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

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

9 Plaintiffs,

10 vs.

11 TMT DEVELOPMENT CO., LLC, an
12 Oregon Limited Liability Company; D.
13 PARK CORPORATION, an Oregon
14 Corporation dba HAYDEN MEADOWS;
15 HAYDEN MEADOWS, A JOINT
16 VENTURE; LOWE’S HOME CENTERS,
17 LLC; MATTHEW CADY, dba
18 CORNERSTONE SECURITY GROUP;
19 JEFFREY JAMES, dba CORNERSTONE
20 SECURITY GROUP; TJ LATHROM, dba
21 CORNERSTONE SECURITY GROUP; and
22 LOGAN GIMBEL,

23 Defendants.

Case No. 21CV40742

THIRD AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL
(Wrongful Death, Personal Injury)

PRAYER: \$200,000,000
(Filing Fee Pursuant to ORS 21.160(1)(e))

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

24 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.

{00660588;4}

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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, was an Oregon limited liability company. Defendant TMT Development Co., LLC, resides in Multnomah County, Oregon.

4.

At all material times, D. Park Corporation, doing business as Hayden Meadows, was an Oregon corporation. Defendant D. Park Corporation resides in and has regular and sustained business activities in Multnomah County, Oregon. At all material times, Hayden Meadows, a Joint Venture, was a partnership between D. Park Corporation and Wm. L. Seibel Non Exempt QTIP, residing in Multnomah County, Oregon. D. Park Corporation and Hayden Meadows, a Joint Venture, and Wm. L. Seibel Non Exempt QTIP are collectively referred to herein as "D. Park." D. Park owned real property located on N Hayden Meadows Drive in Portland, Oregon, including the real properties located at 1160 N Hayden Meadows Drive (collectively known as "Delta Park Center").

5.

At all material times, Lowe's Home Centers, LLC (hereinafter "Lowe's") was a North Carolina limited liability company that maintained a store location at 1160 N Hayden Meadows Drive at Delta Park Center in Multnomah County, Oregon. D. Park leased the real property located at 1160 N Hayden Meadows Drive to Defendant Lowe's.

1 6.

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

4 7.

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

7 8.

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

10 9.

11 At all material times, Logan Gimbel was a resident of Clark County, Washington. At all
12 material times, Logan Gimbel was acting in the course and scope of his employment with
13 Cornerstone Security Group. Further, Logan Gimbel was acting in the course and scope of his
14 agency with Defendant TMT Development Co., LLC, as a hired security guard when he pepper-
15 sprayed the Nelsons and shot and killed Freddy Nelson, Jr.

16 **JURISDICTION AND VENUE**

17 10.

18 Jurisdiction and venue are proper in the Circuit Court for Multnomah County because the
19 acts and omissions giving rise to this complaint occurred in Multnomah County and one or more
20 defendants reside in Multnomah County.

1 **FACTUAL BACKGROUND**

2 11.

3 D. Park exists solely to own Delta Park Center. Vanessa Sturgeon is the president and
4 authorized representative and/or registered agent of D. Park. She is also the registered agent and
5 president of Defendant TMT Development Co., LLC, which solely manages properties owned by
6 Vanessa Sturgeon through her various business entities. Defendant TMT Development Co.,
7 LLC, is an agent of D. Park and the latter is jointly and severally responsible for the actions of
8 the former. D. Park and Defendant TMT Development Co., LLC, (collectively referred to as
9 “TMT Defendants”) jointly managed and maintained Delta Park Center.

10 12.

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

15 13.

16 On November 1, 2019, the TMT Defendants hired the Cornerstone Defendants to provide
17 and manage armed security for Delta Park Center. The Cornerstone Defendants served as a real
18 estate manager to the TMT Defendants through the Cornerstone Defendants’ provision of
19 general site-wide monitoring and security services.

20 14.

21 The contract to provide and manage armed security for Delta Park Center granted the
22 Cornerstone Defendants authority by contract and direction to act on behalf of the TMT
23 Defendants. This included, but not limited to, the authority for Cornerstone Defendants to act as
24

1 the “person in charge” of the property for TMT Defendants, to take legal action against persons
2 committing criminal acts against the property owner, and to act as the victim of any criminal act
3 that occurred on the property.

4 15.

5 Despite the Cornerstone Defendants holding themselves out as a security company
6 providing exclusively armed security, the Cornerstone Defendants and the TMT Defendants
7 failed to take even the most basic measures to ensure that Cornerstone employees were certified
8 armed private security professionals as required by OAR 259-060-0120. Several Cornerstone
9 individuals, including Defendant Logan Gimbel, the security guard that shot and killed Freddy
10 Nelson, Jr., were not legally certified to carry any firearms much less open fire on an unarmed
11 man. The uncertified individuals and the Cornerstone Defendants recklessly violated the law.

12 16.

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

15 17.

16 The Cornerstone Defendants and the TMT Defendants, individually and through their
17 employees and agents, engaged in reckless, unreasonable and dangerous conduct at Delta Park
18 Center.

19 18.

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

1 19.

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

4 20.

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

8 21.

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

14 22.

15 The TMT Defendants knew or should have known that the Cornerstone Defendants
16 provided armed security with unlicensed employees (including Defendant Gimbel) and caused
17 those same employees to glorify violence, ignore possibilities for conflict de-escalation, and
18 disregard human life.

19 23.

20 The TMT Defendants had actual knowledge of unreasonable or dangerous conduct by the
21 Cornerstone Defendants and their employees at Delta Park Center and took no action to stop
22 such conduct. When informed of the unreasonable and dangerous conduct, the TMT Defendants
23 defended, encouraged, and ratified the conduct.

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24.

Defendant Lowe's knew or should have known of unreasonable, dangerous, and unlawful conduct by the Cornerstone Defendants and the TMT Defendants and their employees and/or agents on the real property they leased at Delta Park Center. Defendant Lowe's took no action to prevent such conduct. When informed of the unreasonable and dangerous conduct, Defendant Lowe's acceded to the conduct.

25.

The TMT Defendants provided instructions and directions to the Cornerstone Defendants regarding their duties at Delta Park Center, including specifics of who to exclude, what to exclude them for, and preferred procedure for exclusions. The TMT Defendants and Cornerstone Defendants jointly agreed how Cornerstone employees should interact with customers and business associates like the Nelsons at Delta Park Center.

26.

In February 2020, an agent of the TMT Defendants attempted to force Freddy Nelson to move his motorhome from N Kerby Avenue near Delta Park Center. Freddy Nelson refused. Thereafter, the TMT Defendants directed the Cornerstone Defendants to annoy, heckle, harass, follow, and/or intimidate the Nelsons whenever they passed through Delta Park Center.

27.

Sometime in or around March 2020, Defendant Lowe's authorized Freddy Nelson, Jr. to collect pallets from behind its store at Delta Park Center. The TMT Defendants notified the Cornerstone Defendants that he was the only approved person who was permitted to collect pallets from Defendant Lowe's.

1 28.

2 Despite authorization from Defendant Lowe’s, the TMT Defendants and the Cornerstone
3 Defendants continued to annoy, heckle, harass, follow, and/or intimidate the Nelsons.

4 29.

5 Sometime in or around July 2020, the TMT Defendants directed the Cornerstone
6 Defendants to follow its “zero tolerance” policy at Delta Park Center, which required the
7 Cornerstone Defendants to remove persons for any activity that violated its rules, no matter how
8 minor the infraction. The Cornerstone Defendants informed the TMT Defendants that the “zero
9 tolerance” policy was unlawful. The TMT and Cornerstone Defendants agreed to enforce it
10 anyway at the TMT Defendants’ direction.

11 30.

12 Sometime in or around August 2020, the TMT Defendants required that all new
13 Cornerstone officers meet with the TMT Defendants in person to familiarize themselves with
14 Delta Park Center and enforce their “zero tolerance” policy.

15 31.

16 Sometime in or around January 2021, at the direction of the TMT Defendants, the
17 Cornerstone Defendants “excluded” Freddy Nelson, Jr. from Delta Park Center for
18 “unauthorized taking of pallets” despite being deemed an “approved vendor” by Defendant
19 Lowe’s to take pallets. As a result, employees of the Cornerstone Defendants did in fact annoy,
20 heckle, harass, follow, and intimidate the Nelsons whenever they passed through Delta Park
21 Center.

1 32.

2 Employees and/or agents of the TMT Defendants and Cornerstone Defendants jointly
3 patrolled Delta Park Center. The TMT Defendants directed employees of the Cornerstone
4 Defendants at Delta Park Center to annoy, heckle, harass, follow, and intimidate the Nelsons as
5 described above for a period of approximately one year. During this time, employees of the
6 Cornerstone Defendants did so in the course and scope of their employment and in vehicles
7 owned and insured by the Cornerstone Defendants, including “the Cornerstone vehicle”
8 described below.

9 33.

10 Over the course of several months, the TMT Defendants and the Cornerstone Defendants
11 exchanged emails, held virtual meetings, spoke on the phone, and met in person to coordinate
12 their harassment, intimidation, and attempted exclusion of the Nelsons from Delta Park Center.

13 34.

14 Throughout this year of harassment, Defendant Lowe’s repeatedly informed the TMT
15 Defendants and the Cornerstone Defendants that Freddy Nelson, Jr. was an “approved vendor”
16 but did nothing to stop the known and pervasive harassment of the Nelsons by the TMT
17 Defendants and the Cornerstone Defendants.

18 35.

19 On the early afternoon of May 29, 2021, the Nelsons visited Defendant Lowe’s store at
20 Delta Park Center to purchase items for a home improvement project. Freddy Nelson, Jr. parked
21 his vehicle in Defendant Lowe’s parking lot near the Garden Center.

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36.

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

37.

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

38.

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. The Nelsons then entered their vehicle and locked the doors in hopes of avoiding Defendant Gimbel’s aggression.

39.

Defendant Gimbel approached the driver side and attempted to open the driver’s door to the Nelsons’ vehicle. Upon finding it locked, he proceeded to the rear driver’s side of the Nelsons’ vehicle, forced a pepper spray canister through the partially-opened back window, and pepper-sprayed the Nelsons.

40.

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.

1 41.

2 While the Nelsons suffered from the effects of pepper spray, Defendant Gimbel walked
3 in front of the Nelsons' vehicle. He raised the pistol he was not licensed to carry and instructed
4 the Nelsons not to move.

5 42.

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

8 43.

9 Plaintiff Kari Nelson was sitting beside Freddy Nelson, Jr. in the passenger seat as they
10 were pepper-sprayed and was in the process of getting out of the vehicle as Freddy Nelson, Jr.
11 was shot and killed. As a result, Plaintiff Kari Nelson suffered extreme fright, shock, and fear of
12 imminent death in seeing her husband shot to death and grievous bodily injury as a result of the
13 actions of Defendant Gimbel.

14 44.

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

17 **JOINT LIABILITY**

18 45.

19 The Cornerstone Defendants and the TMT Defendants acted in concert with one another
20 or pursuant to a common design when they annoyed, heckled, harassed, followed, and/or
21 intimidated the Nelsons at Delta Park Center and the surrounding area. This joint and tortious
22 conduct culminated in Defendant Gimbel pepper spraying the Nelsons and shooting and killing
23 Freddy Nelson, Jr.

24 {00660588;4}

1 46.

2 The Cornerstone Defendants and the TMT Defendants knew that the other's conduct
3 constituted a breach of duty to the Nelsons yet they each gave substantial assistance and
4 encouragement to the other in their joint and tortious conduct against the Nelsons.

5 47.

6 The Cornerstone Defendants and the TMT Defendants gave substantial assistance to the
7 other in accomplishing their negligent and reckless treatment of the Nelsons and each of their
8 conduct, separately considered, constituted a breach of duty to the Nelsons.

9 **FIRST CLAIM FOR RELIEF**

10 **(Negligence and Wrongful Death – Estate of Freddy Nelson, Jr. against the TMT**
11 **Defendants)**

12 48.

13 Plaintiffs reallege all paragraphs above.

14 49.

15 The TMT Defendants were negligent, reckless, or some combination thereof in one or
16 more of the following particulars:

- 17 a) In directing the Cornerstone Defendants to annoy, heckle, harass, follow, and/or
18 intimidate Plaintiffs when they knew or should have known that the Cornerstone
19 Defendants could not do so safely or lawfully.
- 20 b) Failing to exercise reasonable care to maintain a reasonably safe property, free of
21 violent crime;
- 22 c) Failing to exercise reasonable care to protect Freddy Nelson, Jr. from violence by
23 other visitors, trespassers, and security guards at the complex, including gun violence;

- 1 d) Failing to provide an appropriate level of security, including the failure to staff the
2 premises solely with security guards (directly or through security providers) who
3 were certified for the type of work they provided; and
4 e) Violating their affirmative duty to protect business invitees from foreseeable harm, or
5 to come to the aid of business invitees in the face of ongoing harm or medical
6 emergency.

7 50.

8 As a direct, proximate, and foreseeable result of the TMT Defendant's conduct, Freddy
9 Nelson, Jr. was injured by pepper spray and sustained gunshot injuries that caused his death.

10 51.

11 The TMT Defendants acted with a reckless and outrageous indifference to a highly
12 unreasonable risk of harm and a conscious indifference to the health, safety, and welfare of
13 others, including the Estate of Freddy Nelson, Jr.

14 52.

15 The TMT Defendants were reckless because they had reason to know of facts which
16 would lead a reasonable person to realize that their conduct not only creates unreasonable risk of
17 harm to others but also involves a high degree of probability that substantial harm would result.

18 53.

19 As a further result of the TMT Defendants' conduct, the Estate of Freddy Nelson, Jr. is
20 entitled to collect punitive damages.
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24

1 **SECOND CLAIM FOR RELIEF**

2 **(Negligence and Wrongful Death – Estate of Freddy Nelson, Jr. against Defendant Lowe’s)**

3 54.

4 Plaintiffs reallege all paragraphs above.

5 55.

6 Defendant Lowe’s was negligent in one or more of the following particulars:

- 7 a) Allowing the Cornerstone Defendants to annoy, heckle, harass, follow, and/or
8 intimidate Plaintiffs on their property when they knew or should have known that the
9 Cornerstone Defendants could not do so safely or lawfully;
- 10 b) Allowing the TMT Defendants to annoy, heckle, harass, follow, and/or intimidate
11 Plaintiffs on their property when they knew or should have known that the TMT
12 Defendants could not do so safely or lawfully;
- 13 c) Failing to exercise reasonable care to maintain a reasonably safe property, free of
14 violent crime;
- 15 d) Failing to exercise reasonable care to protect Freddy Nelson, Jr. from violence by
16 other visitors, trespassers, and security guards at the complex, including gun violence;
17 and
- 18 e) Violating their affirmative duty to protect business invitees from foreseeable harm, or
19 to come to the aid of business invitees in the face of ongoing harm or medical
20 emergency.

21 56.

22 As a direct, proximate, and foreseeable result of Defendant Lowe’s negligence, Freddy
23 Nelson, Jr. was injured by pepper spray and sustained gunshot injuries that caused his death.

1 57.

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 CLAIM FOR RELIEF**

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

7 58.

8 Plaintiffs reallege all paragraphs above.

9 59.

10 The Cornerstone Defendants were negligent, reckless, or some combination thereof in
11 one or more of the following particulars:

- 12 a) Hiring Defendant Gimbel when they knew or should have known that Defendant
13 Gimbel was not fit to work as an armed security professional;
- 14 b) Retaining Defendant Gimbel as an employee when they knew or should have known
15 that Defendant Gimbel was not fit to work as an armed security professional;
- 16 c) Training Defendant Gimbel in a way that, *inter alia*, encouraged the use of violence
17 and failed to include any meaningful de-escalation training as an armed security
18 professional;
- 19 d) Supervising Defendant Gimbel such that he did not perform his duties as an armed
20 security professional in a safe manner;
- 21 e) Failing to exercise reasonable care to maintain a reasonably safe property free of
22 violent crime;
- 23 f) Failing to comply with each and every law and regulation governing private security
24 companies and security professionals;

- 1 g) Failing to exercise reasonable care to protect Freddy Nelson, Jr. from violence by
2 other visitors, trespassers, and security professionals at the complex, including gun
3 violence;
- 4 h) Failing to provide an appropriate level of security, including the failure to staff the
5 premises solely with security guards who were certified for the type of work they
6 provided; and
- 7 i) Violating their affirmative duty as real estate managers to protect business invitees
8 from foreseeable harm, or to come to the aid of business invitees in the face of
9 ongoing harm or medical emergency.

10 60.

11 As a direct, proximate, and foreseeable result of the Cornerstone Defendants' negligence,
12 Freddy Nelson, Jr. was injured by pepper spray and sustained gunshot injuries that caused his
13 death.

14 61.

15 The Cornerstone Defendants acted with a reckless and outrageous indifference to a highly
16 unreasonable risk of harm and a conscious indifference to the health, safety, and welfare of
17 others, including Freddy Nelson, Jr., in hiring, retaining, training and supervising their
18 employees.

19 62.

20 The Cornerstone Defendants were reckless because they had reason to know of facts
21 which would lead a reasonable person to realize that their conduct not only creates unreasonable
22 risk of harm to others but also involves a high degree of probability that substantial harm would
23 result.

1 63.

2 As a further result of the Cornerstone Defendants' conduct, Plaintiff Estate of Freddy
3 Nelson, Jr. is entitled to collect punitive damages.

4 **FOURTH CLAIM FOR RELIEF**

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

7 64.

8 Plaintiffs reallege all paragraphs above.

9 65.

10 Defendant Gimbel was negligent, reckless, or some combination thereof in one or more
11 of the following particulars:

- 12 a) Failing to exercise reasonable care to maintain a reasonably safe property, free of
13 violent crime, and to refrain from committing acts of violence himself;
- 14 b) Failing to comply with each and every law and regulation governing armed security
15 professionals;
- 16 c) Failing to exercise reasonable care to protect Freddy Nelson, Jr. from violence by
17 other visitors, trespassers, and security professionals at the complex, including gun
18 violence;
- 19 d) Discharging tear gas or mace against another person in violation of ORS 163.212;
- 20 e) Discharging a firearm in such a way that it was likely to cause bodily injury or death;
- 21 f) Fatally shooting Freddy Nelson, Jr; and
- 22 g) Failing to protect business invitees from foreseeable harm, or to come to the aid of
23 business invitees in the face of ongoing harm or medical emergency.

1 66.

2 Defendant Gimbel was acting in the course and scope of his employment when he
3 committed the above tortious acts. The Cornerstone Defendants, as employer of Defendant
4 Gimbel, are vicariously liable for his acts and omissions under the doctrine of *respondeat*
5 *superior*. As such, the Cornerstone Defendants are liable for all resulting injuries and damages,
6 including any punitive damages, to Freddy Nelson, Jr. as set forth more particularly below.

7 67.

8 As a direct and proximate result of Defendant Gimbel's negligence, Freddy Nelson, Jr.
9 was injured by pepper spray and sustained gunshot injuries that caused his death.

10 68.

11 Defendant Gimbel acted with a reckless and outrageous indifference to a highly
12 unreasonable risk of harm and a conscious indifference to the health, safety, and welfare of
13 others, including Freddy Nelson, Jr., in failing to effectively provide private security services.

14 69.

15 Defendant Gimbel was reckless because he had reason to know of facts which would lead
16 a reasonable person to realize that his conduct not only creates unreasonable risk of harm to
17 others but also involves a high degree of probability that substantial harm would result.

18 70.

19 As a result of Defendant Gimbel's conduct, Plaintiff Estate of Freddy Nelson, Jr. is
20 entitled to collect punitive damages.

1 **FIFTH CLAIM FOR RELIEF**

2 **(Negligence Per Se – All Plaintiffs against the Cornerstone Defendants)**

3 71.

4 Plaintiffs reallege all paragraphs above.

5 72.

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 73.

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.

1 74.

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

4 **SIXTH CLAIM FOR RELIEF**

5 **(False Arrest / Imprisonment – All Plaintiffs against Defendant Gimbel & The Cornerstone**
6 **Defendants)**

7 75.

8 Plaintiffs reallege all paragraphs above.

9 76.

10 Defendant Gimbel confined Plaintiffs by parking the Cornerstone vehicle in front of the
11 Nelsons' vehicle.

12 77.

13 Defendant Gimbel intended to park the Cornerstone vehicle in front of the Nelsons'
14 vehicle.

15 78.

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

20 79.

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

22 80.

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

1 81.

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

6 82.

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

9 83.

10 Pursuant to ORS 30.075(2), Plaintiff Estate of Freddy Nelson, Jr. is entitled to reasonable
11 attorney fees.

12 **SEVENTH CLAIM FOR RELIEF**

13 **(Negligent Infliction of Emotional Distress – Plaintiff Kari Nelson against All Defendants)**

14 84.

15 Plaintiff Kari Nelson realleges all paragraphs above.

16 85.

17 Plaintiff Kari Nelson had a legally protected interest in avoiding being a witness to the
18 negligently caused traumatic injury and death of her husband and in not being subject to a pattern
19 of harassment, menacing, and intimidation.

20 86.

21 In witnessing Defendant Gimbel pepper spray and injure her husband, Plaintiff Kari
22 Nelson’s legally protected interest was violated.

1 87.

2 In witnessing Defendant Gimbel shoot and kill her husband, Plaintiff Kari Nelson's
3 legally protected interest was violated.

4 88.

5 By being subject to Defendants' ongoing harassment, menacing, and intimidation,
6 including Defendant Gimbel's confinement of Plaintiff Nelson to the Nelsons' vehicle, Plaintiff
7 Kari Nelson's legally protected interest was violated.

8 89.

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

14 90.

15 As a direct, proximate, and foreseeable result of being annoyed, heckled, harassed,
16 followed, and intimidated, Plaintiff Kari Nelson suffered serious emotional harm.

17 91.

18 As a direct, proximate, and foreseeable result of witnessing the pepper spraying and
19 shooting death of her husband, Plaintiff Kari Nelson suffered serious emotional harm.

20 92.

21 The Cornerstone Defendants, the TMT Defendants, and Defendant Gimbel acted with a
22 reckless and outrageous indifference to a highly unreasonable risk of harm and a conscious
23

1 indifference to the health, safety, and welfare of others, in inflicting emotional distress on
2 Plaintiff Kari Nelson.

3 93.

4 The Cornerstone Defendants, the TMT Defendants, and Defendant Gimbel were reckless
5 because they had reason to know of facts which would lead a reasonable person to realize that
6 their conduct not only creates unreasonable risk of harm to others but also involves a high degree
7 of probability that substantial harm would result.

8 94.

9 As a further result of the Cornerstone Defendants', the TMT Defendants', and Defendant
10 Gimbel's infliction of emotional distress, Plaintiff Kari Nelson is entitled to collect punitive
11 damages.

12 **EIGHTH CLAIM FOR RELIEF**

13 **(Negligent Infliction of Emotional Distress – Estate of Freddy Nelson, Jr. against All**
14 **Defendants)**

15 95.

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

17 96.

18 Freddy Nelson, Jr. had a legally protected interest in avoiding being a witness to the
19 negligently caused traumatic injury of his wife and in not being subject to a pattern of
20 harassment, menacing, and intimidation.

21 97.

22 In witnessing Defendant Gimbel pepper spray and injure his wife, Freddy Nelson, Jr.'s
23 legally protected interest was violated.

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98.

By being subject to Defendants’ ongoing harassment, menacing, and intimidation, including Defendant Gimbel’s confinement of Plaintiff Nelson to the Nelsons’ vehicle, Freddy Nelson, Jr.’s legally protected interest was violated.

99.

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

100.

As a direct, proximate, and foreseeable result of being annoyed, heckled, harassed, followed, and intimidated, Freddy Nelson, Jr. suffered serious emotional harm.

101.

As a direct, proximate, and foreseeable result of witnessing the pepper spraying of his wife, Freddy Nelson, Jr. suffered serious emotional harm.

102.

The Estate of Freddy Nelson, Jr. brings this claim pursuant to ORS 30.075(1) as Freddy Nelson, Jr. did not die as a result of Defendants’ negligent infliction of emotional distress. Plaintiff Estate of Freddy Nelson, Jr. is entitled to reasonable attorney fees pursuant to ORS 30.075(2).

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103.

The Cornerstone Defendants, the TMT Defendants, and Defendant Gimbel acted with a reckless and outrageous indifference to a highly unreasonable risk of harm and a conscious indifference to the health, safety, and welfare of others, in inflicting emotional distress on Plaintiff Estate of Freddy Nelson, Jr.

104.

The Cornerstone Defendants, the TMT Defendants, and Defendant Gimbel were reckless because they had reason to know of facts which would lead a reasonable person to realize that their conduct not only creates unreasonable risk of harm to others but also involves a high degree of probability that substantial harm would result.

105.

As a further result of the Cornerstone Defendants', the TMT Defendants', and Defendant Gimbel's infliction of emotional distress, Plaintiff Estate of Freddy Nelson, Jr. is entitled to collect punitive damages.

NINTH CLAIM FOR RELIEF

(Negligence and Personal Injury – Plaintiff Kari Nelson against All Defendants)

106.

Plaintiff Kari Nelson realleges all paragraphs above.

107.

The TMT Defendants were negligent, reckless, or some combination thereof in one or more of the following particulars:

- 1 a) Directing the Cornerstone Defendants to harass Plaintiff Kari Nelson when they knew
2 or should have known that the Cornerstone Defendants could not do so safely or
3 lawfully;
- 4 b) Failing to maintain a reasonably safe property free of violent crime;
- 5 c) Failing to protect Plaintiff Kari Nelson from violence by other visitors, trespassers,
6 and security guards at the complex;
- 7 d) Failing to provide an appropriate level of security, including the failure to staff the
8 premises solely with security guards who were certified for the type of work they
9 provided; and
- 10 e) Violating their affirmative duty to protect business invitees from foreseeable harm or
11 to come to the aid of business invitees in the face of ongoing harm or medical
12 emergency.

13 108.

14 Defendant Lowe's was negligent in one or more of the following particulars:

- 15 a) Allowing the Cornerstone Defendants and/or the TMT Defendants to harass Plaintiff
16 Kari Nelson on its property when it knew or should have known that the Cornerstone
17 Defendants and/or the TMT Defendants could not do so safely or lawfully;
- 18 b) Failing to maintain a reasonably safe property free of violent crime;
- 19 c) Failing to exercise reasonable care to protect Plaintiff Kari Nelson from violence by
20 other visitors, trespassers, and security guards at the complex; and
- 21 d) Violating their affirmative duty to protect business invitees from foreseeable harm or
22 to come to the aid of business invitees in the face of ongoing harm or medical
23 emergency.

The Cornerstone Defendants were negligent, reckless, or some combination thereof in one or more of the following particulars:

- a) Hiring Defendant Gimbel when they knew or should have known that Defendant Gimbel was not fit to work as an armed security professional;
- b) Retaining Defendant Gimbel as an employee when they knew or should have known that Defendant Gimbel was not fit to work as an armed security professional;
- c) Training Defendant Gimbel in a way that, *inter alia*, encouraged the use of violence and failed to include any meaningful de-escalation training as an armed security professional;
- d) Supervising Defendant Gimbel such that he did not perform his duties as an armed security professional in a safe manner;
- e) Failing to exercise reasonable care to maintain a reasonably safe property free of violent crime;
- f) Failing to comply with each and every law and regulation governing private security companies and security professionals;
- g) Failing to exercise reasonable care to protect Freddy Nelson, Jr. from violence by other visitors, trespassers, and security professionals at the complex, including gun violence;
- h) Failing to provide an appropriate level of security, including the failure to staff the premises solely with security guards who were certified for the type of work they provided; and

- 1 i) Violating their affirmative duty as real estate managers to protect business invitees
2 from foreseeable harm or to come to the aid of business invitees in the face of
3 ongoing harm or medical emergency.

4 110.

5 Defendant Gimbel was negligent, reckless, or some combination thereof in one or more
6 of the following particulars:

- 7 a) Failing to maintain a reasonably safe property free of violent crime and to refrain
8 from committing acts of violence himself;
- 9 b) Failing to comply with each and every law and regulation governing armed security
10 professionals;
- 11 c) Failing to exercise reasonable care to protect Plaintiff Kari Nelson from violence by
12 other visitors, trespassers, and security professionals at the complex; and
- 13 d) Discharging tear gas or mace against Plaintiff Kari Nelson in violation of ORS
14 163.212.

15 111.

16 As a direct, proximate, and foreseeable result of Defendants' negligence, recklessness, or
17 some combination thereof, Plaintiff Kari Nelson suffered disorientation; intense, searing pain in
18 the face, nose, and throat; difficulty breathing; and involuntary closing of the eyes from pepper
19 spray.

20 112.

21 The Cornerstone Defendants, the TMT Defendants, and Defendant Gimbel acted with a
22 reckless and outrageous indifference to a highly unreasonable risk of harm and a conscious
23

1 indifference to the health, safety, and welfare of others, in inflicting emotional distress on
2 Plaintiff Kari Nelson.

3 113.

4 The Cornerstone Defendants, the TMT Defendants, and Defendant Gimbel were reckless
5 because they had reason to know of facts which would lead a reasonable person to realize that
6 their conduct not only creates unreasonable risk of harm to others but also involves a high degree
7 of probability that substantial harm would result.

8 114.

9 As a further result of the Cornerstone Defendants', the TMT Defendants', and Defendant
10 Gimbel's conduct, Plaintiff Kari Nelson is entitled to collect punitive damages. Plaintiff Kari
11 Nelson reserves the right to amend this complaint to add punitive damages against Defendant
12 Lowe's.

13 **DAMAGES**

14 115.

15 Plaintiff Estate of Freddy Nelson, Jr. sustained noneconomic damages for Freddy
16 Nelson, Jr.'s pain and suffering and the loss of companionship to his family in an amount that a
17 jury determines is fair and reasonable, but not to exceed \$45,000,000.

18 116.

19 Plaintiff Kari Nelson sustained noneconomic damages for her pain, mental suffering, and
20 severe and traumatic emotional distress from the harassment and intimidation she suffered and
21 from witnessing the pepper spraying and shooting death of her husband, Freddy Nelson, Jr., in an
22 amount that a jury determines is fair and reasonable, but not to exceed \$45,000,000.

1 117.

2 Plaintiffs are entitled to collect punitive damages against the Cornerstone Defendants in
3 an amount that a jury determines is fair and reasonable, but not to exceed \$30,000,000.

4 118.

5 Plaintiffs are entitled to collect punitive damages against Defendant Gimbel in an
6 amount that a jury determines is fair and reasonable, but not to exceed \$30,000,000. The
7 Cornerstone Defendants are vicariously liable for the conduct of Defendant Gimbel.

8 119.

9 Plaintiffs are entitled to collect punitive damages against the TMT Defendants in an
10 amount that a jury determines is fair and reasonable, but not to exceed \$50,000,000.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for judgment as follows:

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

- 15 a) For noneconomic losses in the amount that a jury determines is fair and reasonable,
- 16 but not to exceed \$45,000,000;
- 17 b) For costs and disbursements incurred herein;
- 18 c) For interest according to law;
- 19 d) For such other relief as the court deems just.

20 On behalf of Plaintiff Kari Nelson:

- 21 a) For noneconomic losses in the amount that a jury determines is fair and reasonable,
- 22 but not to exceed \$45,000,000;
- 23 b) For costs and disbursements incurred herein;

