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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

MIDLAND TRUST COMPANY, as Independent)
Administrator of the Estate of ABNERD)
JOSEPH, deceased,)
)
Plaintiff,)
)
v.)
)
SUDLER AND COMPANY d/b/a SUDLER)
PROPERTY MANAGEMENT, et al.,)
)
Defendants.)
)

Case No. 2024-L-005346
Calendar D
Jury Trial Demanded

SMITH’S MOTION FOR SUMMARY JUDGMENT ON
PLAINTIFF’S FOURTH AMENDED COMPLAINT

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Defendant Garrett M. Smith (“Smith”), by and through his undersigned counsel, pursuant to 735 ILCS 5/2-1005 and Rule 191, for his motion for summary judgment, states as follows:

INTRODUCTION

Plaintiff’s Fourth Amended Complaint (the “Complaint”) alleges seven counts against Smith. Plaintiff has not been granted leave to plead punitive damages based on the willful and wanton conduct claim, which is the subject of a separate motion.¹ The applicable law and record evidence in this case, including uncontroverted testimony and documents, compel summary judgment in Smith’s on each of Plaintiff’s claims.

FACTUAL BACKGROUND

On the evening of September 14, 2023, Smith was in his residence on the 29th floor of the Legacy at Millennium Park (the “Legacy Building”), a condominium building connected to Chicago’s historic University Club. He heard shouting and loud banging in the hallway shortly after 7:00 p.m. (Ex. A at 19-20.) The individual, later identified as Joseph, was violently leveraging Smith’s door handle and threatening to break the door down. Joseph angrily shouted about a man behind a mirror, among other incoherent ramblings. Smith believed Joseph was on drugs. (*Id.*; Ex. B at 98:8-16; 128:14-129:23.) Smith, a licensed gun owner with a valid concealed carry license, called 911 at 7:20 p.m. to report someone trying to break into his and other units on the floor, which was coded as criminal trespass by the dispatcher. (Ex. C at, 11; Ex. D at 20:12-21:19.) Consistent with emergency procedures in the building’s rules, Smith also called the front desk to report the disturbance and advise that he had called 911. (Ex. E at 359, 363.)

Younan Nena, who was working at the front desk at the time, began receiving calls between 7:10 and 7:15 p.m. about someone yelling and pounding on doors on the 29th floor. (Ex. F; Ex. G

¹ A hearing on Plaintiff’s motion for leave to plead punitive damages was held on October 14, 2026.

at 27:40-36:00; Ex. H at 14:15-18:9.) Smith was one of those calls reporting yelling and pounding on doors. (Ex. C at 9; Ex. B at 80:22-81:4.) James Delelio, another 29th floor resident, also called the front desk about the same yelling and pounding on doors and asked for police to be called. (Ex. H at 14:15-19:14, 25:2-11, 34:14-35:24.) Nena called 911 at 7:21 p.m. to report someone yelling and pounding on doors on the 29th floor. The dispatched coded Nena's call as a "wellness check." (Ex. C at 11; Ex. I at 16 "the nature of the 911 call would like be classified as. . .a low-level priority not requiring an emergency-level response.") Neither was considered a high-priority call. (Ex. D at 20:12-21:19: "a call at that location of a disturbance. . . also a criminal trespass.")

After about ten minutes, the noise in the hallway subsided. Smith waited a few additional minutes before he cautiously opened his door to confirm Joseph was gone. (Ex. B at 85:20-86:6, 88:5-8, 103:7-15, 288:6-10.) Smith entered the hallway and saw a maintenance worker, Hamilton Steele, who had been sent to the 29th floor to check on the disturbance reports. (Ex. B at 110:20-112:1, 143:3-17; Ex. J at 21:58-22:03.) Steele and Smith went to the lobby. Delelio testified that he, too, waited for the noise to subside, and when he felt he could safely open his door, he went to the lobby because police had not yet arrived. (Ex. H at 38:7-40:23.) During that time, unbeknownst to Smith, Joseph had apparently traveled to the 48th floor of the building where Natalie and Robert Bishopp, who live in unit 4801, encountered Joseph when they called the elevator to their floor. (Ex. L at 31:23-32:23; Ex. M at 9:23-10:12, 12:19-13:6.) The Bishopps reported that Joseph exited the elevator on their floor, yelling expletives and racial slurs, including "fucking white crackers" and "all you fucking white people should be burned," and reported that they were worried they had not locked their unit door. (*Id.*; Ex. A at 17; Ex. F; Ex. N at 89:10-16; Ex. O at 51:21-52:8.)

When Smith arrived in the lobby, Andrew Clement and the Bishopps were already speaking with Nena at the desk. (Ex. G at 40:00.) Clement testified that when he heard the

Bishopp's description of Joseph's actions, it sounded like the "rantings and ravings of a homeless person. It sounds like what you see them doing on the street." (Ex. N at 104:20-105:9.)

Shortly after Smith's arrival, Nena decided to go upstairs to check what was happening. (Ex. B 149:12-15; Ex. J at 22:36-22:38; Ex. N at 107:9-23; Ex. L at 62:1-3; Ex. P at 6:25-6:50.) As they walked to the elevators, Smith learned that Nena and the Bishopps were going upstairs so the Bishopps could check if their unit was locked, and did not want Nena—a gentleman in his 60s—and the Bishopps—a couple in their 70s—to go upstairs alone. (Ex. B at 150:14-20; 153:10-16.) He walked to the elevator lobby with Nena, immediately followed by the Bishopps; and Clement followed the Bishopps. As they walked, Smith told Nena that he had a "CCL." (Ex. B at 149:18-150:7; 153:20-22.)

As they approached the 48th floor, the group could hear shouting and pounding. (Ex. O at 65:9-67:23.) Nena exited the elevator and turned towards his left—the direction of the noise—followed by Clement, then Smith, then Mr. Bishopp. (*Id.* at 65:9-67:23;) Smith later learned that Mrs. Bishopp walked in the opposite direction, which was where her unit was located. (Ex. Q.) Nena came across Joseph first and recognized him as a resident. Nena greeted Joseph and asked what was going on, to which Joseph responded, "oh, my fucking buddy is here." (Ex. O at 72:22-77:16; Ex. P at 17:40-18:17.) He then punched Nena several times in the head. (*Id.*) Nena staggered backwards and tried to duck more punches. (*Id.*) Joseph then struck Clement, who was 47 years old, 6' 4" tall, and very fit. Joseph knocked him unconscious with one blow. (*Id.* at 77:22-78:22; Ex. B 238:14-19; Ex. J at 22:03-22:07; Ex. R at 75:20-23, 84:21-22, 109:7-16.) Joseph then turned his attention to Smith. (Ex. O at 80:12-82:11.) Smith backed away, yelled for Joseph to stop hitting people, and warned Joseph that he had a gun. Joseph, undeterred, charged at Smith. (Ex. A at 15-16; Ex. O at 81:4-83:16; Ex. R at 62:17-63:2; Ex. S at 29:19-24, 54:22-55:7.) Smith, fearing for his

life and the lives of other residents and Nena, drew his gun and fired while Joseph attacked him and tackled him to the ground. (Ex. B at 238:3-19, 239:13-241:12, 248:17-250:23; Ex. J at 22:03-22:14; Ex. O at 132:6-20.) Smith and the others immediately returned to the lobby, where Smith immediately called 911 and reported the incident. (Ex. C at 22; Ex. J at 22:12-22:16; Ex. O at 87:7-17.) Nena pressed the building's panic alarm, and Mr. Bishopp exited the building to try to find police on a nearby corner. (Ex. C at 25.)

Smith was detained by Chicago police and responded to all questions. (Ex. J at 21:55-02:50; Ex. I at 16.) He asked officers about Joseph's condition several times, wanting to know if Joseph was okay. (Ex. B at 250:13-23; Ex. J at 22:20-22:22; Ex. K at 16:18.) Smith had blood on himself and his shirt, which was taken as evidence at the police station, but his black pants were not checked for blood. (Ex. O at 87:20-23; Ex. T at 26:18-21, 33:8-16, 47:19-21; Ex. U.) Smith was found to have injuries to his ribs, knees, and back. (Ex. V; Ex. W.) After 1:30 a.m., Smith was informed that Joseph had died but that "he didn't suffer." (Ex. J at 01:32.) Smith was released without charge. (Ex. A at 21, 24.)

Joseph had several controlled and illicit substances in his body at the time of his death. The toxicology report confirms the presence of amphetamines, a cocaine metabolite, a THC metabolite, and a marijuana ingredient. (Ex. X.) It is undisputed that these substances contributed to, triggered, or caused, Joseph's violent, dissociative state. (Ex. Y at 13; Ex. Z at 6-11; Ex. AA at 5.) Clement and Nena credit Smith with saving their lives. (Ex. A at 21; Ex. N at 170:12-18.)

LEGAL STANDARD

Summary judgment is warranted when "the pleadings, depositions, and affidavits on file demonstrate that no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law." *Wolff v. Bethany N. Suburban Grp.*, 2021 IL App (1st) 191858, ¶ 29. A defendant

may meet his burden when moving for summary judgment by “affirmatively showing that some element of the case must be resolved in his favor or by establishing ‘that there is an absence of evidence to support the nonmoving party’s case.’” *Benson v. Stafford*, 407 Ill. App. 3d 902 (1st 2010) (quoting *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (1st 2007)). The nonmovant cannot defeat a summary judgment by merely resting on its pleadings, but “must produce some competent, admissible evidence” to support its claims and show that a material fact is genuinely disputed. *Zahdan v. Frontline Bus. Enter. Inc.*, 2024 IL App (1st) 221351, ¶ 27. To qualify as a genuine issue, there must be evidence to support the nonmoving party’s position sufficient that a jury could reasonably find for the non-movant. *In re Estate of DeMarzo*, 2015 IL App (1st) 141766, ¶ 30. If a plaintiff “fails to establish any element of his claim, summary judgment is appropriate.” *Growing Lean Foods, Inc. v. Rika Enters., Inc.*, 2016 IL App (1st) 151157-U, ¶ 18.

ARGUMENT

Plaintiff contends that Smith owed Joseph a duty of care based on a number of theories under which there is no legal duty. Plaintiff’s Complaint even asserts that it is based in part on pleading “hypothetically”—that is, not based in fact—which, after discovery, cannot survive a motion for summary judgment, particularly where the actual record evidence—the facts of the case—clearly contradict Plaintiff’s hypothesis. It is not enough to dress up allegations with colorful language to elicit an emotional reaction—allegations and conjecture do not create a genuine dispute of material fact. Nor is it sufficient to support the requisite elements of the causes of action. Additionally, all claims brought pursuant to the Survival Act fail as Plaintiff has not, and cannot, establish any damages. Summary judgment is appropriate.

I. Smith Did Not Owe Joseph the Duties Pled in Counts 5 and 6.

The purported acts that Plaintiff seeks to turn into negligence claims under the Survival Act (Count 5) and Wrongful Death Act (Count 6) fail at the threshold. Plaintiff does not adequately

plead duties owed by Smith to Joseph. Whether a duty exists is a matter of law for the court to decide. *Dunet v. Simmons*, 2013 IL App (1st) 120603, at ¶ 26. “A number of factors are considered in determining duty: the foreseeability of harm, the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations.” *Bear v. Power Air, Inc.*, 230 Ill. App. 3d 403, 408 (1st Dist. 1992). For a duty of care to exist, it is necessary that the risk of harm was reasonably foreseeable under the circumstances. *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, at ¶ 24. As the Illinois Supreme Court has held, “with the benefit of hindsight, [] everything is foreseeable. We must focus, therefore, on the question of whether the injury was reasonably foreseeable at the time defendant engaged in the allegedly negligent action.” *Id.* at ¶ 25. In this case, that assessment must be made on the specific facts circumstances at the time of the alleged negligent act.

Plaintiff alleges broadly that Smith owed “a duty to act with reasonable care under the circumstances,” based on conclusory statements that are (i) unsupported by the record and (ii) that fail to establish duties owed to Joseph.² (Compl. ¶ 148, *et seq.*) Plaintiff alleges that the following acts or omissions amounted to a breach of that duty: (i) failing to stay in Smith’s unit and wait for police; (ii) failing to stay in the lobby and wait for police; (iii) telling Nena, Clement, and the Bishopps that he possessed a firearm; (iv) telling Nena, Clement, and the Bishopps that he had a concealed carry license, creating a misleading sense of safety and security to form a vigilante posse to encounter Joseph; (v) discharging a firearm at Joseph; (vi) shooting Joseph at least five times; (vii) leaving Joseph to die without rendering aid or immediately calling 911; and (viii) acting as an armed security guard without the required training and licensing required by statute to obtain a

² Counts 5 and 6 of the Complaint contain the same allegations and will be addressed together. The same is true for the tortious intentional conspiracy claims in Counts 22 and 23, and the negligently acting in concert claims in Counts 24 and 25, which are addressed in subsequent sections of this brief.

Permanent Employee Registration Card (“PERC”). (See Compl. ¶ 155(a)-(h).) These allegations do not constitute duties owed to Joseph.

A. Smith Did Not Owe Joseph a Duty to Remain in His Unit or in the Lobby.

Joseph’s death was not reasonably foreseeable when Smith left his unit on the 29th floor for the lobby or when he left the lobby for the 48th floor. Foreseeability means “that which is objectively reasonably to expect, nor merely what might conceivable occur.” *Augenstine v. Dico Co., Inc.*, 135 Ill. App. 3d 273, 277 (1st Dist. 1985), citing *Winnett v. Winnett*, 57 Ill. 2d 7, 12 (1974). Criminal acts, such as Joseph’s battery on three individuals, must be “objectively reasonable to expect, not merely which might conceivably occur.” *McKelvy v. Menzies*, 2025 IL App (2d) 240138. The facts and circumstances known at the time do not compel either conclusion.

Smith knew that an unidentified person had been on the 29th floor shouting, pounding on doors, and trying to force entry into his unit. Smith called 911 about a suspected trespasser but did not believe police to be on the way to the building. He wanted to go to the lobby to urge the doorman to also call 911, not for the purpose of encountering Joseph. Had Smith wanted to engage in a confrontation with Joseph as Plaintiff alleges, he would have had ample opportunity to do so when Joseph was shouting in the hallway and pounding on Smith’s door while threatening to “fuck him up”—but this was *not* Smith’s intention. (Ex. B at 54:20-21: “I did not leave my unit to confront Abnerd Joseph.”) In fact, Smith waited until several minutes *after* he no longer heard Joseph in the hallway before carefully opening his door. (Ex. J at 22:01-22:04; Ex. B at 86:4-6, 88:5-8, 103:7-15.) Only then did Smith exit his unit and came across an employee, Steele, in the hallway, who had also not seen Joseph. (*Id.*) Steele and Smith then went downstairs to the lobby. (*Id.*) These facts do not support a reasonably foreseeable risk of harm to Joseph by Smith leaving his unit on the 29th floor to go to the lobby. Joseph was nowhere to be seen or heard, had not engaged in physical violence against any person. As recognized in *Simpkins*, hindsight—if

employed to impose a duty—can make the most remote possibilities foreseeable; but hindsight is not the appropriate measure for imposing a duty. It was not foreseeable that Smith leaving his unit would lead Joseph to savagely attack Smith and two others, in a completely different location in the building, nineteen floors above where Smith and Joseph lived, which then led to Smith taking action in defense of himself and others.

Smith similarly did not owe a duty to Joseph to stay in the lobby of the building. Smith owns a condominium unit in the Legacy Building. He has a legal right to use and freely move throughout the common areas of the building. (Ex. BB at cl. 4.4.) This includes the passenger elevators and hallways. (*Id.* at cl. 3.2.) Smith did not owe Joseph a duty to refrain from exercising his right to use the common areas of the building. The opposite is true. And Smith acted within his rights to move freely about the building.

Just as with leaving his unit, based on what was known to Smith at the time, it not reasonably foreseeable that exercising his right to move freely throughout the common area in the building and leaving the lobby would lead to Joseph attacking Nena, Clement, and Smith on the 48th floor, which lead to Smith using his handgun in self-defense against Joseph's attack, and in defense of others. Smith heard and saw Joseph's erratic behavior on the 29th floor, but no physical attacks on people. Even the Bishopps testimony was that when they encountered Joseph after calling the elevator to their floor, he walked past them and hurled verbal slurs at them, but he did not assault them. Upon leaving the lobby, Smith also did not know where Joseph was. He intended to escort the Bishopps home, but did not know what floor they lived on, or if Joseph was still on their floor. All of these facts support the conclusion that it was not reasonably foreseeable, based on the facts and circumstances existing at that time, that there was a risk of harm to Joseph as a result of Smith leaving the lobby to escort an elderly couple to their home.

The other factors to determine if there is a duty all militate against imposing a duty on Smith to stay in his home or the lobby—indefinitely—until police arrived. Here, the likelihood of Joseph being injured because Smith cautiously left his unit to go to the lobby when Joseph was no longer on the 29th floor was non-existent. The likelihood of Joseph being injured based on the action of Smith escorting an elderly couple to check on the security of their unit is tenuous. Joseph's injury was a direct result of his own unpredictable criminal acts, which ultimately caused injury to Nena, Clement, and Smith, and the subsequent action of Smith discharging his firearm in defense of himself and others. Imposing a legal duty that individuals must hide in their homes or stay in a lobby due to some remote possibility that an unpredictable chain of events could result in a death is not consistent with Illinois law; imposing one, particularly on these uncontroverted facts, and should not be permitted here. Illinois recognizes the freedom of movement as a fundamental right, and while not absolute, there is no duty to restrict one's own movement in place where he is lawfully present. Indeed, there is not even a duty to retreat in Illinois when directly faced with a threat and engaging in self-defense. *See e.g., People v. Rodriguez*, 187 Ill. App. 3d 484, 490 (1989). Imposing a restricting on freedom of movement under these circumstances places a high burden on individuals, would require them to shelter in place in their homes over noise complaints and similar disturbances until police arrive, regardless of how long that might take. This would lead to absurd results. Such a duty has not been recognized in Illinois and, based on the law as presently understood, this Court would be the first to impose such a duty.

B. Smith Did Not Owe Joseph a Duty to Refrain from Disclosing Possession of a Firearm or CCL or to Refrain From Using His Firearm in Self-Defense.

First, there is no duty in Illinois to refrain from telling another person that you own a firearm or have a concealed carry permit. There are no cases in Illinois holding that merely telling another person about possessing a gun—which did not happen here—or that having a CCL

amounts to a breach of a duty of care. The Concealed Carry Act does not have provisions prohibiting disclosure to private individuals. *See* 430 ILCS 66/10. There is nothing inherently negligent about having a concealed carry license, lawfully carrying a handgun, or with disclosing these facts to others. Nor did Smith’s disclosure that he had a CCL create “a misleading sense of safety and security to form a vigilante posse to encounter Joseph,” as Plaintiff claims.

Plaintiff’s made-up assertion that these five scared individuals formed a “vigilante posse to encounter Joseph” lacks factual support. A duty of care must arise out of facts supported by the record, not conjecture or colorful language, conclusory statements. *Simpkins*, at ¶ 26; *Smith v. Tri-R Vending*, 249 Ill. App. 3d 654, 657 (2nd Dist. 1993) (“Liability must be premised on evidence and not on conjecture or speculation.”). A “vigilante” has been defined by the Illinois Supreme Court as “a member of ‘a group extralegally assuming authority for summary action professedly to keep order and punish crime because of the alleged lack of failure of the usual law-enforcement agencies.’” *People v. Lowry*, 178 Ill. 2d 462, 471 (1997). Smith did not assume authority to take action to punish Joseph because of a failure of the police, and Plaintiff has no supporting evidence for such an allegation. The action Smith took was to accompany an elderly couple back to their unit on the 48th floor along with a doorman who was not in great health—not to impose extralegal control over Joseph or impose “vigilante justice.” This was hardly “vigilante posse” seeking to exact revenge.

Additionally, Smith did not announce to all individuals in the lobby that he owned or carried a gun. Smith told Nena he had a concealed carry license, which, unbeknownst to Smith, was overheard by Mr. Bishopp and Clement. Mr. Bishopp interpreted the statement to mean that Smith had a gun, but did not confirm it, and testified he would have gone upstairs regardless. (Ex. M at 25:24-36:14, 69:2-23.) Clement did not interpret Smith’s statement to mean he had carried a

gun, did not know Smith had a gun when they went upstairs. (Ex. N at 108:4-110:3.) Mrs. Bishopp did not know Smith had a gun until after the incident, and even asked her husband if the sound of gunshots was a taser. (Ex. L at 84:23-85:5, 99:2-12, 107:2-11). Regardless of the knowledge of others, it was not improper or contrary to the law for Smith to go to the 48th floor with his gun. (Ex. CC at 36-37.)

Even if the others had felt a sense of safety—which no testimony supports—that does not create a duty owed by Smith to *Joseph*. Again, foreseeability of harm is lacking. It is not reasonable to expect that announcing that Smith had a gun in the lobby—which he did not do—would lead to Joseph being on the 48th floor, Joseph attacking Nena, Joseph attacking and rendering Clement unconscious, Joseph ignoring warnings by Smith, and Joseph attacking Smith, and Smith shooting Joseph in self-defense and in defense of others. The sequence of events on the 48th floor was too remote, given what Smith knew at the time, to be foreseeable and create a duty owed to Joseph.

Furthermore, there is generally no duty imposed on a properly licensed individual from using a firearm in self-defense in Illinois, which is precisely what Smith did here. An evaluation of the factors of foreseeability of harm, the likelihood of the injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden on the defendant, *Bear*, 230 Ill. App. 3d at 408, all favor Smith. Imposing such a duty under these facts and circumstances would essentially mean that all handgun owners have a duty to *never* use them, even in cases of self-defense or in defense of others. This is flatly inconsistent with Illinois law, which permits the use of deadly force when one “reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.” 720 ILCS 5/7-1.

Plaintiff’s allegation that Smith knew or should have known that Joseph was experiencing

a mental health crisis is of no consequence. Laypersons are not “reasonably expected to anticipate the mental health consequences of their acts or omissions” even in a close relationship, let alone strangers. *Chalhoub v. Dixon*, 338 Ill. App. 3d 535, 539 (1st Dist. 2003) (affirming it was not reasonably foreseeable that failure to secure a handgun in a home would lead to stepson’s suicide).

Plaintiff has no factual support to show that this was anything but a case of self-defense and defense of others. There were no defensive wounds identified on Joseph’s body that could contradict that Joseph was the initial aggressor. (Ex. DD at 86:11-88:9.) The facts support that Smith acted with care to guard against harm and consistent with his training—he did not pull the gun out from his pocket until he was threatened by Joseph, he yelled for Joseph to stop, warned Joseph he had a gun, and only when those precautions failed, he took actions to try to stop an imminent attack on Smith himself. (Ex. CC at 24-31, 36-37.) Plaintiff focuses on the fact that Joseph was in a bathrobe and was ultimately found to be unarmed. But Illinois law does not require that Joseph be definitively armed with his own weapon before Smith is permitted to draw his in defense, and there is no evidence that Smith provoked Joseph. (Ex. I at 12-14, 19; Ex. CC at 21-23, 36-37.) Moreover, the great physical disparity between Joseph at 6’2” and 210-230 pounds, as compared to elderly residents and Smith, at 5’10” and 180 pounds, contributed to a reasonable fear for his life and the lives of others. *See, e.g., People v. Givens*, 26 Ill. 2d 371, 376 (1962) (shooting in self-defense was reasonable given decedent’s actions and fear enhanced by physical disparity.) Imposing a duty on individuals to refrain from using a properly licensed handgun in self-defense scenarios carries the risk of great consequences. It would force individuals to subject themselves to significant threats, risk their lives, great bodily harm, and the lives of others. It also would not account for defense against closed-fist strikes to the head, which cause death or serious, great bodily harm, and an individual is not required to subject himself to such harm—he is permitted,

legally, to defend himself. (Ex. CC at 21-23, 36-37.)

C. Smith Did Not Fail to Immediately Call 911.

In Illinois, there is generally no affirmative duty to protect or render aid to another absent a special relationship or where one individual causes the harm. *Simpkins*, 2012 IL 110662 at ¶¶ 19-20. Even where there is a duty to render aid, a “defendant is not required to take any action until he knows or has reason to know that the plaintiff is endangered, or is ill or injured. He is not required to take any action beyond that which is reasonable under the circumstances.” Restat. (2d) of Torts § 314A, comment f, (1965) at 120; *see also*, Prosser and Keaton on The Law of Torts § 56, at 377 (5th ed. 1984); *Parra v. Tarasco, Inc.*, 230 Ill. App. 3d 819, 828–29 (1st Dist. 1992).

Smith testified that despite warnings, Joseph continued advancing upon him and tackled him to the ground as he was acting in self-defense. (Ex. A at 15; Ex. B at 305:4-18; Ex. O at 96:7-17, 130:24-132:20; Ex. R at 70:5-8.) After being shot, Joseph got up and moved to the other end of the hallway, still alive and a potential threat. (Ex. J at 22:12-22:14.) This was after Smith witnessed Joseph render Clement unconscious with a single punch and saw him batter Nena in the head multiple times. Smith was also violently attacked himself. He had no way of knowing if Joseph could or would continue the attack, perhaps even taking Smith’s gun himself, should Smith try to render aid personally. (Ex. R at 113:24-5; Ex. CC at 34-35, 37.) Moreover, Joseph was a complete stranger to Smith; there was no special circumstance. It was reasonable under the circumstances for Smith to leave the presence of the violent individual rather than move towards him to check wounds. (Ex. B at 250:19-23, 279:6-10; Ex. R at 110:23-111:17.)

After the attacks, Smith, Nena, Clement, and the Bishopps hurried to the elevator, which arrived immediately, and went to the lobby. (Ex. B at 121:21-122:16.) This was not a long lapse of time—evidence in the record supports that the Legacy Building has high-speed elevators that transverse multiple floors quickly, resulting in it taking “only seconds” to move from one floor to

another. (Ex. H at 28:12-15.) As soon as Smith reached the lobby, he called 911 to report the shooting. (Ex. B at 250:19-23, 279:6-10; Ex. C at 22; Ex. R at 110:23-111:17.) Smith testified that he was “very concerned for Joseph” and the record supports this as Smith asked his own interrogators about Joseph’s condition several times. (Ex. B at 250:13-23; Ex. J at 22:20-22:22; Ex. K at 16:18.) Accordingly, the undisputed facts of the case do not support Plaintiff’s allegation that Smith failed to call 911.

D. Smith Did Not Owe a Duty to Joseph to Obtain a PERC Card.

The statutory provisions invoked by Plaintiff for this alleged duty make clear that this allegation is inapplicable to Smith. Both 225 ILCS 447/10-5 et seq. and 225 ILCS 447/25-20 et seq. are sections of the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act (the “Act”). Plaintiff alleges that Smith acted as “an armed security guard” when he chose to escort an elderly couple to their home. There is no evidence that Smith held himself out to be “a person who engages in the business of providing a private security officer, watchman, patrol, guard dog, canine odor detection, or a similar service by any other title or name on a contractual basis for another person, firm, corporation, or other entity for a fee or other consideration . . .” 225 ILCS 447/5-10. Smith did not indicate that he would act as a security guard for the group or on behalf of the building, nor did he undertake to provide the functions of a security guard. Smith was acting as a good neighbor when he decided to escort the Bishopps to the 48th floor. The Act simply does not apply to Smith or this case.

Even if the Court were to determine that Plaintiff has a right to a private cause of action for a violation under the Act, which it has not established, Plaintiff has not set forth facts to establish that a lack of a PERC card was the proximate cause of Plaintiff’s death. *Parra v. Tarasco, Inc.*, 230 Ill. App. 3d 819, 825 (1st Dist. 1992) (“A private cause of action is found to exist under a statute where: (1) the plaintiff falls within the class of persons the statute is designed to benefit;

(2) the plaintiff's injury is one the statute is intended to prevent; (3) implying the cause of action is consistent with the underlying purpose of the statute; and (4) implying a private cause of action is necessary to effectuate the purpose of the statute, *i.e.*, a civil remedy is needed.”) In *Parra v. Tarasco, Inc.*, the court found there was no causal connection between failure to post a sign about the Heimlich Maneuver in a restaurant, which was required by statute, because there were no facts showing the causal connection between a patron’s death by choking on food and the failure to post the sign. *Id.* at 520-21. Here, there are no facts that show a causal connection between Smith’s failure to have a PERC card and Joseph’s death.

To the extent Plaintiff seeks to impose liability based on a theory of “voluntary undertaking” of duties of a security guard, which is not plead, there is no such duty owed to Joseph here. When there is a voluntary undertaking, a person has a duty to act with reasonable care, but liability is limited to the scope of that undertaking. *Kolodziejzak v. Melvin Simon & Assocs.*, 292 Ill. App. 3d 490, 492 (1st Dist. 1997) (finding that defendant had no duty to protect from third party criminal attacks when it did not undertake that duty, evidence of crimes common to shopping centers did not put defendant on notice of the likelihood of a gang related shooting, and there was no evidence that the defendant’s actions or inactions were the proximate cause of the plaintiff’s death). If there were such a duty—and there is not—that duty to protect from danger would be limited to the scope of the voluntary undertaking, which, according to Plaintiff, would be to act as armed security for Nena, Clement, and the Bishoppes—not Joseph.

II. Plaintiff Cannot Establish that Smith Engaged in a Tortious Intentional Conspiracy to Cause Harm (Counts 22 and 23).

The undisputed facts show that Smith did not “knowingly and voluntarily participate in a common scheme to commit an unlawful act or a lawful act in an unlawful manner,” and, therefore, summary judgment must be granted in Smith’s favor on Plaintiff’s civil conspiracy claims. *Adcock*

v. Brakegate, Ltd., 164 Ill. 54, 64 (1994). Plaintiff must prove “an agreement between the parties and a tortious act committed in furtherance of that agreement” to survive summary judgment. *Lewis v. Lead Indus. Ass’n*, 2020 IL 124107, at ¶ 20. Absent an agreement, there can be no tortious act performed in furtherance of such an agreement, and, without such an agreement, there can be no civil conspiracy. In this case, there is no direct evidence alleged or in the record to support that Smith understood “general objectives of the [alleged] conspiratorial scheme, accept[ed] them, and agree[d]” to do “his part” to further those objectives, as Illinois law requires. *Adcock v. Brakegate, Ltd.*, 164 Ill. 54, 64 (1994). Plaintiff must rely on circumstantial evidence, and to survive summary judgment on that basis, Plaintiff must establish sufficient facts that a potential jury could find that there was a conspiracy by *clear and convincing* evidence. *Garrelts v. Honeywell Intern., Inc.*, 2013 IL App (4th) 120997-U, at ¶ 1 (emphasis added) (referencing *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102 (1999).) Clear and convincing evidence “requires a greater degree of persuasion than is necessary to meet the preponderance of the evidence standard.” 735 ILCS 5/2-1115.05(b). This is by no means a low bar—clear and convincing requires evidence that leaves no reasonable doubt that the assertion is true. *Bazydlo v. Volant*, 164 Ill. 2d 207, 213 (1995).

Here, Plaintiff admits that there was no agreed plan among the defendants. (Compl. ¶ 91.) This is not disputed and is consistent with all witness testimony. Plaintiff, however, contradicts itself and also makes conclusory allegations that Smith entered into an agreement with Nena, Clement, and the Bishopps to not wait for police, “but instead to confront and subdue” Joseph, including “the understanding between them that the firearm discussed with them by Smith, might need to be used to accomplish said goal, and to which” they all agreed. (Compl. ¶ 300.) Plaintiff alleges that the purpose of this unsubstantiated “agreement” was to “act as untrained unlicensed security guards, and at least in part, to physically subdue decedent Joseph by force or threat of

force... such that each of them had knowledge with substantial certainty that the group intended to unlawfully physically confront and stop” Joseph by force or threat of force. (Compl. ¶ 301.) There are multiple components to this conclusory allegation, none of which are supported by any record evidence, to say nothing of evidence that surpasses the hurdle of “clear and convincing.”

The testimony establishes the opposite of Plaintiff’s conclusory allegations—there was never any agreement to “confront and subdue” Joseph. (Ex. B at 54:20-21, 152:16-17, 153:2-5.) Instead, the record supports that Smith did not want to confront Joseph and waited until the 29th floor hallway was silent and clear of Joseph to even open his unit door. (*Id.* at 54:20-21.) Once in the lobby, Smith was unaware of Joseph’s whereabouts, and he did not leave the lobby with any agreement or intention to confront Joseph or to “subdue” him by force or threat of force, nor was there an agreement expressed among the other individuals in the lobby to do so. (*Id.* at 54:20-21, 152:16-17, 153:2-5.)

There are no facts to support an alleged discussion or agreement in the lobby to act as unlicensed security guards. Smith testified that the conversation in the lobby was very disorganized, each defendant had a different motive, that “there was no discussion, and . . . certainly no decision” to go to the 48th floor, and no plan as to what they were going to do once they got to the 48th floor. (*Id.* at 150:21-24; 153:3-10.) Smith had one goal with his actions on September 14, 2023—to escort the Bishopps safely back to their unit so they could verify it was secure. (*Id.* at 158:17-19.) A decision to accompany other residents upstairs is not proof of a plan to attack another. Smith did not know Joseph would be on the 48th floor—he did not even know that the Bishopps’ lived on that floor—and he did not have “substantial certainty” that he, or the others of the group, three of whom were senior citizens, intended to “unlawfully physically confront and stop” Joseph. (Compl. ¶ 301.) Clement testified that he went up to the 48th floor only

because he did not want Nena, who was not in great health, to go alone. (Ex. N at 105:20-106:22.) Nena cared for the building and its residents as a community or family, and he felt he had to check on the reported disturbance and escort the Bishopps back to their unit. (Ex. O at 34:23-35:8, 60:15-61:13.) Mr. Bishopp testified that Nena stated he needed to go upstairs to investigate, but there was no agreement or discussion to physically subdue the decedent. (Ex. M at 23:15-19.) Mrs. Bishopp testified that she heard no discussion or agreement between the others and that her goal in returning upstairs was “[t]o make sure [decedent] was not in [her] home.” (Ex. L at 58:1-8.) These facts do not amount to a group agreeing to act as unlicensed security guards.

As to Smith’s lawfully carried handgun: there was no discussion or agreement among the defendants amounting to conspiracy about the possession or use of Smith’s handgun, and Plaintiff cannot point to evidence supporting such an agreement. Carrying a concealed handgun for personal protection, as Smith routinely does, does not lead to an inference that he, or anyone else, decided to seek out Joseph to confront him with that gun. (Ex. B at 149:18-150:1, 154:4-7, 168:18-24). Smith lawfully carried his gun in accordance with his CCL and without ill intention. There was no group discussion or announcement that he had a concealed handgun on his person. Indeed, Clement did not know Smith was carrying a handgun prior to getting in the elevator, nor did Mrs. Bishopp. (Ex. N at 105:20-106:22; 107:9-109:14; Ex. L at 107:2-11.) Plaintiff’s conspiracy claim has no factual support.

The testimony is consistent and unequivocal: there was no agreement—or even a discussion—about “confronting” or “subduing” an aggressor. Indeed, nearly every witness testified to a different reason for going to the 48th floor, ranging from a doorman fulfilling his job responsibilities to check on a disturbance to an elderly resident ensuring her home was secure. These facts do not meet the “clear and convincing” standard to substantiate a conspiracy claim.

III. Plaintiff Cannot Establish that Smith “Negligently Acted in Concert.”

Plaintiff’s claims for negligently acting in concert (counts 24 and 25) also fail as the record shows there was no agreement among the defendants to act in concert. Restatement (2d) of Torts § 876 provides that a party may be held liable for the harm caused to an individual from the tortious conduct of another if the party committed the tortious conduct in concert with the tortfeasor or pursuant to a common design to cause harm, knew the conduct was a breach of a duty and provided substantial assistance or encouragement to the other to act, or gave substantial assistance to the actor and in doing so committed his own breach of duty. *See* Restat. (2d) of Torts § 876; *Norman v. Brandt*, 397 Ill. App. 3d 1074, 1077 (4th Dist. 2010).

As discussed in Section II above, the sworn testimony in this case establishes there was no common design or scheme to commit any tortious act or cause harm to Joseph. Plaintiff’s allegations that the defendants agreed “to act in concert to not wait for the police but instead to confront and subdue the decedent Joseph, which included the understanding between the that the firearm discussed with them by Defendant Smith, might need to be used to accomplish said goal, and to which [these defendants] acceded consent to do so,” (Compl. at ¶ 314), is belied by the deposition testimony. Absent evidence of facts establishing a shared plan or agreement, Plaintiff’s concerted-action claims fail as a matter of law. Illinois courts have confronted—and rejected—similar claims.

In *Norman v. Brandt*, the plaintiff claimed that the defendant-driver was responsible for the plaintiff’s injuries resulting from a car accident because the defendant allegedly acted “in concert” with a third-party driver by speeding pursuant to a common design. *Id.* at 1076-77. The court concluded that there was no common design to engage in tortious conduct of speeding. *Id.* At most, the evidence showed a plan to follow each other on the road, with one vehicle traveling in front of the other, and the only conduct undertaken “in concert” was that one car led while the other followed. *Id.* at 1077-78. This “plan” was not evidence of an agreement to commit a tortious

act, and the trial court rightly dismissed the “acting in concert” based negligence claim, which was affirmed on appeal.

Here, as in *Norman*, the testimony establishes that no “design” or “scheme” was ever formed between Smith and the others, and Plaintiff admits as much. Nena, Clement, Smith, and the Bishopps each went to the 48th floor for independent reasons and without a common plan. There was no agreement to “confront or subdue” the aggressor and there was no discussion or understanding about the potential use of Smith’s firearm for any purpose—let alone to use it to “confront or subdue” any individual. The only act undertaken in concert or that they may have impliedly consented to was riding the elevator together to escort the Bishopps to their home. But, like in *Norman*, the sworn testimony shows there was no mutually agreed-upon plan to commit any tortious act, nor can one be reasonably inferred from the testimony.

Plaintiff also alleges that the defendants “went as a physical group together from the lobby to the elevator with each others [sic] assent and encouragement, to the common area hallway of the 48th floor of the building.” (Compl. ¶ 316.) Under § 876, liability can be imposed if a defendant “knows that the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself.” Restat. (2d) § 876(b). The alleged encouragement or assistance must be a substantial factor in causing the resulting tort. *Id.* at cmt d.

Plaintiff does not plead facts to justify imposing liability or demonstrating what encouragement or assistance was supplied, or by whom, as is required under this prong. There are no facts that Smith knew he or any of Nena, Clement, or the Bishopps were acting in breach of a duty of care owed to Joseph by going as a group to the 48th floor—indeed this was not a breach of a duty—nor are there facts to support that Smith gave, or was given, “substantial assistance or encouragement” to conduct himself in a manner that knowingly breached a duty. There is no

testimony that any one of the defendants encouraged or desired to encounter Joseph; there is only a conclusory allegation in the Complaint. By contrast, in *Sanke v. Bechina*, a passenger verbally and through physical gestures encouraged a driver to exceed the speed limit and disregard a stop sign, the driver lost control, exploded, and killed one of the other passengers. 216 Ill. App. 3d 962, 963 (2nd Dist. 1991). While Second District found those facts sufficient to plead a claim under § 876, reversing the trial court's dismissal of the claims, here, Plaintiff does not allege similar encouragement to engage in a tortious act though gestures or verbally, and the record is absent of any testimony or evidence to support such a claim. Absent concrete facts to establish a common design or substantial assistance and encouragement to engage in tortious conduct, Plaintiff's claims for negligently acting in concert fail as a matter of law and summary judgment is appropriate.

IV. Plaintiff Cannot Plead Damages Required to Sustain Claims Under the Survival Act.

Each of the claims Plaintiff raises under the Survival Act fails as Plaintiff cannot establish the required element of damages. The Survival Act "allows for recovering of damages for injury sustained up to the time of death." *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, at ¶ 34. It is axiomatic that even if liability can be established in a negligence claim, which it cannot be here, Plaintiff still has the burden to prove injuries and damages to recover. *Bodam v. City of Chicago*, 241 Ill. App. 3d 937, 941 (1st Dist. 1993).

Here, Plaintiff is not claiming pecuniary damages and has limited the Survival Act claims to "conscious pain and suffering after he was shot and before he died." (Compl. ¶¶ 158, 309, 323.) Plaintiff has pled no facts concerning Joseph's alleged pain and suffering, and nothing in the record establishes any such pain and suffering. No witnesses have identified any screaming, crying, or other utterances from Joseph that might indicate he experienced conscious pain or suffering after he was shot. Joseph had already expired when police and paramedics arrived at the scene and therefore did not experience "obvious pain and suffering" after being transported to the hospital.

(Ex. EE at 29:21-30:13; Ex. D 23:4-6.) See, e.g., *Chrysler v. Darnall*, 238 Ill. App. 3d 673, 681 (distinguishing cases of obvious pain and suffering when a plaintiff had skull fracture, concussion, cerebral contusions, and was hospitalized for a week or suffering extensive facial fractures requiring permanent wiring to repair, permanent double vision, and loss of feeling in the face.)

Death does not prove the existence of pain and suffering or damages. Plaintiff must prove that Joseph was conscious before death to recover such damages. *Bardhan v. Northwestern Mem'l Hosp.*, 2026 IL App (1st) 240371-U ¶ 121. Plaintiff has not pled any facts in support of this contention. For example, in *Clarke v. Medley Moving and Storage, Inc.*, both lay witnesses and medical professionals testified that the injured party was awake and trying to speak for 10-15 minutes after an accident. 381 Ill. App. 3d 82, 90 (1st Dist. 2008). Here, however, there is nothing in the record to support a conclusion that Joseph remained conscious or experienced pain or establishing the length of time Joseph may have remained alive after being shot.

V. Plaintiff Cannot Establish Willful and Wanton Conduct (Count 9).

To substantiate allegations of willful and wanton conduct, a plaintiff must allege facts to establish each of the elements of negligence in addition to facts that support a deliberate intention to harm or conscious disregard for a plaintiff's welfare. *Papadakis v. Fitness 19 IL 116, LLC*, 2018 IL App (1st) 170388, ¶ 22 (2018); see also, *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 518 (1989) ("To sufficiently plead willful and wanton misconduct, a plaintiff must allege either deliberate intention to harm or an utter indifference to or conscious disregard for the welfare of the plaintiff."). Willful and wanton conduct is not "mere inadvertence, incompetence, unskillfulness, or a failure to take precautions to enable the actor adequately to cope with a possible or probable future emergency." *Cole v. Chicago Transit Auth.*, 2025 IL App (1st) 230797, ¶ 54, quoting *Burke v. Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 449 (1992). It is conduct that "shocks the conscience." *Pryor v. Chicago Transit Auth.*, 2022 IL App (1st) 200895, ¶ 42.

There are no such facts in the record to support a willful and wanton conduct claim. Smith's actions on September 14 are *not* of the sort that "shock the conscience." Smith acted reasonably based on what he knew at the time. Plaintiff's use of descriptive language such as "falsely," "maliciously," or "with conscious disregard and utter indifference" to make conclusory statements about Smith's actions is insufficient to change the nature of reasonable conduct into deliberate misconduct or reckless disregard for the wellbeing of others. *Adkins* at 519-20 ("[A]n actionable wrong cannot be made out merely by characterizing acts as having been wrongfully done."). In addition to failing to adequately the required heightened state of mind, the record does not support such a finding. Accordingly, summary judgment should be granted for Count 9.

Plaintiff asserts that the following alleged actions constitute "willful and wanton disregard for the safety of Joseph:"

- a. With conscious disregard and utter indifference for JOSEPH's safety, left multiple places of safety to encounter JOSEPH with his firearm.
- b. With conscious disregard and utter indifference for JOSEPH's safety, chose to participate in a posse by going with other residents to encounter JOSEPH.
- c. With conscious disregard and utter indifference for JOSEPH's safety, refused to wait for the police and took it upon himself to act as an armed vigilante.
- d. With conscious disregard and utter indifference for JOSEPH's safety, Defendant SMITH sought to punish JOSEPH.
- e. With conscious disregard and utter indifference for JOSEPH's safety, Defendant SMITH discharged his firearm at JOSEPH five times while JOSEPH was unarmed and dressed only in his bathrobe and underwear, and thus, was not justified." (Compl. at ¶ 205.)

As explained earlier in this brief, these allegations do not amount to acts of negligence. The addition of the conclusory language of "with conscious disregard and utter indifference" to these allegations does nothing to bolster claims of negligence, let alone establish a deliberate intention to harm or show reckless disregard of the safety of Plaintiff. Similarly, characterizing someone as a "vigilante" or alleging that he purportedly sought to punish someone without any facts or record evidence, is insufficient to set forth claim of willful and wanton conduct.

The facts here do not support willful and wanton conduct. None of the record evidence establishing that Smith knew of a danger to Joseph which he consciously disregarded, nor does it amount to a “failure to take precautions to enable the [him] adequately to cope with a possible or probable future emergency.” Rather, the record shows that Smith did take precautionary measures. There were two calls to 911 at this point in time—one by Smith and one by Nena. Calling 911 and informing the doorperson of Joseph’s behavior on the 29th floor were both precautionary measures.

Carrying a concealed gun, as he was licensed to do, was also a precautionary measure for self-defense protection. This action—taken before leaving his unit to go to the lobby, before the decision to go to the 48th floor, before hearing from Nena that he, too, did not think police were coming—does not demonstrate an evil motive, nor was it improper. (Ex. CC at 36-37.) Nor is there an evil motive demonstrated by Smith escorting the Bishopps to the 48th floor. It does not demonstrate that Smith wanted to act as the police or as an “armed vigilante,” nor that he wanted to punish Joseph.³ When on the 48th floor, there is uncontroverted testimony that Joseph was yelling and pounding on doors or walls. (Ex. L at 31:23-32:18, 86:1-88:20; Ex. M at 10:9-4; Ex. FF at 45:16-46:24; Ex. GG.) The evidence is uncontroverted that Joseph was the initial aggressor and attacked both Nena and Clement before assaulting and battering Smith. (Ex. I at 13-14, 19.) Smith yelled for Joseph to stop hitting people and warned him he had a gun—these are appropriate, cautionary measures taken by Smith, showing due regard for Joseph’s safety. Smith did not draw his weapon until Joseph had already violently attacked two others, charged at Smith, and Smith feared for his life. (Ex. B at 59:10-12: “Joseph had already attacked multiple people before I pulled

³ Plaintiff relies on its counsel’s own outlandish leading questions during a discovery deposition to create the conjecture that Joseph spit on Smith’s door and Smith was angry, so he sought revenge. (“Q: You told the police that you killed Abnerd Joseph because he spit on your door, right? A: “That’s categorically false.” Ex. B at 94:8-12.)

my firearm.”; Ex. I at 19: “it is apparent that Smith believed that shooting Joseph was necessary to prevent the imminent infliction of great bodily harm or death. . . Smith’s use of deadly force was reasonable.) Joseph continued to advance on Smith while Smith was shooting, and Joseph tackled Smith to the ground. As Joseph was still moving after being shot, Smith and the others immediately took the elevator to the lobby where Smith immediately called 911 to report the shooting and get medical assistance for Joseph. This was a reasonable action under the circumstances. (Ex. CC at 35: “After Smith shot Joseph, it would have been unsafe and inadvisable for Smith. . . to attempt to approach Joseph to render first aid . . . There was no way to know whether he might resume his attack. . . no way of knowing whether Joseph might be armed with one of more weapons in addition to his personal weapons.”; *Id.* at 34-37.) There are no facts and no record evidence that Smith acted recklessly or with utter indifference to the safety of Joseph.

Additionally, Plaintiff again seeks damages for willful and wanton conduct for what it describes as “horrific emotional and physical pain before his death.” (*See e.g.*, Compl. ¶ 206.) Plaintiff has invoked the Dead Man’s Act to try to exclude certain key testimony and evidence of conversations and events involving Joseph on September 14, 2023. Plaintiff’s contention lacks support. All evidence and testimony of what transpired on the 48th floor, including any purported substantiation of “emotional and physical pain” would be barred by the same act, if Plaintiff is permitted to invoke it. Speculation and conjecture is not sufficient to support a claim of damages.

The uncontroverted evidence in this case supports Smith’s position and shows no deliberate intention to harm Plaintiff, nor does it establish a conscious disregard for Plaintiff’s safety. Plaintiff’s willful and wanton allegations are based purely on speculation and conjecture. “[U]nsupported conclusions, opinions, and speculation are insufficient to raise a genuine issue of material fact. *Valfar v. Evanston Northwestern Healthcare*, 2016 IL 119220, at ¶ 20. Simply put,

there are no facts to support a willful and wanton count against Smith, let alone a genuine issue of material facts, and summary judgment should be granted.

WHEREFORE, for the foregoing reasons, Defendant Garrett Smith respectfully requests that this Court enter an order granting Smith's motion for summary judgment, and granting any other relief the Court deems just and equitable under the circumstances.

Dated: October 16, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 16, 2026, a copy of the foregoing was filed with the Clerk for the Circuit Court of Cook County, Illinois, through the Odyssey eFileIL system, which will serve all counsel of record.

Date: October 16, 2026

By: s/ Karolina Peza