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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**08/21/2020** at 01:53:00 PM

Clerk of the Superior Court  
By Gen Dieu, Deputy Clerk

11  
12 **SUPERIOR COURT OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO – HALL OF JUSTICE**

14 RICARDO VIDAL, d.b.a., SCHNELLZUG  
15 CAPITAL,  
16 Plaintiff,

17 v.

18 PICK AXE HOLDING, LLC, a California Limited  
19 Liability Company; CHRISTOPHER WILLIAMS,  
20 an individual; and DOES 1 through 50, inclusive,  
21 Defendants.

22 CHRISTOPHER WILLIAMS, an individual,

23 Cross-Complainant

24 v.

25 RICARDO VIDAL, an individual, and DOES 1  
26 through 50, inclusive,

27 Cross-Defendants.

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CASE NO. 37-2018-00044217-CU-BC-CTL

**DEFENDANTS/CROSS-COMPLAINANT'S  
EX PARTE APPLICATION FOR AN ORDER  
TO REOPEN DISCOVERY PURSUANT TO  
CCP § 2024.050**

1                   **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2                   **PLEASE TAKE NOTICE THAT** on August 25, 2020 at 8:45 a.m., or as soon as may be heard  
3 in the above entitled court, Defendants/Cross-Plaintiffs Pick Axe Holdings, LLC and Christopher  
4 Williams by and through their counsel of record, Andrew Flores, will move this Court for an order to  
5 reopen discovery pursuant to CCP § 2024.050.

6                   The application will be made on the grounds that due to the unprecedented global pandemic, and  
7 Executive Order N-33-20 (“stay at home order”), this Court’s closure and limited operations, and the  
8 Court’s rescheduling of the trial in this matter to December 18, 2020, give reasonable grounds, in the  
9 equity and the interest of justice, to reopen discovery for a limited time.

10  
11 DATED:       August 19, 2020

THE LAW OFFICE OF ANDREW FLORES

12  
13 By \_\_\_\_\_  
14                   ANDREW FLORES  
15                   Attorney for Defendant/Cross-Complainants  
16                   CHRISTOPHER WILLIAMS & PICK AXE  
17                   HOLDING LLC

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10 CHRISTOPHER WILLIAMS and PICK AXE HOLDING LLC

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27 CASE NO. 37-2018-00044217-CU-BC-CTL

28 **DEFENDANT/CROSS-COMPLAINANTS’  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF *EX PARTE*  
APPLICATION TO REOPEN DISCOVERY  
PURSUANT TO CCP § 2024.050**

1 The Court should exercises it's discretion to reopen discovery because it is necessary to obtain  
2 additional information in order to properly prepare for trial, which is currently set for December 18,  
3 2020 and/or to file a dispositive motion before the trial date. This limited reopening is unlikely to  
4 interfere with the trial calendar or prejudice any party.

5 **A. Background.** On or about September 27, 2019 the Court continued the trial in this matter  
6 to June 19, 2020 with a discovery cut off date of May 16, 2020. On or about March 17, 2020 the Court  
7 closed operation but for limited “emergency” matters. Additionally, on or about March 17, 2020 the  
8 Governor of California issued an executive order, ordering a people of this state “stay at home” but for  
9 “essential workers.” The Court then resumed operations (albeit still on a limited bases) on May 26, 2020.  
10 Effectively the Court was closed for operations for a period of sixty-nine calendar days. On May 16,  
11 2020 the Court, on its own motion rescheduled the trial from June 16, 2020 to December 18, 2020.

12 On July 1, 2020 Defendant/Cross-Complainant served upon Plaintiffs Request for Admissions  
13 (Set One, 34 Requests), Special Interrogatories (Set One, 33 Interrogatories), and Form Interrogatories  
14 (Set One).

15 **B. Legal Standard.** On a motion of any party, accompanied by a declaration stating facts  
16 showing a reasonable and good-faith attempt at an informal resolution of each issue presented by the  
17 motion, the court make grant leave to reopen discovery after a new trial date has been set. CCP §  
18 2024.050(a).

19 **C. Factors to be Considered.** In exercising its discretion to grand leave to reopen discovery,  
20 the court is required to take into consideration any matter relevant to the leave requested, including but  
21 not limited to the following.

- 22 1. The necessity and reasons for the discovery. (CCP § 2025.050(b)(a));
- 23 2. The diligence of the party seeking the discovery, and the reasons the discovery was not  
24 completed earlier;
- 25 3. Any likelihood, or absence thereof that permitting the discovery will prevent the case from  
26 going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any  
27 other party. (CCP § 2024.050(b)(3));

1           4.       The length of time that has elapse between the dates previously set, and the date presently  
2 set for trial of the action. (CCP§ 2024.050(b)(4)).

3           **D.       ARGUMENT**

4           a.       Meet and Confer Requirement. As further detailed in the attached declaration, on July 1, 2020  
5 Defendants/Cross-Complainant served upon Plaintiff’s counsel three separate discovery devices  
6 described above. On July 3, 2020 Defendants/Cross-Complainant’s attorney sent a curtsey copy to  
7 Plaintiff’s attorney Michael Cindrich. A few days later attorney Robert Crissman, of Mr. Cindrich’ s  
8 office called Defendants/Cross-Complainant’s counsel to discuss possible settlement in the case. On July  
9 30, 2020 Defendants/Cross-Complainant’s counsel sent Messrs. Cindrich and Crissman an email  
10 requesting confirmation that they would in fact respond to the discovery requests and outlining the  
11 equitable reasons why discovery should be extended.

12           b.       Court Have Authority to Reopen Discovery on an Ex Parte Basis, Upon Showing of Good Cause.  
13 A court ma reopen discovery based on an *ex parte* application. For example in Hernandez v. Superior  
14 Court, the court of appeals issued a writ of mandate reversing the trial court’s denial of an ex parte  
15 application to reopen discovery because the application was supported by a showing of good cause. 115  
16 Cal. App. 4<sup>th</sup> 1242, 1245, 1247-48 (2004).

17           c.       Why Discovery Should be Reopened. No discovery had been conducted by either side. Though  
18 this case involves a very narrow issue regarding an alleged breach of contract this discovery is necessary  
19 to prepare for trial and potentially for case dispositive motion purposes. The COVID-19 pandemic  
20 significantly hindered the ability of Defendants/Cross-Complainant’s attorney to conduct the discovery  
21 as the stay at home order compelled closure of his solo practice. It is just and fair to reopen discovery for  
22 a short time.

23           d.       The Trial has Been Continued to December 18, 2020. The Court, due to the court closures caused  
24 by the COVID-19 pandemic, continued the trial in this matter till December 18, 2020. As such, under  
25 CCP § 2024.050(a) states “On motion of any party, the court may grant leave to complete discovery  
26 proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen  
27 discovery *after a new trial date has been set.*” (emphasis added).

