The declarant has included no foundational information demonstrating that he has sufficient experience or the requisite expertise on the fatigue levels of tractor-trailer drivers to attest to the statements made. Declarations which set forth only conclusions, opinions, or ultimate facts are

insufficient. (*Kramer v. Barnes* (1963) 212 Cal. App. 2d 440, 446).

6.

Evidence Objected To

Exhibit G to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Declaration of Jesus Aguayo, ¶ 5.

Grounds for Objections

Hearsay (Evid. Code § 1200, 1201).

Declarant's conversations with third parties and the contents of those conversations are inadmissible hearsay for which no exception applies.

7.

Evidence Objected To

Exhibit G to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Declaration of Jesus Aguayo, ¶ 6 "Had I received any safety training or been instructed as to any safety procedures for dealing with obviously fatigued drivers, I would have followed them."

Grounds for Objections

Lacks foundation, speculation and assumes facts (Evid. Code §§ 702, 801). Declarations which set forth only conclusions, opinions, or ultimate facts

are insufficient. (*Kramer v. Barnes* (1963) 212 Cal. App. 2d 440, 446).

No information is set forth regarding Mr. Aguayo's employment history, training, experience, knowledge, or expertise, either as an employee of Irigoyen Farms or more generally. Mr. Arguayo provides no information about his job duties and/or responsibilities as a forklift driver or shipping clerk when working at Irigoyen Farms. Mr. Arguayo provides no information about his supervisor at Irigoyen Farms or the role of his supervisor.

Mr. Arguayo's declaration makes clear he was not an officer, director, manager, or supervisor for Irigoyen Farms at any time. Mr. Arguayo's declaration fails to state that he relayed any information regarding Mr. Hill's purported state to any managerial agent of Irigoyen Farms on the night of the incident, or any time before or after the incident.

8.

Evidence Objected To

Exhibit G to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Declaration of Jesus Aguayo, ¶ 7.

Grounds for Objections

Hearsay (Evid. Code § 1200, 1201).

Declarant's conversations with third parties and the contents of those conversations are inadmissible hearsay for which no exception applies.

9.

Evidence Objected To

Exhibit H to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Declaration of Jane Ann Lyttle.

Grounds for Objections

Lacks foundation, speculation and assumes facts (Evid. Code §§ 702, 801). Irrelevant and immaterial. (Evid. Code § 352). Declarations which set forth only conclusions, opinions, or ultimate facts are insufficient. (*Kramer v. Barnes* (1963) 212 Cal. App. 2d 440, 446).

Nothing in the declaration establishes that the Declarant has the requisite knowledge, foundation, or expertise to provide the statements made thereon.

Irrelevant, circumstantial, and immaterial as there is no evidence that the amount of traffic in the area has any correlation to the business of Irigoyen Farms, nor is the amount of traffic in the area pertinent to any issue that is the subject of the pending motion. (Evid. Code § 352).

10.

Evidence Objected To

Exhibit I to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

Walmart's Standards for Suppliers.

Grounds for Objections

Hearsay (Evid. Code §§ 1200, 1291); lacks authentication (Evid. Code § 1400).

Irrelevant and immaterial as there is no evidence presented that Irigoyen Farms received a copy of this hearsay document. (Evid. Code § 352).

11.

Evidence Objected To

Exhibit H to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

July 26, 2023 report of V. Paul Herbert, page 2 "When Hill was at Irigoyen Farms during the loading process, one of the Irigoyen employee loaders, Jesus Aguayo, noticed that Hill seemed tired and low on sleep. Notwithstanding these observations, no steps were taken to determine whether Hill was capable of transporting the 80,000 pound load he was to drive another approximately 350 miles to Walmart's Nevada distribution center."

Grounds for Objections

Speculation; Lack of Personal Knowledge (Evid. Code § 702); Conclusory; Best Evidence Rule; Impermissible Expert Opinion (Evid. Code § 720): witness did not personally observe the Hill. His reliance on inadmissible hearsay to opine as to Hill's state of fatigue and subsequent consequences of his actions is speculative and an improper attempt to establish case-specific facts for which there is no independent admissible evidence. *People v. Sanchez* (2016) 63 Cal.4th 665.

A self-serving expert declaration that is devoid of any factual basis to support the conclusions contained therein and contains rank speculation and impermissible conjecture and cannot be used to manufacture a triable issue of material fact in opposition to a summary judgment motion. *Andrews v. Foster Wheeler* (2006) 138 Cal.App.4th 96, 108-113; and *McGonnell v. Kaiser Gypsum Co.* (2002) 98 Cal.App.4th 1098, 1105. "When an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an expert opinion is worth no more than the reasons upon which it rests." *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108.

"The trial court may strike or dismiss an expert declaration filed in connection with a summary judgment motion when the declaration states expert opinions that are speculative, lack foundation, or are stated without sufficient certainty. [Citation.]" *Lynn v. Tatitlek Supporting Services,*

Inc. (2017) 8 Cal.App.5th 1096, 1115- 16 [excluding expert declaration that contended driver's work activities caused driver to be overly fatigued, and that was a substantial factor in causing the automobile accident]; see also *Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 123 [expert's opinion rendered without reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value].

12.

Evidence Objected To

Exhibit H to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

July 26, 2023 report of V. Paul Herbert, page 3 "Similar to Walmart, defendant Irigoyen Farms also took no steps to insist that its loads be transported in a safe and legally compliant manner. Irigoyen Farms also did nothing to monitor the progress of its loads, to make sure they were not picked up or transported by non-compliant or fatigued drivers. Irigoyen Farms also failed to take any steps to monitor incoming or outgoing trucks, which is technologically feasible, despite being subject to a Grocery Supplier Agreement that demanded timely deliveries. Even further, as per the declaration of Aguayo, Irigoyen Farms hired inexperienced personnel and placed them in supervisory positions, provided no safety training or policies, and instructed staff not to do anything that could slow down a high priority Walmart load, which was treated as a rush job."

Grounds for Objections

Speculation; Lack of Personal Knowledge (Evid. Code § 702); Conclusory; Best Evidence Rule; Impermissible Expert Opinion (Evid. Code § 720): witness did not personally observe the Hill. His reliance on inadmissible hearsay to opine as to Hill's state of fatigue and subsequent consequences of his actions is speculative and an improper attempt to establish case-specific facts for which there is no independent admissible evidence. *People v. Sanchez* (2016) 63 Cal.4th 665.

A self-serving expert declaration that is devoid of any factual basis to support the conclusions contained therein and contains rank speculation and impermissible conjecture and cannot be used to manufacture a triable issue of material fact in opposition to a summary judgment motion. *Andrews v. Foster Wheeler* (2006) 138 Cal.App.4th 96, 108-113; and *McGonnell v. Kaiser Gypsum Co.* (2002) 98 Cal.App.4th 1098, 1105. "When an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an expert opinion is worth no more than the reasons upon which it rests." *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal. App. 4th 1108.

"The trial court may strike or dismiss an expert declaration filed in connection with a summary judgment motion when the declaration states expert opinions that are speculative, lack foundation, or are stated without sufficient certainty. [Citation.]" *Lynn v. Tatitlek Supporting Services,*

Inc. (2017) 8 Cal.App.5th 1096, 1115-16 [excluding expert declaration that contended driver's work activities caused driver to be overly fatigued, and that was a substantial factor in causing the automobile accident]; *see also Powell v. Kleinman* (2007) 151 Cal. App. 4th 112, 123 [expert's opinion rendered without reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value].

13.

Evidence Objected To

Exhibit H to Plaintiff Christina Casarez's Statement of Evidence in Opposition to Irigoyen Farms' Motion for Summary Judgment.

July 26, 2023 report of V. Paul Herbert, page 3 "Had Walmart and/or Irigoyen Farms exercised any precaution, there was readily available information that showed the subject load was being transported unsafely and unlawfully, and by an historically unsafe driver. Mr. Hill's driving record included a recent (14 months before the subject accident) prior accident where he was driving at an excessive speed, refused to submit to a post-accident drug test, and also was recommended to be discontinued as a commercial driver by the Department of Transportation. Furthermore, Irigoyen employee Aguayo's observations of Hill's fatigue were consistent with his driving logs. Those logs had been falsified and, upon examination, revealed that Hill had been routinely driving in excess of the permissible daily time, including driving throughout the day on the date of the

collision, despite representing he was “off duty” that entire day as per his driving logs.”

Grounds for Objections

Speculation; Lack of Personal Knowledge (Evid. Code § 702); Conclusory; Best Evidence Rule; Impermissible Expert Opinion (Evid. Code § 720): witness did not personally observe the Hill. His reliance on inadmissible hearsay to opine as to Hill’s state of fatigue and subsequent consequences of his actions is speculative and an improper attempt to establish case-specific facts for which there is no independent admissible evidence. *People v. Sanchez* (2016) 63 Cal.4th 665.

A self-serving expert declaration that is devoid of any factual basis to support the conclusions contained therein and contains rank speculation and impermissible conjecture and cannot be used to manufacture a triable issue of material fact in opposition to a summary judgment motion. *Andrews v. Foster Wheeler* (2006) 138 Cal.App.4th 96, 108-113; and *McGonnell v. Kaiser Gypsum Co.* (2002) 98 Cal.App.4th 1098, 1105. “When an expert’s opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an expert opinion is worth no more than the reasons upon which it rests.” *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108.

Expert declarations cannot provide ultimate conclusions of law or make speculative assertions about what “increased the potential for a collision”

and risk of injury. Such declarations are properly excluded by a court when deciding a motion for summary judgment. *Towns v. Davidson* (2007) 147 Cal.App.4th 461.

“The trial court may strike or dismiss an expert declaration filed in connection with a summary judgment motion when the declaration states expert opinions that are speculative, lack foundation, or are stated without sufficient certainty. [Citation.]” *Lynn v. Tatitlek Supporting Services, Inc.* (2017) 8 Cal.App.5th 1096, 1115-16 [excluding expert declaration that contended driver’s work activities caused driver to be overly fatigued, and that was a substantial factor in causing the automobile accident]; *see also Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 123 [expert’s opinion rendered without reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value].

HUGO PARKER, LLP

By: /s/ Alex G. Taheri

Edward R. Hugo

Alex G. Taheri

Attorneys for Defendant

IRIGOYEN FARMS, INC.

Dated: August 4, 2023

**BRIEF OF RESPONDENT
IRIGOYEN FARMS, INC.,
RELEVANT EXCERPTS
(JANUARY 2, 2025)**

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FIFTH APPELLATE DISTRICT

CHRISTINA CASAREZ, INDIVIDUALLY AND ON THE
BEHALF OF THE ESTATE OF OLIVIA MENDOZA,

*Plaintiffs and
Appellants,*

v.

WALMART, INC.; IRIGOYEN FARMS, INC.,

*Defendants and
Respondents.*

Civil No. F086901

Superior Court of the County of Fresno
Case No. 19CECG03758

Appeal from the Judgment of the Superior Court,
County of Fresno, Hon. Jonathan M. Skiles, Judge

**BRIEF OF RESPONDENT
IRIGOYEN FARMS, INC.**

Edward R. Hugo [Bar No. 124839]

*Bina Ghanaat [Bar No. 264826]

Alex G. Taheri [Bar No. 275054]

HUGO PARKER, LLP
90 New Montgomery Street, Suite 1010
San Francisco, CA 94105
Tel. (415) 808-0300
E-Mail: bghanaat@hugoparker.com
service@hugoparker.com

Attorneys for Defendant and
Respondent IRIGOYEN FARMS, INC.

[. . .]

. . . independent contractor is not liable for the actions or inactions of that independent contractor applies. No special circumstances, such as additional responsibilities for school districts or special privileges for hire licensed carriers, are applicable. Irigoyen Farms did not owe a duty to Ms. Mendoza.

3. Appellant's Purported Disputed Facts Are Immaterial to the Analysis of Whether a Legal Duty Exists

Whether an enforceable duty exists is a legal question within the sole province of the court, not a jury, and is properly resolved by the court on summary judgment. Appellant expressly acknowledges that duty is a legal question “decided by the court rather than the jury,” that is “an expression of policy considerations leading to the legal conclusion that a plaintiff is entitled to a defendant’s protection’ [citation].” (Appellant’s Opening Brief at p. 38.)

Here, applicable case authority establishes that the law does not impose a legal duty of care on a private entity for the conduct of a for-hire, independent contractor hired to ship product for that entity. While Appellant attempts to create triable issues of

fact regarding *breach* of duty¹², nothing in her opening brief properly creates a triable issue of fact regarding whether a duty exists in the first place. Issues pertaining to breach of duty are wholly irrelevant to this appeal.

Nor can Appellant rely on an expert to create triable issues of fact as to whether a legal duty exists. “[I]t is well settled that ‘expert testimony is incompetent on the . . . question of whether [a legal] duty [of care] exists because this is a question of law for the court alone’ to decide.” (*Gordon v. Ervin Cohen & Jessup LLP* (2023) 88 Cal.App.5th 543, 564 (citing *QDOS, Inc. v. Signature Financial, LLC* (2017) 17 Cal.App.5th 990, 1004).) Mr. Herbert’s (Appellant’s expert) opinions about what duties exist are legally improper and cannot be considered by this Court in deciding this appeal.

VII. Conclusion

For the reasons set forth above, as well as the reasons set forth in Walmart, Inc.’s appellate brief, the superior court’s grant of summary judgment in favor of Irigoyen Farms should be affirmed.

¹² Irigoyen Farms objected to the improper declarations of Jesus Aguayo and Jane Ann Lyttle and the letter report of V. Paul Herbert submitted by Plaintiffs in the trial court and referenced in Appellant’s opening brief. (4 CT 1102-1111.) Irigoyen Farms incorporates those objections herein.

Res.App.24a

Respectfully submitted,
HUGO PARKER, LLP

/s/ Bina Ghanaat

Edward R. Hugo

Bina Ghanaat

Alex G. Taheri

Attorneys for Defendant
and Respondent

IRIGOYEN FARMS, INC.

Date: January 2, 2025