

1 SHEA & SHEA
 A PROFESSIONAL LAW CORPORATION
 2 MICHAEL M. SHEA (State Bar No. 38396)
 MICHAEL M. SHEA, JR. (State Bar No. 126983)
 3 MARK B. O'CONNOR (State Bar No. 126960)
 NICOLE N. HANCOCK (State Bar No. 221457)
 4 THE JAMES SQUARE BUILDING
 255 NORTH MARKET STREET, SUITE 190
 5 SAN JOSE, CA 95110
 Phone: (408) 292-2434
 6 Fax : (408) 292-1264



5/19/2016

7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF CALIFORNIA,
 9 NORTHERN DISTRICT OF CALIFORNIA

11 JESUS CORTES DIAZ, MARGARITA DIAZ
 and JESUS CORTES DIAZ as *guardian ad*
 12 *litem* for ITZEL CORTES DIAZ, individually,
 and as Successors in Interest of JOSE CORTES
 13 DIAZ, deceased

Case No. C 12-05325 EJD
 STIPULATION REGARDING TESTING
 OF CLEATS

14 Plaintiffs,
 15 vs.

16 DAWS MANUFACTURING COMPANY,
 INC., LOWE'S COMPANIES, INC., BETTER
 BUILT COMPANY, SNAP-ON
 17 INCORPORATED, KOBALT TOOLS,
 LOWE'S HIW, INC., and DOES 1 through 100,
 18 inclusive,

19 Defendants.

20 The parties have met and conferred and have agreed to stipulate as follows:

21 1. Plaintiffs filed an action captioned Jesus Diaz, et al. v. Daws Manufacturing
 22 Company, Inc. et al., Case No. C 12-05325-EJD, in the United States District Court in the Northern
 23 District of California alleging that Defendants manufactured or distributed defective toolboxes or
 24 plastic retention cleats.

25 2. All parties affiliated in any manner with the above-referenced matter now desire to
 26 enter into a stipulation and agreement pertaining to materials testing that will be conducted on the
 27 subject plastic retention cleats and the subject toolbox.

1 3. Now, therefore, the parties, through their undersigned counsel and attorneys of
2 record, stipulate and agree as follows:

3 4. It is hereby stipulated and agreed, by the parties hereto, that (A) the plastic retention
4 cleats located on the passenger right side of Plaintiff, Mr. Jesus Diaz's vehicle; (B) the toolbox
5 originally located on the right side and in the back of Mr. Diaz's vehicle that is currently in the back
6 of Mr. James Lee's vehicle; and (C) the plastic retention cleats originally attached to the toolbox on
7 the right side and that are located on or in the back of Mr. Diaz's vehicle be removed from
8 evidentiary storage at Bracco's Towing, where the plastic retention cleats and toolbox previously
9 described are presently located.

10 5. Furthermore, after the plastic retention cleats and toolbox described in the preceding
11 paragraph are removed from Mr. Diaz and Mr. Lee's vehicles located at Bracco's Towing, the
12 plastic retention cleats and toolbox will be given to a designated representative that all parties
13 consummating this stipulation will agree upon at a future date for further testing. The further testing
14 will include materials testing to be conducted jointly by all of the parties consummating this
15 stipulation and agreement in addition to each party's selected experts and consultants. The materials
16 testing will be, in part, destructive in nature. The date and time for the removal of the items herein
17 described will be determined by mutual agreement by the parties to this agreement as further
18 determined by the availability of any personnel from the CHP's office and/or Bracco's Towing.

19 6. Finally, it is hereby stipulated and agreed, by the parties hereto, that until a future
20 stipulation and agreement, the plastic retention cleats pertaining to the toolbox located on the left
21 (driver's) side of Mr. Diaz' vehicle and the tool box that remains located on and in the Diaz vehicle's
22 passenger compartment will remain in evidentiary storage.

23 7. Counsel for defendants Daws Manufacturing, Inc. and Lowe's Home Centers, LLC,
24 has advised that they have no objection to Plaintiffs' request.

25 8. During the removal of the tool box from the back of Mr. Lee's vehicle, as specified
26 in paragraph 4(b), the actual removal shall be recorded by video with a copy of the video provided
27 to Mr. Baker in addition to any other counsel who should make a request for a copy. Further, the

1 person who conducts the removal of the tool box shall provide a declaration under penalty of
2 perjury as to the removal stating he or she did nothing to the truck other than remove the tool box,
3 and that he or she observed no objects or discoloration in the portion of the truck in which he or she
4 moved in the course of removing the tool box or where the tool box was situated. However, if the
5 person does observe an object, objects and/or discoloration in the portion of the truck in which he or
6 she moved in the course of removing the tool box or where the tool box was situated, he or she shall
7 describe in the above-noted declaration what he or she saw and cause it to be videotaped. The
8 description referred to in the preceding sentence shall as best as possible report quantity, size and
9 color.

10 Dated: May 17, 2016

SHEA & SHEA

11 By: _____ /s/
12 NICOLE N. HANCOCK
13 Attorneys for Plaintiffs Diaz

14 Dated: May 19, 2016

MARANGA MORGENSTERN

15 By: _____ /s/
16 PHILLIP T.S. TUKIA
17 Attorneys for Defendant
18 DIVERSIFIED FASTENERS

19 Dated: May 13, 2016

WIGGINS MARKS ROSENBLATT LLP

20 By: _____ /s/
21 TROY D. WIGGINS
22 Attorneys for Defendant
23 DAWS MANUFACTURING COMPANY,
24 INC.; LOWE'S HOME CENTERS, LLC

25 Dated: May 12, 2016

LAW OFFICES OF RANDY BAKER

26 By: _____ /s/
27 RANDY BAKER
Attorney for Defendant
JAMES FRANCIS LEE

Dated: May 17, 2016

OFFICE OF THE DISTRICT ATTORNEY

By: _____ /s/
ANGELA BERNHARD
Deputy District Attorney