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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KARI NELSON, individually, and
KIONO NELSON as the Personal
Representative for the ESTATE OF
FREDDY NELSON, JR.,

Plaintiff,

vs.

TMT DEVELOPMENT CO., LLC, an
Oregon Corporation; D. PARK
CORPORATION, an Oregon
Corporation dba HAYDEN MEADOWS;
MATTHEW CADY, dba CORNERSTONE
SECURITY GROUP; JEFFREY JAMES,
dba CORNERSTONE SECURITY
GROUP; TJ LATHROM, dba
CORNERSTONE SECURITY GROUP;
and LOGAN GIMBEL.

Defendants.

Case No. 21CV40742

**PLAINTIFFS’ MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT
INCLUDING CLAIM FOR PUNITIVE
DAMAGES**

Oral Argument Requested

Motions Judge: The Honorable Leslie G.
Bottomly

UTCR 5.050 INFORMATION

Time requested for argument:	2 hours
Telephone attendance requested:	No
Counsel located more than 25 miles from the court:	No
Recording services requested:	Yes

1 **UTCR 5.010 COMPLIANCE**

2 Plaintiffs’ counsel and all defense counsel have met and conferred about the substance of
3 this motion and could not reach an agreement on any of the proposed changes to Plaintiffs’
4 Second Amended Complaint.

5 **MOTION**

6 Pursuant to ORCP 23 and ORS 31.725, Plaintiffs hereby move the Court for leave to file
7 a Second Amended Complaint to add a claim for punitive damages against Defendant Logan
8 Gimbel (“Defendant Gimbel”) and Defendants Matthew Cady, TJ Lathrom, and Jeffrey James
9 dba Cornerstone Security Group (“Defendant Cornerstone”). Plaintiffs further move the court for
10 leave to add Lowe’s Home Centers (“Lowe’s”) as a defendant, amend economic and
11 noneconomic damages, add a personal injury claim for Plaintiff Kari Nelson, and update the
12 factual and legal allegations in their complaint. This motion is supported by the Declaration of
13 Ben Turner (“Turner Decl.”), the exhibits attached thereto, and the following points and
14 authorities. As required by UTCR 5.070(1), attached hereto as Exhibit A is a copy of the
15 proposed Second Amended Complaint.

16 **I. FACTUAL BACKGROUND**

17 From November 2019 until June 2021, Defendant Cornerstone patrolled Delta Park
18 Center under an agreement and at the direction of property manager, Defendant TMT
19 Development Co., LLC (“Defendant TMT”). (Turner Decl., Ex. 1, Confidential Def. 1478.)
20 Defendant D. Park Corporation (“Defendant D. Park”) owned Delta Park Center and jointly
21 managed it with Defendant TMT. Defendant Cornerstone provided exclusively armed security at
22 Delta Park Center. (*Id.*, Ex. 2, Confidential Def. 1479 – Def. 1482, at p. 2.) During this time,
23 Defendant Cornerstone repeatedly used excessive force on patrons at the direction of Defendant
24

1 TMT. (*See, e.g., id.*, Ex. 3, Sept. 30, 2020, Letter from OBRC to TMT; Ex. 4, Dec. 31, 2020,
2 Letter from OBRC to TMT.) (TMT unreasonably insisted on use of armed security guards at
3 Delta Park Center resulting in an “inhumane unreasonable policy” and “very aggressive
4 behavior” “between Cornerstone employees and shopping patrons”.) Further, Defendant TMT
5 and Defendant Cornerstone’s policy of excessive force was in direct violation of the regulations
6 set by the Oregon Department of Public Safety Standards and Training (“DPSST”). (*Id.*, Ex. 5,
7 Confidential TMT 1167.) Defendants D. Park and TMT were repeatedly warned of
8 Cornerstone’s excessive use of force. (*Id.*, Exs. 3-5.) Instead of ameliorating the situation,
9 Defendant TMT supported Defendant Cornerstone’s actions and adopted policies that forced
10 Defendant Cornerstone to use disproportionate force and break the law. (*See id.*, Ex. 6, March 2,
11 2021, Letter from TMT to OBRC.)

12 Beginning in late 2019, decedent Freddy Nelson and his wife, Plaintiff Kari Nelson, lived
13 near Delta Park Center. Freddy Nelson owned and operated Pacific Pallets, a business that
14 collected and resold pallets from various business including the Lowe’s at Delta Park Center.
15 (*See id.*, Ex. 7, Confidential Def. 1019; Ex. 8, Confidential Def. 1021.) Defendants TMT and
16 Cornerstone developed a reputation for harassment and intimidation of both patrons and the
17 tenants of Delta Park Center. Like many patrons, decedent Freddy Nelson and Plaintiff Kari
18 Nelson suffered continuous and periodic harassment and intimidation at the hands of TMT and
19 Cornerstone from late 2019 until May 29, 2021.

20 The focus of Cornerstone’s harassment of the Nelsons was a disagreement as to whether
21 Freddy Nelson had permission to collect pallets from Lowe’s. (*See id.*, Exs. 7-8.) When the
22 harassment and intimidation did not succeed, Defendant Gimbel stalked, assaulted and battered
23 Freddy Nelson and his wife Kari with pepper spray in an enclosed car. (*Id.*, Ex. 9, Confidential
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1 Def. 1016.) After pepper spraying Freddy and Kari, Gimbel shot Freddy four times in the head
2 and chest from point blank range through the front windshield of his stopped car. (*Id.*) Plaintiff
3 Kari Nelson watched Defendant Gimbel murder her husband. (*Id.*)

4 ARGUMENT

5 II. LEGAL STANDARDS

6 A. Leave to amend should be given freely when justice so requires.

7 ORCP 23 A states, in pertinent part, that a party may amend their pleadings by leave of
8 court and that “leave should be freely given when justice so requires.” Two key principals should
9 guide a trial court’s evaluation of a motion for leave to amend. The first principal is that courts
10 should allow amendments freely, without reserve or restraint. *Eklöf v. Persson*, 369 Or 531, 539,
11 508 P3d 468 (2022); *see also Holmes v. Or. Ass’n Credit Mgmt.*, 52 Or App 551, 558, 628 P2d
12 1264 (1981) (liberality of amendments is favored under Oregon law). The second principal is
13 that the court should consider whether the amendment is fair to both parties. *Id.* at 540 (“Thus,
14 although amendments are to be permitted ‘freely,’ which will ordinarily benefit the party seeking
15 amendment, the additional component of the rule—‘when justice so requires’—means that the
16 court must consider the fairness to both parties of allowing the amendment.”); *see also Franke v.*
17 *Or. Dep’t of Fish & Wildlife*, 166 Or App 660, 669, 2 P3d 921 (2000) (“Leave to amend should
18 normally be allowed unless the other party would be prejudiced in some respect.”).

19 The gravamen of the inquiry under ORCP 23 A is prejudice to the opposing party. *Eklöf*,
20 369 Or at 533. A “vague claim of prejudice” is not enough. *RLF Liquidating, LLC v. McDonald*
21 *Brothers, Inc.*, 318 Or App 321, 328, 507 P3d 758 (2022), *quoting Safeport, Inc. v. Equipment*
22 *Roundup & Mfg., Inc.*, 184 Or App 690, 700, 60 P3d 1076 (2002). Defendants must articulate
23 clear reasons that the amendments prejudice them. *Safeport*, 184 Or App at 700. The potential
24

1 for additional exposure for damages, and even having to prepare additional defenses, if
2 necessary, is not enough to establish prejudice. *See Jensen v. Duboff*, 253 Or App 517, 524, 291
3 P3d 738 (2012).

4 **B. Under ORS 31.725, a minimal amount of proof is required to plead punitive**
5 **damages.**

6 A minimal amount of proof is necessary to plead punitive damages under Oregon law;
7 the plaintiff must:

8 “set forth specific facts supported by **admissible evidence adequate to avoid the**
9 **granting of a motion for a directed verdict** to the party opposing the motion on the
10 issue of punitive damages.”

11 ORS 31.725(3)(a) (emphasis added).

12 By referring to the “directed verdict” standard, the Oregon Legislature intended the trial
13 court to determine the sufficiency of evidence supporting a claim for punitive damages under the
14 well-established “no evidence” standard or, conversely, the “some evidence” standard set out by
15 the Oregon Supreme Court. *Bolt v. Influence, Inc.*, 333 Or 572, 578, 43 P3d 425 (2002). As such,
16 the court does not weigh evidence or apply a “clear and convincing” standard at this juncture. *Id.*
17 at 579 (finding error to apply a clear and convincing standard on a motion to amend to add
18 punitive damages). Rather, the court’s task is to review the facts in the light most favorable to
19 plaintiff and grant the motion unless it finds that no reasonable person could find for the plaintiff.
20 *Mark v. Hutchinson*, 132 Or App 613, 617, 889 P2d 361 (1995).

21 **III. THE *HERINCKX* FACTORS AND THE *EKLOF* PRINCIPLES FAVOR**
22 **AMENDMENT**

23 In addition to adding a claim for punitive damages against certain defendants, as
24 discussed below, Plaintiffs seek to make the following amendments:

- Addition of Lowe’s Home Centers as a defendant;

- Increase of noneconomic damage claims and removal of economic damages claim;
- Addition of a claim for personal injury by Plaintiff Kari Nelson; and
- Other additions, deletions and alterations to the existing legal and factual allegations.

Plaintiffs seek to add Lowe's as the claims occurred on the premises of Lowe's, and Lowe's owed a duty to Freddy and Kari Nelson as invitees to make the premises reasonably safe, including but not limited to taking reasonable and feasible steps to eliminate the danger. *See Vandevivere-Pratt v. Portland Habilitation Ctr., Inc.*, 242 Or App 554, 561, 259 P3d 9, 13 (2011).

Plaintiffs also seek to remove the economic damages claim previously made on behalf of the Estate of Freddy Nelson and to increase the amount of noneconomic damages sought for each plaintiff from \$25,000,000 to \$45,000,000. The latter is necessary in light of the evidence that has developed and the severity of the harm suffered by the Plaintiffs as a result of their tortious conduct. It is fairly routine for the amount of damages sought to change over the course of litigation, and Oregon courts routinely permit amendments to increase damages. *See, e.g., Stranahan v. Fred Meyer, Inc.*, 153 Or App 442, 462, 958 P2d 854 (1998), *rev'd on other grounds*, 331 Or 38 (2000) (affirming trial court's decision to allow plaintiff to amend complaint to increase damages on the day of trial); *Martin v. Burlington N., Inc.*, 47 Or App 381, 385, 614 P2d 1203 (1980) (affirming trial court's decision to permit plaintiff to increase the prayer for damages just prior to argument at trial); *Laursen v. Morris*, 103 Or App 538, 545, 799 P2d 648 (1990) (affirming trial court's decision to permit plaintiff to increase prayer for damages after the jury reached a verdict).

Plaintiff Kari Nelson seeks to add a personal injury claim for the damages she suffered as a result of the use of mace against her by Defendant Gimbel, for which Defendant Gimbel was

1 also criminally convicted. Defendant Gimbel’s actions were permitted, authorized, ratified,
2 encouraged, and/or on behalf of the corporate defendants. Plaintiffs also seek leave to amend to
3 make additions, deletions and alterations to the existing legal and factual allegations to conform
4 to the evidence. ORCP 23 contemplates motions to amend pleadings throughout the litigation
5 process, even during and after trial. ORCP 23 B provides for amendments to conform to the
6 evidence presented at trial. ORCP 23 E provides for supplemental pleadings to set forth
7 occurrences which have happened since of the date of the original pleading. Amending a
8 pleading well before the trial date is within the parameters of ORCP 23

9 In addition to the two guiding principles outlined by the Oregon Supreme Court in *Eklof*,
10 Oregon courts also consider four factors: (1) the nature of the proposed amendments and their
11 relationship to the existing pleadings; (2) the prejudice, if any, to the opposing party; (3) the
12 timing of the proposed amendments and related docketing concerns; and (4) the colorable merit
13 of the proposed amendment. *See Herinckx v. Sanelle*, 281 Or App 869, 879, 385 P3d 1190, 1198
14 (2016). Both *Eklof* factors and all four *Herinckx* factors militate in favor of amendment.

15 There is minimal prejudice to the opposing parties – they have nearly six months until
16 trial, this filing is made within the statute of limitations for all claims, opposing parties do not
17 need to defend against novel claims or facts, and opposing parties have been on notice of a
18 possible claim for punitive damages since the initial filing of this complaint. (*See Compl.* ¶¶ 35,
19 39, 42, 44, 59, 67, 72.) The timing of the proposed amendment will not affect this court’s docket
20 or the parties’ readiness for trial. In fact, because of our liberal amendment standard, Oregon
21 courts have permitted amendments at much later stages of litigation. *See, e.g., RLF Liquidating*,
22 318 Or App 321, 328-29, 507 P3d 758 (2022) (reversing trial court’s denial of defendants’
23 motion for leave to amend and finding that the timing of the amendment at six weeks prior to
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1 trial was sufficient to prevent prejudice to the opposing party); *Kaste v. Land O'Lakes Purina*
2 *Feed, LLC*, 284 Or App 233, 249-50, 392 P3d 805 (2017) (affirming trial court's decision
3 permitting plaintiffs to amend complaint during trial); *Safepoint*, 184 Or App 690, 701, 60 P3d
4 1076 (2002) (reversing trial court's decision to deny defendant's motion to amend its third-party
5 complaint after trial to comply with statutory requirements for an award of attorney fees);
6 *Laurson*, 103 Or App at 545 (affirming trial court's decision permitting plaintiff to amend
7 complaint after the jury reached a verdict).

8 Finally, there is strong merit to the proposed amendments and they are not futile,
9 particularly the amendments for punitive damages as discussed below. A proposed amendment
10 to a complaint is "futile" if the claims "could not prevail on the merits due to some failing in the
11 pleadings or some unavoidable bar or obstacle." *Eklof*, 369 Or at 543-44. The futility standard is
12 a very low bar—if it is possible to prevail on a claim, even if it is unlikely, then leave to amend
13 should be granted. *Id.* at 550. Here, the amendments are not subject to any fatal defenses or any
14 other issue that means the Plaintiffs cannot prevail on the merits. Since the amendments are not
15 futile, justice requires that leave to amend be granted.

16 **IV. DEFENDANTS' RECKLESS CONDUCT GIVES RISE TO A CLAIM FOR** 17 **PUNITIVE DAMAGES**

18 Punitive damages are awarded to deter the defendant and others from similar conduct in
19 the future. *DeMendoza v. Huffman*, 334 Or 425, 443-47, 51 P3d 1232 (2002). They are proper
20 when the defendant "has acted with malice or has shown a reckless and outrageous indifference
21 to a highly unreasonable risk of harm and has acted with a conscious indifference to the health,
22 safety and welfare of others." ORS 31.730(1). Taken in the light most favorable to the Plaintiffs,
23 the evidence submitted in support of this motion shows that the conduct of Defendant Gimbel
24 and Defendant Cornerstone conduct meets that standard.

1 **A. Defendant Gimbel’s conduct provides sufficient evidence to meet the directed**
2 **verdict standard for alleging punitive damages.**

3 Under the direction and control of Defendants Cornerstone and TMT, Logan Gimbel
4 maliciously harassed, assaulted, and ultimately murdered Freddy Nelson. On May 8, 2023, an
5 Oregon jury unanimously convicted Defendant Gimbel of murder in the second degree pursuant
6 to ORS 163.115 for “unlawfully and **intentionally** caus[ing] the death of Freddy Theodore
7 Nelson”; unlawful use of a weapon pursuant to ORS 163.220 for “unlawfully attempt[ing] to use,
8 carry[ing] **with intent** to use and possess[ing] **with intent** to use unlawfully against Freddy
9 Theodore Nelson, a firearm, a dangerous an deadly weapon”; and unlawful use of mace in the
10 second degree in violation of ORS 163.212 for “unlawfully and **recklessly** discharg[ing] mace
11 against Freddy Theodore Nelson” and “against Kari Nelson.” (Turner Decl., Ex. 10, *State v.*
12 *Gimbel* Indictment; Ex. 11, *State v. Gimbel* Verdict) (emphasis added). These convictions
13 establish that Defendant Gimbel acted intentionally and recklessly when he harassed the Nelsons
14 and then killed Freddy Nelson – culpability that more than meets what is required to award
15 punitive damages.

16 “Malice” in the context of punitive damages represents the “intentional disregard of the
17 interests of another” or simply, “a wrongful act done **intentionally**, without just cause or
18 excuse.” *McElwain v. Georgia-Pac. Corp.*, 245 Or 247, 249, 421 P2d 957, 958 (1966) (emphasis
19 added); *see also Blades v. White Motor Credit Corp.*, 90 Or App 125, 130, 750 P2d 1198, 1201
20 (1988). Upon proof of such conduct, the question of the award of punitive damages is for the
21 jury. *Id.* Defendant Gimbel’s conviction of murder in the second degree and unlawful use of a
22 weapon both establish that he intentionally committed wrongful acts against the Nelsons.

23 Punitive damages have been awarded in cases involving conduct far less reprehensible
24 than this. *See Andor by Affatigato v. United Air Lines, Inc.*, 303 Or 505, 511, 739 P2d 18, 22

1 (1987), citing *Lewis v. Oregon Beauty Supply Co.*, 302 Or 616, 733 P2d 430 (1987) (punitive
2 damages for nonverbal infliction of severe emotional distress); *Green v. Uncle Don's Mobile*
3 *City*, 279 Or 425, 568 P2d 1375 (1977) (punitive damages for fraud); *Roshak v. Leathers*, 277 Or
4 207, 560 P2d 275 (1976) (punitive damages for assault and battery); *Harrell v. Ames*, 265 Or
5 183, 508 P2d 211 (1973) (punitive damages awarded against defendant who struck plaintiff
6 while driving under the influence of intoxicants); *McElwain v. Georgia-Pacific Corp.*, 245 Or
7 247, 421 P2d 957 (1966) (punitive damages for intentional discharge of pollutants); *Gumm v.*
8 *Heider*, 220 Or 5, 348 P2d 455 (1960) (punitive damages for malicious prosecution).

9 Accordingly, there is more than sufficient evidence to meet the directed verdict standard here
10 where Defendant Gimbel intentionally killed Freddy.

11 Similarly, Defendant Gimbel's conduct also meets the second prong of culpability that
12 meets the punitive damages standard – recklessness and conscious indifference. Defendant
13 Gimbel's unlawful use of mace against the Nelsons establishes that he acted with criminal
14 recklessness. *See* ORS 163.212. (*See also* Turner Decl., Exs. 10-11.) Criminal recklessness is a
15 higher degree of culpability than civil recklessness and is more closely akin to civil wantonness.
16 *See State v. Gutierrez-Medina*, 365 Or 79, 91-93, 442 P3d 183, 189-90 (2019). As the Oregon
17 Supreme Court has explained, legal terms such as “reckless disregard” and “conscious
18 indifference” are “appropriate to describe the hypothetical state of mind of the hypothetical
19 reasonable man who, faced with the dangerous situation, nevertheless elected to encounter it.”
20 *Id.* at 91, quoting *Taylor v. Lawrence*, 229 Or 259, 265, 366 P2d 735 (1961), quoting *Williamson*
21 *v. McKenna*, 223 Or 366, 398, 354 P2d 546 (1960). Criminal recklessness and civil wantonness,
22 on the other hand, describe a person who acted with actual knowledge and disregard of the risk.
23 *Id.* at 92; *see also* ORS 161.085(9) (defining recklessly as “a person is aware of and consciously
24

1 disregards a substantial and unjustifiable risk that the result will occur or that the circumstance
2 exists”).

3 Defendant Gimbel recklessly discharged mace against the Nelsons in an enclosed truck
4 cab. (*See* Turner Decl., Ex. 9, Confidential Def. 1016.) In doing so, he disregarded the safety of
5 the Nelsons knowing or having reason to know that doing so created an unreasonable risk of
6 bodily harm to the Nelsons and a high degree of probability that substantial harm would result to
7 them. *Gutierrez-Medina*, 365 Or at 93, *citing Taylor*, 229 Or at 265, *citing* Restatement of Torts
8 § 500 (1934). In other words, Defendant Gimbel’s conduct merits punitive damages because he
9 showed “a reckless and outrageous indifference to a highly unreasonable risk of harm and has
10 acted with a conscious indifference to the health, safety and welfare of others,” including the
11 Nelsons. ORS 31.730(1). Proof of such conduct via the jury conviction is sufficient to grant
12 Plaintiff’s Motion for Leave to Amend and allow a jury to determine the appropriate measure of
13 punitive damages.

14 **B. Defendant Cornerstone is vicariously liable for the punitive damages caused**
15 **by its employee, Defendant Gimbel.**

16 It is undisputed that Defendant Gimbel was an employee of Defendant Cornerstone on
17 May 29, 2021. (*See, e.g.*, Turner Decl., Ex. 12, DPSST Violation; Ex. 13, Def. Cady’s Resp. to
18 Pls.’ 1st Req. for Prod., at pp. 3-4; Ex. 14, Def. James’ Resp. to Pls.’ 1st Req. for Prod., at pp. 3-
19 4; Ex. 15, Def. Lathrom’s Resp. to Pls.’ 1st Req. for Prod., at pp. 3-4.) Defendant Cornerstone is
20 vicariously liable for both the reckless and malicious conduct of its employee Defendant Gimbel.

21 Under the doctrine of *respondeat superior*, an employer is liable for an employee’s torts
22 when they are acting within the scope of their employment. *Stanfield v. Laccoarce*, 284 Or 651,
23 654, 588 P2d 1271 (1978). Employees act within the scope of employment when three
24 requirements are met: (1) the act occurred substantially within the time and space authorized by

1 the employment; (2) the employee was at least partially motivated by a purpose to serve the
2 employer; and (3) the act is of a kind which the employee was hired to perform.” *Id.* at 655;
3 *Gossett v. Simonson*, 243 Or 16, 24, 411 P2d 277 (1966). Each of these requirements was met
4 when Defendant Gimbel recklessly discharged mace against the Nelsons and intentionally killed
5 Freddy Nelson.

6 Defendant Gimbel (1) was “on duty at Delta Park at the time of the incident on May 29,
7 2021” and was responsible for providing armed security; (2) he was attempting to “exclud[e] or
8 eject[.]” the Nelsons from the premises on the alleged basis that they were trespassing according
9 to Gimbel, Cornerstone, and TMT; and (3) his use of mace and a firearm against the Nelsons as
10 purported trespassers was exactly the kind of act armed security personnel are hired to perform.
11 (*See Turner Decl.*, Exs. 12-15). Because Defendant Gimbel was acting within the scope of his
12 employment, Defendant Cornerstone is liable for his reckless actions and the resultant punitive
13 damages under Oregon law. *Stroud v. Denny's Rest., Inc.*, 271 Or 430, 437, 532 P2d 790, 793
14 (1975) (“if the servant has committed a tort within the scope of his employment so as to render
15 the corporation liable for compensatory damages, and if the servant’s act is such as to render him
16 liable for punitive damages, then the corporation is likewise liable for punitive damages.”).

17 It is unnecessary to prove that Defendant Cornerstone ratified Defendant Gimbel’s
18 reckless actions or had a reckless state of mind itself. The *Stroud* Court explicitly rejected the
19 requirement that the reckless conduct must be authorized or ratified by someone within the
20 corporate hierarchy. *Id.* at 433-34. The Oregon Supreme Court revised the issue nearly 30 years
21 later in *Johannesen v. Salem Hospital*, where the defendant employer argued it could not be
22 vicariously liable for punitive damages based on the conduct of another “without evidence of
23 fault on its part.” 336 Or 211, 219, 82 P3d 139, 142 (2003). The Oregon Supreme Court noted
24

1 that it had “considered and rejected that theory” in *Stroud* and “perceive[d] no reason to revisit
2 that decision in this case.” *Id.* As such, it is enough to prove that Defendant Gimbel acted with
3 the requisite intent and he did so while in the course and scope of his employment.

4 **C. Defendant Cornerstone’s reckless hiring, supervision, training and retention
5 meet the directed verdict standard for alleging punitive damages.**

6 In its hiring, supervision, training, and retention of its employees, including and
7 especially Defendant Gimbel, Defendant Cornerstone showed a reckless and outrageous
8 indifference to a highly unreasonable risk of harm and conscious indifference to the health,
9 safety, and welfare of others. ORS 31.730(1).

10 Less than five months before Defendant Gimbel’s attack on the Nelsons, Defendant
11 Cornerstone issued a policy memorandum that trained its employees to see everything as a
12 potential fatal threat. (*See* Turner Decl., Ex. 16, Confidential Def. 1313 – Def. 1314.)

13 Cornerstone employees, including Defendant Gimbel, were given the following directives:

- 14 • “Smile, be polite, be professional, **BUT HAVE A PLAN TO KILL EVERYONE
15 YOU MEET.**”
- 16 • “This occupation is inherently dangerous and people if given the opportunity **will kill
17 you.**”
- 18 • “Allowing subjects to have hands in their pockets. **WHAT YOU CAN’T SEE:
19 WILL KILL YOU.**”
- 20 • “Failure to maintain your gear; **YOUR GEAR WILL FAIL TO MAINTAIN
21 YOU.**”

22 *Id.* (emphasis and capitalization in original).

23 Defendant Cornerstone supervised and trained its armed security guards in such a way
24 that they would view “subjects” – patrons of a shopping center – as threats to their life. It advised

1 those same employees to “**HAVE A PLAN TO KILL EVERYONE YOU MEET.**” *Id.* Giving
2 these instructions to armed security guards is reckless, outrageous, and shows total indifference
3 to the health, welfare and safety of others.

4 Additionally, Cornerstone provided these fatal instructions to employees it recklessly
5 hired, supervised, and retained. As a company providing exclusively armed security, Defendant
6 Cornerstone had a responsibility to ensure that it only employed armed private security
7 professionals certified by DPSST. OAR 259-060-0450(2)(i). To gain certification as an armed
8 private security professional, an individual must complete an unarmed security course, an
9 additional basic firearms course, and submit his or her documentation to DPSST. OAR 259-060-
10 0120(5)(a).

11 Throughout his employment with Defendant Cornerstone, however, Defendant Gimbel
12 never gained certification to work as an armed security officer. On April 10, 2020, Defendant
13 Gimbel was issued an Unarmed Professional certification by DPSST. (Turner Decl., Ex. 12.)
14 Defendant Gimbel was then “employed by Cornerstone Security Group to provide armed private
15 security services without the proper certification starting September 10, 2020 through May 29,
16 2021.” (*Id.*) Defendant Cornerstone hired an employee to perform a job he was not certified to
17 perform, and Defendant Cornerstone continued to retain that employee when it had no evidence
18 he had obtained the proper certification. Given that such certification involved use of a firearm
19 by a security office, which carries with it a great deal of danger and potential for harm, a
20 reasonable juror could find that Defendant Cornerstone showed a reckless and outrageous
21 indifference to a highly unreasonable risk of harm and a conscious indifference to the health,
22 safety, and welfare of others. ORS 31.730(1).

1 **V. PUNITIVE DAMAGES ARE MERITED AGAINST DEFENDANTS GIMBEL**
2 **AND CORNERSTONE**

3 A unanimous jury conviction and the evidence in the case show that:

- 4 • Defendant Gimbel intentionally killed decedent Freddy Nelson, used a
5 weapon against Freddy Nelson with intent to kill him, and recklessly used tear
6 gas against both decedent Freddy Nelson and Plaintiff Kari Nelson to
7 immobilize and disorient Freddy Nelson before killing him;
- 8 • Defendant Cornerstone trained and supervised its uncertified employees to
9 **HAVE A PLAN TO KILL EVERYONE YOU MEET**; and
- 10 • Defendant Cornerstone hired and retained employees who were not certified
11 to provide armed security.

12 Such evidence is sufficient to allow a plaintiff to submit the question of punitive damages
13 to the jury under ORS 31.730, more than what is required at this juncture of amending the
14 complaint. Granting the instant motion requires only that a plaintiff set forth facts supported by
15 admissible evidence adequate to avoid the granting of a motion for a directed verdict. ORS
16 31.725(3)(a). Plaintiffs have clearly satisfied that minimal standard here.

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1 **CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’
3 Motion for Leave to File a Second Amended Complaint adding Lowe’s as a defendant, adding a
4 personal injury claim on behalf of Plaintiff Kari Nelson, amending damages, updating the factual
5 and legal allegations in their complaint, and adding punitive damages as set forth above.

6 DATED this 26th day of May, 2023.

7 D’AMORE LAW GROUP, P.C.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KARI NELSON, individually, and KIONO NELSON as the Personal Representative for the ESTATE OF FREDDY NELSON, JR.,

Plaintiffs,

vs.

TMT DEVELOPMENT CO., LLC, an Oregon Limited Liability Company; D. PARK CORPORATION, an Oregon Corporation dba HAYDEN MEADOWS; **LOWE'S HOME CENTERS, LLC;** MATTHEW CADY, dba CORNERSTONE SECURITY GROUP; JEFFREY JAMES, dba CORNERSTONE SECURITY GROUP; TJ LATHROM, dba CORNERSTONE SECURITY GROUP; and LOGAN GIMBEL,

Defendants.

Case No. 21CV40742

{SECOND} AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

(Negligent, Reckless, and/or Wanton Conduct, Wrongful Death, Negligent, Reckless, and/or Wanton Infliction of Emotional Distress)

PRAYER: **{\$150,000,000}** / *[\$25,000,000]*
(Filing Fee Pursuant to ORS 21.160(1)(e))

CLAIM NOT SUBJECT TO MANDATORY ARBITRATION
(Pursuant to UTCR 13.060)

Plaintiffs KARI NELSON and KIONO NELSON, as Personal Representative of THE ESTATE OF FREDDY NELSON, JR. allege:

PARTIES

1.

At all material times, Plaintiff Kari Nelson and decedent Freddy Nelson, Jr. (collectively “the Nelsons”) were both adults, a married couple, and residents of Multnomah County, Oregon.

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2.

Kiono Nelson is the duly appointed personal representative of the Estate of Freddy Nelson, Jr. Kiono Nelson’s appointment is for the sole purpose of bringing this wrongful death action.

3.

At all material times, TMT Development Co., LLC (hereinafter “TMT”) was an Oregon limited liability company. Defendant TMT has regular and sustained business activities in Multnomah County, Oregon.

4.

At all material times, D. Park Corporation, doing business as Hayden Meadows (hereinafter “D. Park”), was an Oregon Corporation. Defendant D. Park has regular and sustained business activities in Multnomah County, Oregon.

5.

At all material times, Lowe’s Home Centers, LLC (hereinafter “Lowe’s”) was a North Carolina limited liability company that that maintains a store location at 1160 N Hayden Meadows Drive in Multnomah County, Oregon.

{6.} /5.]

At all material times, Matthew Cady, doing business as Cornerstone Security Group (hereinafter “Cady”), was a resident of Clackamas County, Oregon.

{7.} /6.]

At all material times, Jeffrey James, doing business as Cornerstone Security Group (hereinafter “James”), was a resident of Clackamas County, Oregon.

1 {8.} [7.]

2 At all material times, T.J. Lathrom, doing business as Cornerstone Security Group
3 (hereinafter “Lathrom”), was a resident of Multnomah County, Oregon.

4 {9.} [8.]

5 At all material times, Logan Gimbel was a resident of Clark County, Washington. **{At all**
6 **material times, Logan Gimbel was acting in the course and scope of his employment with**
7 **Cornerstone Security Group.}**

8 **JURISDICTION AND VENUE**

9 {10.} [9.]

10 Jurisdiction and venue are proper in the Circuit Court for Multnomah County because the
11 acts and omissions giving rise to this complaint occurred in Multnomah County [*Defendants*
12 *TMT, D.Park, and Lathrom reside in Multnomah County, and all Defendants engage in regular*
13 *and sustained business activity in Multnomah County*] **{and one or more defendants reside in**
14 **Multnomah County.}**

15 **FACTUAL BACKGROUND**

16 {11.} [10.]

17 At the time of the incident giving rise to this lawsuit, Defendants Cady, Lathrom, and
18 James (collectively referred to as “Cornerstone Defendants”) were doing business as Cornerstone
19 Security Group. The Cornerstone Defendants held themselves out as a security business
20 exclusively providing armed security.

21 {12.} [11.]

22 Defendant D. Park owned [*the vast majority of*] real property located on N Hayden
23 Meadows Drive in Portland, Oregon, including the real property located at 1160 N Hayden

1 Meadows Drive. Defendant D. Park leased the real property located at 1160 N Hayden Meadows
2 Drive to Defendant Lowe's [*Home Centers, LLC*].

3 **{13.}** [12.]

4 Upon information and belief, Defendants D. Park, Defendant TMT, and the Cornerstone
5 Defendants jointly managed and maintained certain real property owned by Defendant D. Park,
6 including the real property located at 1160 N Hayden Meadows Drive.

7 **{14.}** [13.]

8 **{On November 1, 2019}** *In the spring of 2020*], Defendants D. Park and TMT
9 (collectively referred to as "TMT Defendants") hired the Cornerstone Defendants to provide and
10 manage armed security for all real properties owned by Defendant D. Park, [*and Defendant TMT*
11 *hired the Cornerstone Defendants for the real properties*] including the real properties located
12 on N Hayden Meadows Drive.

13 **{15.}** [14.]

14 Despite the Cornerstone Defendants holding themselves out as a security company
15 providing exclusively armed security, the Cornerstone Defendants and the TMT Defendants
16 failed to take even the most basic measures to ensure that Cornerstone employees were certified
17 armed private security professionals as required by OAR 259-060-0120. Several Cornerstone
18 individuals, including Defendant Logan Gimbel, the security guard that shot and killed Freddy
19 Nelson, Jr., were not legally certified to carry any firearms much less open fire on an unarmed
20 man. The uncertified individuals [*that the Cornerstone Defendants employed as armed security*
21 *professionals disregarded the law and illegally carried firearms*] **{and the Cornerstone**
22 **Defendants intentionally or recklessly violated the law}**.

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{16.} [15.]

The Cornerstone Defendants fostered a work environment that recklessly glorified violence, ignored de-escalation training, and instilled disregard for human life.

{17.}

The Cornerstone Defendants, individually and through their employees, engaged in reckless, unreasonable and dangerous conduct on the real properties owned by Defendant D. Park. }

{18.} [16.]

The Cornerstone Defendants hired Defendant Logan Gimbel to work as an armed security professional on August 26, 2020.

{19.} [17.]

At the time he was hired by the Cornerstone Defendants, Defendant Gimbel held no valid certification to work as an armed security professional.

{20.} [18.]

Defendant Gimbel never obtained certification to work as an armed security professional. During the course of his employment, Defendant Gimbel knew or should have known that he was not certified to work as an armed security professional in violation of OAR 259-060-0120.

{21.} [19.]

During the course of Defendant Gimbel’s employment, the Cornerstone Defendants knew or should have known that Defendant Gimbel was not certified to work as an armed security professional. Despite this, the Cornerstone Defendants recklessly took no measures to verify whether Defendant Gimbel was certified to work as an armed security professional or to ensure compliance with OAR 259-060-0120.

1 {22.} [20.]

2 **{Defendants D. Park and TMT}** [The TMT Defendants] knew or should have known
3 that the Cornerstone Defendants provided armed security with unlicensed employees (including
4 Defendant Gimbel) and caused those same employees to glorify violence, ignore possibilities for
5 conflict de-escalation, and disregard human life.

6 {23.}

7 **The TMT Defendants had actual knowledge of unreasonable or dangerous conduct**
8 **by the Cornerstone Defendants and their employees on the real properties owned by**
9 **Defendant D. Park and took no action to stop such conduct. When informed of the**
10 **unreasonable and dangerous conduct, the TMT Defendants defended, encouraged, and**
11 **ratified the conduct.**

12 24.

13 **Defendant Lowe's knew or should have known of unreasonable, dangerous, and**
14 **unlawful conduct by the Cornerstone Defendants and the TMT Defendants and their**
15 **employees on the real properties they leased. Defendant Lowe's took no action to prevent**
16 **such conduct. When informed of the unreasonable and dangerous conduct, Defendant**
17 **Lowe's acceded to the conduct.**

18 {25.} [21.]

19 After a personal dispute between Freddy Nelson, Jr. and an agent of [Defendants D. Park
20 and TMT] **{the TMT Defendants, the TMT Defendants}** [Defendants D. Park and TMT]
21 directed the Cornerstone Defendants to annoy, heckle, harass, follow, and/or intimidate Freddy
22 Nelson, Jr. and Plaintiff Kari Nelson whenever the Nelsons passed through the real properties
23 located on N Hayden Meadows Drive.

24 {00609194;2}

Page 6 – {SECOND} AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

D'AMORE 4230 Galewood St., Ste. 200
LAW GROUP Lake Oswego, OR 97035
(503) 222-6333

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{26.} [22.]

At the direction of the [Defendants D. Park and TMT] **{TMT Defendants}**, the Cornerstone Defendants issued a “Be on the lookout” order for Freddy Nelson, Jr. Pursuant to this order, employees of the Cornerstone Defendants did in fact annoy, heckle, harass, follow, and intimidate the Nelsons whenever they passed through the real properties located on N Hayden Meadows Drive.

{27.} [23.]

Employees of the Cornerstone Defendants annoyed, heckled, harassed, followed, and intimidated the Nelsons as described above for a period of approximately one year. During this time, employees of the Cornerstone Defendants did so in the course and scope of their employment and in vehicles owned and insured by the Cornerstone Defendants, including “the Cornerstone vehicle” described below.

{28.} [24.]

On the early afternoon of May 29, 2021, the Nelsons visited [*the Lowe’s Home Improvement*] **{Defendant Lowe’s}** store located at 1160 N Hayden Meadows Drive to purchase items for a home improvement project. Freddy Nelson, Jr. parked his vehicle in Defendant Lowe’s parking lot near the Garden Center. [*While Freddy Nelson, Jr. gathered his belongings, Plaintiff Kari Nelson walked to the Lowe’s Garden Center to look at the flowers.*]

{29.}

On the early afternoon of May 29, 2021, the Nelsons were invitees on Defendant Lowe’s store premises located at 1160 N Hayden Meadows Drive.

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{30.} [25.]

As Freddy Nelson, Jr. gathered his belongings, Defendant Gimbel parked a vehicle owned by the Cornerstone Defendants (“the Cornerstone vehicle”) perpendicular to the Nelson vehicle, partially blocking the Nelson vehicle from leaving its parking space.

{31.} [26.]

Defendant Gimbel approached Freddy Nelson, Jr. and informed him that he was under arrest. Freddy Nelson, Jr. responded that Defendant Gimbel had no authority to arrest him. Plaintiff Kari Nelson returned to the vehicle upon hearing the confrontation. *[Freddy Nelson, Jr. informed Defendant Gimbel that he was leaving.]* The Nelsons then entered their vehicle and locked the doors in hopes of avoiding Defendant Gimbel’s aggression.

{32.} [27.]

Defendant Gimbel approached the driver side and attempted to open the driver’s door to the Nelson vehicle. Upon finding it locked, he proceeded to the **{rear}** driver’s side of the Nelson vehicle, forced a pepper spray *[cannister]* **{bottle}** through the partially-opened **{back}** window, and *[assaulted the Nelsons with pepper spray]* **{pepper sprayed the Nelsons}** .

{33.} [28.]

As a result of the pepper spray, the Nelsons suffered disorientation; intense, searing pain in the face, nose, and throat; difficulty breathing; and involuntary closing of the eyes.

{34.} [29.]

While the Nelsons suffered from the effects of pepper spray, Defendant Gimbel walked in front of the Nelson vehicle. He raised the pistol he was not licensed to carry and instructed the Nelsons not to move. *[The Nelsons complied.]*

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{35.} [30.]

Moments later, Defendant Gimbel fired four shots at Freddy Nelson, Jr. Three of the shots struck Freddy Nelson, Jr. in the head and chest, killing him.

[31.

While her eyes were still burning due to the effects of the pepper spray, Plaintiff Kari Nelson witnessed her husbands shooting and death in the car seat to her left. Plaintiff Kari Nelson offered aid to her husband until he died.]

{36.

Plaintiff Kari Nelson, sitting beside Freddy Nelson in the passenger seat as he was murdered, suffered extreme fright, shock, and fear of imminent death or grievous bodily injury as a result of the actions of Defendant Gimbel.

37.

While her eyes were still burning due to the effects of the pepper spray, Plaintiff Kari Nelson attempted to offer aid to her husband until he died.}

FIRST CLAIM FOR RELIEF

(Negligence and Wrongful Death – Estate of Freddy Nelson, Jr. against {the TMT Defendants}) [Defendants TMT Development Co., LLC & D. Park Corporation]

{38.} [32.]

Plaintiffs reallege all paragraphs above.

{39.} [33.]

{The shooting and} Freddy Nelson, Jr.'s [injury and] death were caused by [Defendants TMT & D. Park] **{the TMT Defendants}** in one or more of the following particulars:

1 a) In directing the Cornerstone Defendants to annoy, heckle, harass, follow, and/or
2 intimidate Plaintiffs when they knew or should have known that the Cornerstone Defendants
3 could not do so safely or lawfully.

4 b) In failing to exercise reasonable care to maintain a reasonably safe property, free
5 of violent crime;

6 c) In failing to exercise reasonable care to protect Nelson from violence by other
7 visitors, trespassers, and security guards at the complex, including gun violence;

8 d) In failing to provide an appropriate level of security, including the failure to staff
9 the premises solely with security guards (directly or through security providers) who were
10 certified for the type of work they provided; and

11 e) By violating their affirmative duty to protect business invitees from foreseeable
12 harm, or to come to the aid of business invitees in the face of ongoing harm or medical
13 emergency.

14 {40.} [34.]

15 As a direct, proximate, and foreseeable result of [Defendant TMT and D. Park's] **{the**
16 **TMT Defendants'}** negligence, Freddy Nelson, Jr. [sustained gunshot injuries and died] **{was a**
17 **victim of violence and gunshot injuries and died}**.

18 {41.} [35.]

19 Plaintiffs reserve the right to amend this complaint to add punitive damages against
20 Defendants TMT and D. Park pursuant to ORS 31.725.

1 SECOND CLAIM FOR RELIEF

2 (Negligence and Wrongful Death – *[Cornerstone Defendants]* {Estate of Freddy Nelson, Jr.
3 against Defendant Lowe’s})

4 {42.

5 Plaintiffs reallege all paragraphs above.

6 43.

7 Plaintiffs injuries and death were caused by Defendant Lowe’s in one or more of the
8 following particulars:

9 a) In allowing the Cornerstone Defendants to annoy, heckle, harass, follow,
10 and/or intimidate Plaintiffs on their property when they knew or should have known that
11 the Cornerstone Defendants could not do so safely or lawfully;

12 b) In allowing the TMT Defendants to annoy, heckle, harass, follow, and/or
13 intimidate Plaintiffs on their property when they knew or should have known that the
14 Cornerstone Defendants could not do so safely or lawfully;

15 c) In failing to exercise reasonable care to maintain a reasonably safe property,
16 free of violent crime;

17 d) In failing to exercise reasonable care to protect Plaintiffs from violence by
18 other visitors, trespassers, and security guards at the complex, including gun violence; and

19 e) By violating their affirmative duty to protect business invitees from
20 foreseeable harm, or to come to the aid of business invitees in the face of ongoing harm or
21 medical emergency.

22 44.

23 As a direct, proximate, and foreseeable result of Defendant Lowe’s negligence,
24 Freddy Nelson, Jr. sustained gunshot injuries and died.

1 45.

2 Plaintiffs reserve the right to amend this complaint to add punitive damages against
3 Defendant Lowe's pursuant to ORS 31.725.

4 **THIRD *[SECOND]* CLAIM FOR RELIEF**

5 **{Negligent Employment}/Negligence/ and Wrongful Death – Estate of Freddy Nelson, Jr.**
6 **against} Cornerstone Defendants)**

7 {46.} [36.]

8 Plaintiffs reallege all paragraphs above.

9 {47.} [37.]

10 *[The shooting and]* Freddy Nelson, Jr.'s injury and death were caused by the Cornerstone
11 Defendants in one or more of the following particulars:

12 a) In negligently, **{recklessly, and/or wantonly}** hiring Defendant Gimbel when they
13 knew or should have known that Defendant Gimbel was not fit to work as an armed
14 security professional;

15 **{b) In negligently, recklessly, and/or wantonly retaining Defendant Gimbel as an**
16 **employee when they knew or should have known that Defendant Gimbel was not fit**
17 **to work as an armed security professional;}**

18 **{c) [b)] In negligently, {recklessly, and/or wantonly}** training Defendant Gimbel in a
19 way that, *inter alia*, encouraged the use of violence and failed to include any meaningful
20 de-escalation training as an armed security professional;

21 **{d)} [c)] In negligently, {recklessly, and/or wantonly}** supervising Defendant Gimbel
22 such that he did not perform his duties as an armed security professional in a safe
23 manner.

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{50.} [39.]

[Plaintiffs reserve the right to amend this complaint to add punitive damages against the Cornerstone Defendants pursuant to ORS 31.725.] **{As a further result of The Cornerstone Defendants’ conduct, Plaintiffs are entitled to collect punitive damages in an amount not to exceed \$30,000,000.}**

{FOURTH} [THIRD] CLAIM FOR RELIEF

(Negligence and Wrongful Death – {Estate of Freddy Nelson, Jr. against} Defendants Logan Gimbel & The Cornerstone Defendants)

{51.} [40.]

Plaintiffs reallege all paragraphs above.

{52.} [41.]

The shooting and Freddy Nelson, Jr.’s death were caused by Defendant Gimbel in one or more of the following particulars:

- a) In **{negligently, recklessly, and/or wantonly}** failing to exercise reasonable care to maintain a reasonably safe property, free of violent crime, and to refrain from committing acts of violence himself;
- b) In **{negligently, recklessly, and/or wantonly}** failing to comply with each and every law and regulation governing armed security professionals;
- c) In **{negligently, recklessly, and/or wantonly}** failing to exercise reasonable care to protect Nelson from violence by other visitors, trespassers, and security professionals at the complex, including gun violence;
- d) In recklessly discharging tear gas or mace against another person in violation of ORS 163.212;

- 1 e) In negligently, recklessly, and/or wantonly discharging a firearm in such a way that it
2 was likely to cause bodily injury or death;
- 3 f) By fatally shooting Freddy Nelson, Jr; and
- 4 g) In negligently, recklessly, and/or wantonly failing to protect business invitees from
5 foreseeable harm, or to come to the aid of business invitees in the face of ongoing
6 harm or medical emergency.

7 **{53.} [42.]**

8 **{Defendant Gimbel was acting in the course and scope of his employment when he**
9 **committed the above tortious acts.}** The Cornerstone Defendants, as employer of Defendant
10 Gimbel, are vicariously liable for his acts and omissions under the doctrine of *respondent*
11 *superior*. As such, the Cornerstone Defendants are liable for all resulting injuries and damages,
12 including any punitive damages, to Plaintiffs as set forth more particularly below.

13 **{54.} [43.]**

14 As a direct and proximate result of Defendant Gimbel's negligence, Freddy Nelson, Jr.
15 sustained gunshot injuries and died.

16 **{55.}**

17 **Defendant Gimbel acted with a reckless and outrageous indifference to a highly**
18 **unreasonable risk of harm and a conscious indifference to the health, safety, and welfare of**
19 **others, including Plaintiffs, in failing to effectively provide private security services.}**

20 **{56.} [44.]**

21 *[Plaintiffs reserve the right to amend this complaint to add punitive damages against*
22 *Defendant Gimbel pursuant to ORS 31.725.]* **{As a result of Defendant Gimbel's conduct,**
23 **Plaintiffs are entitled to collect punitive damages in an amount not to exceed \$30,000,000.}**

1 **FIFTH [FOURTH] CLAIM FOR RELIEF**

2 **(Negligence Per Se – The Cornerstone Defendants)**

3 **{57.} [45.]**

4 Plaintiffs reallege all paragraphs above.

5 **{58.} [46.]**

6 The Cornerstone Defendants violated numerous statutes, regulations, and codes including
7 but not limited to:

- 8 (a) Providing private security services without valid certification in violation of
9 OAR 259-060-0450(2)(a);
- 10 (b) Failing to submit properly completed forms or documentation in the time frame
11 designated by the Department of Public Safety Standards and Training in violation of
12 OAR 259-060-0450(2)(b);
- 13 (c) Employing private security professionals who had not completed the required training
14 and application process in violation of OAR 259-060-0450(2)(i); and
- 15 (d) Assigning a person to perform private security services when that person was not
16 properly certified to do so in violation of ORS 181A.850(1)(d).

17 **{59.} [47.]**

18 Plaintiffs were members of the class of persons intended to be protected by the
19 aforementioned Oregon statutes and Oregon administrative rules, and the injuries suffered by
20 Plaintiffs were of the kind that these statutes and rules were intended to prevent. By virtue of the
21 Cornerstone Defendants' violations of these statutes and rules, the Cornerstone Defendants were
22 negligent *per se* with respect to the injuries suffered by Plaintiffs.

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{60.} [48.]

As a result of the Cornerstone Defendants’ violations of these statutes and rules, Plaintiffs sustained damages as alleged in this Complaint.

{SIXTH} /*FIFTH* CLAIM FOR RELIEF
(Negligence Per Se – Defendant Gimbel)

{61.} [49.]

Plaintiffs reallege all paragraphs above.

{62.} [50.]

Defendant Gimbel violated numerous statutes, regulations, and codes including but not limited to:

- (a) Providing private security services without valid certification in violation of OAR 259-060-0450(2)(a);
- (b) Failing to submit properly completed forms or documentation in the time frame designated by the Department of Public Safety Standards and Training in violation of OAR 259-060-0450(2)(b);
- (c) Performing a service as a private security professional without proper certification in violation of ORS 181A.850(1)(b);
- (d) Failing to satisfactorily complete training requirements approved by the Board on Public Safety Standards and Training in violation of ORS 181A.855(1)(b);
- (e) Attempting to use a deadly weapon unlawfully against another person in violation of ORS 166.220(1)(a); and
- (f) Recklessly discharging tear gas or mace against another person in violation of ORS 163.212.

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{63.} [51.]

Plaintiffs were members of the class of persons intended to be protected by the
aforementioned Oregon statutes and Oregon administrative rules, and the injuries suffered by
Plaintiffs were of the kind that these statutes and rules were intended to prevent. By virtue of
Defendant Gimbel’s violations of these statutes and rules, Defendant Gimbel was negligent *per*
se with respect to the injuries suffered by Plaintiffs.

{64.} [52.]

As a result of Defendant Logan Gimbel’s violations of these statutes and rules, Plaintiffs
sustained damages as alleged in this Complaint.

{SEVENTH} / {FIFTH} CLAIM FOR RELIEF

(False Arrest / Imprisonment – Defendant Gimbel & The Cornerstone Defendants)

{65.} [53.]

Plaintiffs reallege all paragraphs above.

{66.} [54.]

Defendant Gimbel confined Plaintiffs by parking the Cornerstone vehicle in front of the
Nelson vehicle.

{67.} [55.]

Defendant Gimbel intended to park the Cornerstone vehicle in front of the Nelson
vehicle.

¹ The Amended Complaint filed with the court contained two “Fifth Claims for Relief.”

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{68.} [56.]

Defendant Gimbel negligently failed to move the Cornerstone vehicle before exiting the vehicle, confronting Freddy Nelson, pepper spraying the Nelsons, or discharging his firearm. Defendant Gimbel’s negligent failure to move the Cornerstone vehicle continued to confine the Nelsons.

{69.} [57.]

The Nelsons were aware of their confinement by the Cornerstone vehicle.

{70.} [58.]

While Defendant Gimbel confined the Nelsons and told Freddy Nelson he was under arrest, he had no lawful basis to confine the Nelsons.

{71.} [59.]

The Cornerstone Defendants, as principal and/or employer, are vicariously liable under the doctrine of *respondeat superior* for the acts and omissions of their employees. As such, the Cornerstone Defendants are liable for all resulting injuries and damages, including any punitive damages, to [Plaintiff Kari Nelson] **{Plaintiffs}** as set forth more particularly below.

{72.} [60.]

As a direct, proximate, and foreseeable result of the conduct of Defendant Gimbel, Plaintiffs suffered damages as alleged in this complaint.

**{EIGHTH} /~~SIXTH~~/ CLAIM FOR RELIEF
(Negligent Infliction of Emotional Distress – Plaintiff Kari Nelson against all Defendants)**

{73.} [61.]

Plaintiff Kari Nelson realleges all paragraphs above.

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{74.} [62.]

The pattern of harassment and intimidation suffered by Plaintiff Kari Nelson deprived her of her privacy.

{75.} [63.]

The negligent acts of Defendant Gimbel deprived Plaintiff Kari Nelson of her right to be free from unlawful imprisonment.

{76.}

The negligent acts of Defendant Gimbel deprived Plaintiff Kari Nelson of her right to avoid being a witness to the negligently-caused traumatic injury and death of a close family member.}

{77.} [64.]

The negligent acts of Defendant Gimbel as described above confined Plaintiff Kari Nelson to the Nelson vehicle.

{78.} [65.]

Plaintiff Kari Nelson contemporaneously observed the killing of decedent Freddy Nelson, Jr.

{79.} [66.]

Plaintiff Kari Nelson is a close family member of decedent Freddy Nelson, Jr.

{80.} [67.]

The Cornerstone Defendants, as principal and/or employer, are vicariously liable under the doctrine of *respondeat superior* for the acts and omissions of their employees. As such, the Cornerstone Defendants are liable for all resulting injuries and damages, including any punitive damages, to Plaintiff Kari Nelson as set forth more particularly below.

1 **{81.}** [68.]

2 As a direct, proximate, and foreseeable result of the acts of each Defendant as alleged
3 above, Plaintiff Kari Nelson suffered serious emotional harm as a result of being annoyed,
4 heckled, harassed, followed, and intimidated.

5 **{82.}**

6 **As a direct, proximate, and foreseeable result of the acts of each Defendant as**
7 **alleged above, Plaintiff Kari Nelson suffered serious emotional harm severe from**
8 **witnessing the pepper spraying and shooting death of her husband.}**

9 **{83.}** [69. &70.]

10 As a direct, proximate, and foreseeable result of the acts of Defendant Logan Gimbel in
11 blocking in her vehicle, threatening decedent Freddy Nelson with arrest, and refusing to allow
12 the Nelsons to leave the property, and brandishing his firearm, Plaintiff Kari Nelson suffered
13 serious emotional harm.

14 **{NINTH}** **{SEVENTH}** CLAIM FOR RELIEF

15 **(Negligent Infliction of Emotional Distress – *[Plaintiff Kiono Nelson as Personal***
16 ***Representative of the/* Estate of Freddy Nelson, Jr. against all Defendants)**

17 **{84.}** [71]

18 Plaintiff Estate of Freddy Nelson, Jr. realleges all paragraphs above.

19 **{85.}** [72.]

20 The Cornerstone Defendants, as principal and/or employer, are vicariously liable under
21 the doctrine of *respondeat superior* for the acts and omissions of their employees. As such, the
22 Cornerstone Defendants are liable for all resulting injuries and damages, including any punitive
23 damages, to Plaintiff Estate of Freddy Nelson, Jr. as set forth more particularly below.

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{86.} [73.]

The pattern of harassment and intimidation suffered by decedent Freddy Nelson, Jr. deprived him of his privacy.

{87.} [74.]

The actions of Defendant Gimbel deprived decedent Freddy Nelson, Jr. of his right to be free from false imprisonment.

{88.} [75.]

The negligent acts of Defendant Gimbel as described above confined decedent Freddy Nelson, Jr. to the Nelson vehicle.

{89.} [76.]

As a direct, proximate, and foreseeable result of the acts of each Defendant as alleged above, decedent Freddy Nelson suffered serious emotional harm as a result of being annoyed, heckled, harassed, followed, and intimidated.

{90.} [77.]

As a direct, proximate, and foreseeable result of the acts of Defendant Logan Gimbel in blocking in his vehicle, threatening him with arrest, refusing to allow the Nelsons to leave the property, and brandishing his firearm, decedent Freddy Nelson suffered serious emotional harm.

{TENTH CLAIM FOR RELIEF

(Negligence and Personal Injury - Plaintiff Kari Nelson against all Defendants)

{91.}

Plaintiff Kari Nelson realleges all paragraphs above.

1 92.

2 As a direct, proximate, and foreseeable result of Defendants' negligence, Kari
3 Nelson suffered disorientation; intense, searing pain in the face, nose, and throat; difficulty
4 breathing; and involuntary closing of the eyes from pepper spray.

5 93.

6 Plaintiff Kari Nelson reserves the right to amend this complaint to add punitive
7 damages against Defendants.

8 **DAMAGES**

9 {94.} [78.]

10 *[Plaintiff Kiono Nelson as Personal Representative for the Estate of Freddy Nelson, Jr.*
11 *sustained the following damages:*

- 12 a) *Noneconomic damages for his pain and suffering and the loss of companionship to*
13 *his family in an amount that a jury determines is fair, but not to exceed \$12,000,000.*
- 14 b) *Lost earning capacity in an amount that a jury determines is fair, but not to exceed*
15 *\$2,000,000.*
- 16 c) *Loss of household services in an amount that a jury determines is fair, but not to*
17 *exceed \$1,000,000.]*

18 {Plaintiff Kiono Nelson as Personal Representative for the Estate of Freddy Nelson,
19 Jr. sustained noneconomic damages for Freddy Nelson, Jr.'s pain and suffering and the
20 loss of companionship to his family in an amount that a jury determines is fair, but not to
21 exceed \$45,000,000.}

1 {95.} [79.]

2 Plaintiff Kari Nelson sustained noneconomic damages for her pain, mental suffering, and
3 severe and traumatic emotional distress from the harassment and intimidation she suffered and
4 from witnessing the pepper spraying and shooting death of her husband, Freddy Nelson, Jr., in an
5 amount that a jury determines is fair, but not to exceed [10,000,000] {S45,000,000}.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment as follows:

8 On behalf of Plaintiff Kiono Nelson as Personal Representative for the Estate of Freddy
9 Nelson, Jr.:

- 10 a. For noneconomic losses in the amount of [~~12,000,000~~] {S45,000,000};
- 11 b. For costs and disbursements incurred herein;
- 12 c. For interest according to law;
- 13 d. For such other relief as the court deems just.

14 On behalf of Plaintiff Kari Nelson:

- 15 a. For noneconomic losses in the amount of [~~10,000,000~~] {S45,000,000};
- 16 b. For costs and disbursements incurred herein;
- 17 c. For interest according to law;
- 18 d. For such other relief as the court deems just.

19 **On behalf of Plaintiff Kiono Nelson as Personal Representative for the Estate of Freddy**
20 **Nelson, Jr. and Plaintiff Kari Nelson:**

- 21 a. **Punitive damages against the Cornerstone Defendants in an amount to be**
22 **determined by the jury, not to exceed \$30,000,000; and**
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b. Punitive damages against Defendant Gimbel in an amount to be determined by the jury, not to exceed \$30,000,000.

DATED this ___ day of May, 2023.

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Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the below date, I served a true and correct copy of the foregoing

3 *Motion to Amend Complaint and Add Punitive Damages* on the following in the manner(s)

4 described below:

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Of Attorneys for Defendant Logan Gimbel

DATED this 26th day of May, 2023.

D'AMORE LAW GROUP, P.C.

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Daniel C. Doede, Paralegal