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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, LEGACY AT MILLENNIUM PARK CONDOMINIUM ASSOCIATION, DEBORAH ROMERO, DOMINIC TEDALDI, GARRETT MARK SMITH, YOUNAN "JONAH" NENA, ANDREW CLEMENT, ROBERT JOHN BISHOPP, JR., and NATALIE BISHOPP, *Defendants*.	Case No. 2024-L-005346 Calendar D Jury Trial Demanded

SMITH'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO ADD PRAYER FOR PUNITIVE DAMAGES

John J. Scharkey
Robert D. Sweeney
Michael H. King
Erin I. Wenger
SWEENEY SCHARKEY LLC
230 West Monroe Street, Suite 1500
Chicago, Illinois 60606
Tel. (312) 384-0500

--and—

William H. Hooks
Hooks Law, P.C.
The Barclay Building
3525 South King Drive
Chicago, Illinois 60653
Tel. (224) 553-5252

Counsel for Garrett M. Smith

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Defendant Garrett Smith ("Smith"), by and through his undersigned counsel, submits the following opposition to Plaintiff's Motion for Leave to Add Prayer for Punitive Damages, and states the following in support:

I. INTRODUCTION

Plaintiff has taken the sprawling accusations in its shotgun style complaint and fashioned them into one single, thirty-seven-page group motion seeking to add punitive damages claims against three of the nine defendants in this matter – Sudler and Company d/b/a Sudler Property Management ("Sudler"), the Legacy at Millennium Park Condominium Association ("Legacy"), and Smith. Much like its strategy with the complaint, using this approach in a motion seeking to add punitive damages claims results in stringing together multiple baseless factual allegations against each party with an inadequate connection between the specific defendants and alleged wrongdoing, if any at all. Plaintiff muddies the issues before the Court through a vague narrative based primarily on speculation, and attempts to have the actions of one party be imputed to all other actors. Despite the smoke and mirrors, Plaintiff fails to meet the threshold of what is required to plead willful and wanton conduct against Smith. More importantly, the "facts" Plaintiff invokes in support of its position are inaccurate and often just dressed up in descriptive, conclusory language—something that the Illinois courts have repeatedly held is inadequate to establish willful and wanton conduct. (*See* Smith's Combined Partial Mot. for Dismissal at 5-7, 10-13.)

Moreover, Plaintiff's request is untimely. The statute addressing punitive damages mandates that a motion for leave to add such a claim be filed within thirty days of the close of discovery. 735 ILCS 5/2-604.1. Plaintiff did not file its motion seeking leave to add a punitive damages claim until July 13, 2026. Fact discovery closed on April 30, 2026. The logic behind this thirty-day limit is clear as parties approach trial – the reopening of discovery for punitive damages and forcing the defendants to restructure trial strategy at a late stage is unduly prejudicial.

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Furthermore, there is no reason for the delay by Plaintiff, nor has Plaintiff offered one. Plaintiff surely knew the parties from whom it would seek punitive damages when it filed the Third Amended Complaint in September 2025, as it had already requested relief in the form of punitive damages without the Court's permission in that pleading, and again in the fourth amended complaint, despite those requests being prohibited in pleadings alleging negligence in Illinois. (*See* Third Am. Compl. at 25-33; Fourth Am. Compl. at 29-33.) 735 ILCS 5/2-604.1; *Loitz v. Remington Arms Co., Inc.*, 138 Ill. 2d 404, 417 (1990). Additionally, all (but one) of the depositions and documents cited in the allegations against Smith were taken in 2025.[1] Plaintiff's treatment of the rules and law as optional should not be countenanced, and its motion should be denied.

II. LEGAL STANDARD

Punitive damages are not available absent specific statutory authority, and they have historically been unavailable to plaintiffs who assert claims under the Wrongful Death Act or Survival Act in Illinois. *See Marston v. Walgreen Co.*, 389 Ill. App. 3d 337, 344-45 (1st Dist. 2009). Notably absent from Plaintiff's motion is any specific statutory authority permitting punitive damages for the claims asserted in this case, and Plaintiff's motion should be denied on that basis. However, Plaintiff will likely argue that this flaw can be remediated in its reply brief, so it is presumed that Plaintiff will cite to the 2023 amendments to the Wrongful Death Act and Survival Act. *See* 740 ILCS 180/1; 755 ILCS 5/27-6. These amendments to permit punitive damages, however, are unconstitutional because they violate the "three-readings rule" of the

[1] The one exception is Smith's second deposition, which was to be limited to the issues in Case No. 2024L010547 involving a defamation compliant filed by Smith. Despite this limitation, for the majority of the second deposition, defense counsel in that matter and Plaintiff's counsel in the instant matter revisited and repeated topics from Smith's first deposition, resulting in Smith being subjected to nearly *eleven* hours of deposition questioning despite the three-hour rule in Illinois. The two references to testimony from Smith's second deposition are not quotes and are topics also covered in his first deposition.

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Illinois Constitution, which requires that "[a] bill shall be read by title on three different days in each house." Ill. Const. Art. IV, § 8(d). The legislative record is unequivocal: the 2023 amendments to the Wrongful Death Act and Survival Act were not "read by title on three different days in each house." This fatal defect renders the 2023 amendments unconstitutional and thus without force. Absent constitutionally sound legislative or statutory authority for Plaintiff's punitive damages request, the requested relief request must be denied.

Even where there is statutory authority permitting a plaintiff to seek punitive damages, punitive damages are disfavored in Illinois and there is no presumed entitlement to punitive damages. "Punitive damages are not awarded for mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence." Restat. 2d of Torts § 908, comment b, at 465; *Parsons v. Winter*, 142 Ill. App. 3d 354, 361 (1st Dist. 1986); *Cress v. Recreation Services, Inc.*, 341 Ill. App. 3d 149, 182 (2nd Dist. 2003). Plaintiff must satisfy the procedural and substantive requirements before filing such a claim, and must establish facts that will show by "clear and convincing" evidence that the individual defendant's acts were committed with fraud, actual malice, deliberate violence or oppression, willfulness, or wanton disregard of the rights of others. *Parsons* at 360; 735 ILCS 5/2-1115.05(b). 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).

Therefore, Plaintiff's evidence must leave no reasonable doubt that the alleged conduct is "outrageous, either because the defendant's acts are done with an *evil motive* or because they are *done with reckless indifference to the rights of others*." Restat. 2d of Torts § 908, comment b, at 464-65 (emphasis added); 735 ILCS 5/2-1115.05(b); *see also, Adkins v. Sarah Bush Lincoln*

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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.") But Plaintiff has not met this threshold. Plaintiff's use of descriptive language such as "recklessly" or "maliciously" to recharacterize allegations of negligence does not meet this evidentiary bar and is "pure meaningless conclusion" by the plaintiff. *Adkins* at 519-20. (*See* Fourth Am. Compl. at 29-33.) There is no record of a deliberate intention to harm or an utter indifference to or conscious disregard of Plaintiff's decedent. The Court may therefore appropriately deny the motion for leave on this basis as the evidence does not substantiate the level of "evil motive" or "reckless indifference" required to justify punitive damages. *See e.g., Bachman v. General Motors Corp.*, 332 Ill. App. 3d 760, 804-05 (4th Dist. 2002).

III. PLAINTIFF'S "FACTUAL BACKGROUND" IS INSUFFICIENT TO SUPPORT A CLAIM FOR PUNITIVE DAMAGES AGAINST SMITH.

Contrary to Plaintiff's assertions, the allegations against Smith do not constitute "overwhelming evidence" that Smith engaged in willful and wanton conduct or justify punitive damages. Plaintiff contends that Smith: chose to leave his unit carrying a concealed handgun that he was licensed—and permitted by Illinois law—to carry (and routinely carried in daily activities); left his condominium unit to go to the building lobby after waiting until he could no longer hear Joseph on his own floor, after he had called 911 and the building's front desk; told Nena that he had a concealed carry license; escorted an elderly couple back to the floor of their home where Joseph attacked Smith, Nena, and Clement; shot Joseph in self-defense and in defense of others; and allegedly failed to render aid to his attacker. (Pl.'s Mot. at 2.) Nothing in Plaintiff's narrative rises to the level of egregiousness required to establish a deliberate intention to harm or reckless disregard for the rights of others on the part of Smith when the facts and evidence are considered.

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A. The Knowledge of Other Defendants is Not Attributable to Smith.

Plaintiff undergirds its motion with a "factual background" section that is a mishmash of testimony from various individuals and distorted, speculative commentary about their actions, pieced together in an apparent attempt to attribute actions and knowledge of *others* to Smith. This is improper to substantiate a claim for punitive damages against Smith. Plaintiff must establish that *Smith* knew or that *Smith* should have known under the circumstances "that his conduct posed a high probability of serious physical harm to others" or the *Smith* had a deliberate intention to harm someone else. *Pomrehn v. Crete-Monee H.S. Dist.*, 101 Ill. App. 3d 331, 334-35 (3rd Dist. 1981), citing *Booker v. Chicago Bd. of Educ.*, 75 Ill. App. 3d 381 (1st Dist. 1979). But Plaintiff has failed to make that threshold showing. It is *Smith's* state of mind at the time of the alleged breach of duty that is relevant for evaluating whether punitive damages claims against Smith are warranted and proper. *Pendowski v. Patent Scaffolding Co.*, 89 Ill. App. 3d 484, 492 (1st Dist. 1980).

Plaintiff references, for example, that Robert Bishopp testified he was aware that Chicago Police Department "decoy cops were stationed around the city" and, at that time, Mr. Bishopp understood there would regularly be one at a nearby intersection of Madison and Wabash. (Exhibit A, R. Bishopp Tr. at 39:1-16.) Plaintiff characterizes this testimony, without evidence, as a factual statement that police were "permanently nearby on Michigan and Wabash"[2] to suggest that residents, including Smith, and employees of the Legacy building should all know this. (Pl.'s Mot. at 4.) Rubbish. Not only is this statement unsupported by testimony, but it is also not the knowledge of Smith. Moreover, even if it were a fact—which it is not—had Smith known this information—which he did not—getting assistance from any officers outside the building on another street would

[2] Michigan Avenue and Wabash are parallel streets.

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have required Smith to leave his unit and go to the lobby, two of the very things that Plaintiff complains about.

Plaintiff argues that Nena received multiple calls from residents about Joseph running around hallways, acting "crazy" to somehow impute—and create a broad impression of—this so-called knowledge among all defendants, including Smith. (Pl.'s Mot. at 3-4.) This argument fails for multiple reasons. Plaintiff cannot establish that Smith knew the volume, content, or even nature of the calls that Nena received that night. Other than Smith's own attempt at calling Nena, Nena's knowledge is Nena's knowledge alone. Plaintiff has not—and cannot—establish that Smith knew there were calls to the front desk reportedly coming from multiple floors and other residents in the building. At the time he arrived in the lobby, Smith's only knowledge of Joseph's behavior was what he witnessed himself on the 29th floor—an unknown man, yelling and pounding on Smith's door with such force that Smith feared Joseph might break his door down, and Smith believed that man was likely under the influence of drugs. (Exhibit B, Smith Tr. I at 98: 8-16, 128:14-129:23; Ex. A, R. Bishopp Tr. at 15:1-16, 16:23-17:9; Exhibit C, July 23, 2025 Case Suppl. Report at 19; Exhibit D, Toxicology Report.)

Smith's actions, based on what he knew of his own call to the front desk and Joseph's behavior, were not unreasonable and were certainly not egregious or malicious. Smith waited to exit his unit until Joseph—who was unknown to Smith that the time—could no longer be heard on his floor, and Smith verified that Joseph was no longer in the hallway when he cautiously opened his door. (Ex. B, Smith Tr. I at 86:4-6, 88:5-8, 103:7-15.) Smith also spoke with two other people in the hallway before proceeding to the lobby—Hamilton Steele, an employee, and James Delelio, another resident. (Ex. B, Smith Tr. I at 143:3-17; Exhibit E, Interview Room 3 Video at 21:58-22:03.) Knowing what *Smith* knew, Smith's conduct is simply not representative of reckless or

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malicious behavior and does not show a high probability of harm or intention to harm others.

B. Plaintiff Fails to Show Reasonable Likelihood of Finding that Smith Engaged in Outrageous Behavior or Showed Reckless Disregard for Others.

The testimony and evidence in this case do not support that finding of a deliberate intention to harm or conscious disregard for the welfare of others; rather, the deposition testimony establishes the opposite. Based on the circumstances that confronted Smith and his reaction to those particular circumstances, Smith's actions cannot be said to be willful and wanton conduct, or, in other words, the sort that "shocks the conscience." *Pryor v. Chicago Transit Authority*, 2022 IL App (1st) 200895, ¶ 42. Smith acted cautiously, reasonably, and out of concern for his safety and the safety of others. Smith did not set out with a deliberate intention to harm Plaintiff, nor did he demonstrate a conscious disregard for the rights or safety of others. Plaintiff has no contrary evidence. The uncontroverted testimony establishes that Smith was confronted by an extremely aggressive individual (Joseph) who had already savagely attacked two other residents (Nena and Clement), including hitting one (Clement) with such force as to render him unconscious, and who turned to attack him (Smith) and possibly others (the Bishopps), and that Smith feared that he and others were in imminent danger of death or serious bodily harm. (Ex. B, Smith Tr. I at 238:14-19, 239:13-15, 250:3-6, 283:16-284:18; Exhibit F, Clement Tr. 133:15-134:23, 137:7-14, 142:20-143:2, 143:23-144:5; Exhibit G, Nena Tr. I at 73:16-76:12; 77:22-81:24.) Simply put, there are no facts to support a willful and wanton count against Smith.

1. Smith Called 911 on Two Occasions.

Plaintiff alleges that Smith understood that police were dispatched when he called 911 and he should have just stayed in his unit to wait for the police to arrive. This is false and Plaintiff offers no facts to support the allegation. Smith called 911 from his condominium to report that someone was trying to break into his home, which was coded as a disturbance or criminal trespass

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by the Chicago Office of Emergency Management and Communications—not something characterized by violence or urgency. (Exhibit H, Gilliland Tr. at 21:2-8; 29:19-24; Exhibit I, OEMC Report at 9-10.) While Smith testified that the 911 operator stated police would be sent, the operator did not indicate how long that would take, nor did the operator say that the police were "on their way."

Smith's testimony reflects that he had the reasonable belief that police were not, in fact, "on their way" given his conversations with police officers who told him that unless there is violence in progress, police would not respond to a single 911 call in Chicago. (Ex. B, Smith Tr. I at 91:14-17, 92:10-16. 113:13-15, 115:17-24.) Nena similarly expressed his opinion that police were not coming, as did Mr. Bishopp. (Ex. G, Nena Tr. I at 167:10-16; Ex. A, R. Bishopp Tr. at 20:16-24, 21:15-23; Ex. B, Smith Tr. I at 175:1-6.) This belief is supported by activities on the following day, September 15, 2023, when police were called because two of Joseph's brothers were in the lobby and threatened to "shoot up" the building. (Exhibit J, De La Cruz Tr. at 88:14-89:10.) On that day, the building's panic alarm was triggered just after 6:00 p.m. and was coded as a "1A" priority, the same priority given to the shooting on September 14, 2023, but police did not arrive until 8:55 p.m. on September 15—nearly three hours after the panic alarm was triggered. (Ex. I, OEMC Report at 21-25, 37-38; Exhibit K, Sept. 15, 2026 Incident Report.)

Officers who were in the area of the building on September 14, 2023, and who were assigned to units that respond to higher priority 911 calls for "in progress" crimes like robbery, drugs, guns, and the like, testified that they had not been dispatched after Smith's initial 911 call, but several were driving in the area or engaged in a traffic stop until call of "shots fired" was heard. (Ex. H, Gilliland Tr. at 19:21-21:19; Exhibit L, Islas Tr. at 14:19-15:10, 16:23-18:5, 20:9-22:7; Exhibit M, Salmeron Tr. at 18:2-10.) Even the police testified that no one had been dispatched

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prior to the 911 call that shots had been fired. (Ex. H, Gilliland Tr. at 21:18-19.) Moreover, Plaintiff has not and cannot establish that there is a legal duty on the part of a condominium unit owner to stay in his unit just because he has called 911 to report a trespasser. Absent a duty and breach of that duty, there can be no recovery of damages, let alone the extraordinary remedy of punitive damages.

2. Smith Exercised Caution When Leaving His Unit and Was Under No Duty to Stay in Place.

Plaintiff claims that Smith "left a place of safety" when he left his condominium to go to the first-floor lobby. Even if there were a legal duty to essentially shelter in place when an individual is yelling in a hallway and pounding on your door—which there is not and Plaintiff has failed to identify one—Plaintiff glosses over the fact that Smith waited until he could no longer hear Joseph in the hallway and carefully opened his door. (Ex. B, Smith Tr. I at 85:20-86:6, 103:7-15.) Seeing no one, Smith exited his unit and thereafter interacted with a neighbor, James Delelio, who had also exited his own unit, and a maintenance worker, Hamilton Steele, who rode the elevators upstairs from the lobby to the 29th floor to check on the noise disturbance calls that had come into the front desk. (Ex. B, Smith Tr. I at 110:17-112:24; Exhibit N, Delelio Tr. at 40:14-17.) Smith did not exit his unit to "pursue his neighbor," nor is there any evidence—deposition testimony or otherwise—of this meritless speculation by Plaintiff. (Pl.'s Mot. at 35.) Two other individuals were in the hallway with Smith, and Joseph was nowhere to be seen.

There is nothing inherently willful or wanton about a resident of the building leaving his private residence and entering the common areas of his own property to determine what was occurring. Leaving his unit was not an act of negligence, Smith was not trespassing, he was not committing a crime, and he was not acting with reckless disregard for the rights of another. Smith was lawfully present in the common areas of his home after contacting law enforcement. Similarly,

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going to the lobby, another common area of his building, is not an action sounding in negligence or one that demonstrates deliberate intention to harm or an utter indifference to or conscious disregard for the welfare of the plaintiff. These are simply not egregious behaviors. Moreover, the lobby video shows there were other residents and visitors in the building who were freely coming and going. (Exhibit O, Lobby Video; Exhibit P, N. Bishopp Tr. at 118:2-119:22.) It was therefore not unreasonable—let alone reckless—for Smith to wait until Joseph left the 29th floor and then proceed to the lobby with Mr. Steele where there were many other individuals taking the elevators and transversing the lobby area. Plaintiff has offered no authority to suggest a duty under *any* of these circumstances. There is none.

3. Smith Carried a Handgun Responsibly and in Compliance with Illinois Law.

The fact that Smith chooses to carry a handgun outside his home in a manner that complies with his concealed carry license ("CCL") is consistent with the law as interpreted by the Illinois Supreme Court and the Supreme Court of the United States. "The Supreme Court has decided that the [second] amendment confers a right to bear arms for self-defense, which is as important outside the home as inside." *People v. Aguilar*, 2013 IL 112116, ¶ 19 (2013), citing *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012). The Second Amendment does not only protect the right to carry a handgun in one's home. *Aguilar*, 2013 IL 112116 at ¶ 20. In *Aguilar*, it was held that:

> "[B]oth [*Heller* and *McDonald*] contain language strongly suggesting if not outright confirming that the second amendment right to keep and bear arms extends beyond the home. Moreover, if *Heller* means what it says, and 'individual self-defense' is indeed 'the central component' of the second amendment right to keep and bear arms, then it would make little sense to restrict that right to the home, as '[c]onfrontations are not limited to the home.' Indeed, *Heller* itself recognizes as much when it states that 'the right to have arms was by the time of the founding understood to be an individual right protecting against both *public* and private violence.'" *Aguilar* 2013 IL 112116 at ¶ 20 (emphasis in original), citing *D.C. v. Heller*, 554 U.S. 570, 593-94, 99 (2008); *Moore*, 702 F.3d at 935-36.

Lawfully carrying a handgun is not evidence of taking the law into one's own hands, as

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Plaintiff contends. Rather, Smith is legally—indeed constitutionally—permitted to carry a handgun outside his home and routinely does so. Exercising this right is not an act of negligence, nor is it a reckless act. Smith did not leave his home lawfully carrying a small handgun with deliberate intention to harm another or in conscious disregard for the rights or safety of others, nor has Plaintiff substantiated such a claim. Indeed, the point of a CCL is self-defense, and self-defense is not evidence of negligence. It is certainly not an act of willful or deliberate indifference.

Smith was not wielding his handgun in an unsafe manner in the presence of others; he was not charged with reckless or aggravated discharge of a firearm. Rather, as the evidence and testimony shows: Smith lawfully carried a handgun and when he and his neighbors were physically assaulted by Joseph, he warned Joseph to stop, told Joseph he had a gun, and after being attacked himself, he shot Joseph in self-defense. (Ex. C, July 23, 2025 Case Suppl. Report at 15; Ex. F, Clement Tr. at 163:12-167:16; Ex. G, Nena Tr. I at 96:7-17; Ex. H, Gilliland Tr. at 42:24-43:4, 62:19-24, 86:4-14; Ex. L, Islas Tr. at 38:1-24; Exhibit Q, Dowling Tr. at 32:23-33:8; Exhibit R, Smith Tr. II at 70:5-8.) The Cook County State's Attorney reached the same conclusion based on its extensive review of the facts and forensic evidence when it elected not to criminally prosecute Smith.

Disclosing to Nena that Smith had a CCL is likewise not something that rises to the level of willful and wanton conduct. In fact, Smith testified that he is cautious and deliberate about the language he uses when disclosing that he has a concealed carry license:

> "I specifically said, I have a CCL. I like that wording because if people know what it means, they know what I'm saying is that I am capable of carrying a concealed firearm. . . I'm not saying that I'm armed, which would sound aggressive and kind of threatening. I'm simply saying, I have a permit to carry a concealed firearm. At no point when we were on the ground floor did I disclose to people that I was carrying a gun. I did, and I said the exact words, I have a CCL." (Ex. B, Smith Tr. I at 154:4-16.)

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"I never said, I have a gun." (Ex. R, Smith Tr. II at 70:1.)

Plaintiff misstates the facts in this case: Smith did not announce to anyone in the lobby that he had a gun, nor did he indicate he would act as an "armed escort" or "armed security guard" to take individuals to the 48th floor. (Ex. A, R. Bishopp Tr. at 25:18-26:14, 35:21-23; Ex. B, Smith Tr. I at 79:1-3; Ex. F, Clement Tr. at 107:24-109:23; Ex. N, Delelio Tr. at 42:7-20; Ex. P, N. Bishopp Tr. at 56:21-57:12; 108:9-15; Ex. R, Smith Tr. II at 69:5-9.) In fact, Natalie Bishopp testified that she did not know Smith had a gun, and even after hearing the sounds of gunshots, she did not know what it was and asked her husband if it was a taser. (Ex. P, N. Bishopp Tr. at 84:23-85:5, 99:2-12, 107:2-11.) To the contrary, Smith testified that there was no plan to "confront Joseph," and Mr. Bishopp testified he would have gone back up to the 48th floor regardless of whether Smith had a handgun. (Ex. B, Smith Tr. I at 54:20-21: "I did not leave my unit to confront Abnerd Joseph"; *Id*. at 152:16-17: "I'm not aware of it being anybody's idea to encounter Joseph."; Ex. A, R. Bishopp Tr. at 69:2-23.) Plaintiff has not offered any evidence to counter this testimony.

Plaintiff also misrepresents what Smith knew about Joseph. Smith did not know Joseph was his neighbor at the time. (Ex. B, Smith Tr. I at 104:5-10.) Smith did not know where Joseph went once Joseph was no longer on the 29th floor. (Pl.'s Mot. at 36.) Smith did not know what caused Joseph's behavior but suspected it could have been drug induced, as did others. (Ex. A, R. Bishopp Tr. at 16:23-17:2; Ex. C, July 23, 2025 Case Suppl. Report at 19; Ex. I, OEMC Report at 9-10.) Additionally, Smith testified that when he got off the elevator on the 48th floor, he exited after Nena and Clement, but not after the Bishopps. (Ex. B, Smith Tr. I at 159:6-160:20, 161:13-162:13.) Mr. Bishopp, however, went in the same direction as Nena, Clement, and Smith. Smith did not know which direction to take to get to the Bishopps' unit, and did not see which direction Mrs. Bishopp travelled as she was behind Smith and the others, so it was reasonable for Smith to

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believe he was heading towards the Bishopps' home upon exiting the elevator. *Id.*

4. Smith's Actions on the 48th Floor Were Reasonable and the Dangerous Situation Was Created by Joseph.

Plaintiff's narrative of what transpired on the 48th floor is inaccurate and conveniently omits that Joseph viciously attacked Nena—a shorter, older male, about 60 years old and not in good physical condition—and Clement—an active, physically fit, 6-foot-4-inch-tall man who Joseph knocked unconscious—before rushing at Smith and attacking him. (Ex. Q, Dowling Tr. at 35:13-36:4, 37:12-38:8.) Smith testified: "Joseph had already attacked multiple people before I pulled my firearm." (Ex. B, Smith Tr. I at 59:11-12). This is confirmed in multiple witnesses' testimony that Nena was struck several times by Joseph, and Joseph knocked Clement unconscious before Joseph went after Smith. (Ex. A, R. Bishopp Tr. at 43:5-23; Ex. F, Clement Tr. at 133:15-134:11, 137:7-139:23; Ex. G, Nena Tr. I at 74:12-19-81:1; Ex. P, N. Bishopp Tr. at 105:11-17; Ex. R, Smith Tr. II at 105:4-7.)

Plaintiff's narrative also omits other critical facts. Smith initially backed away from Joseph, warned Joseph to stop hitting people, and warned that he had a gun prior to shooting, but Joseph was undeterred. (Ex. C, July 23, 2025 Case Supp. Report at 15-16; Ex. G, Nena Tr. I at 81:4-83:16; Ex. R, Smith Tr. II at 62:17-63:2; Exhibit S, Riccio Tr. at 29:19-24, 54:22-55:7.) Smith testified that he thought Joseph had a weapon of some sort given that he knocked Clement unconscious with one strike. (Ex. B, Smith Tr. I at 238:14-19; Ex. E, Interview Room E Video at 22:03-22:07; Ex. R, Smith Tr. II at 75:20-23, 84:21-22, 109:7-16.) Moreover, it would be simple to hide a weapon in a robe pocket or the waistband of boxer shorts.[3] Joseph's clothing choices are irrelevant to the danger posed. Joseph's close friend who spoke with Joseph on the evening of September 14,

[3] *See, e.g.,* https://www.wtvr.com/2018/07/04/anna-mae-blessing-allegedly-killed-son-wanted-to-put-her-in-nursing-home; https://www.koin.com/local/washington-county/man-found-guilty-hiding-fully-loaded-gun-underwear-jail/. (last visited August 27, 2026.)

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2023, testified that it was not unusual for Joseph to be in a bathrobe and he would frequently dress in a robe when at home. (Exhibit T, Beener Tr. at 35:10-13; 87:3-22.)

Plaintiff's description of the lack of stippling on Joseph's body is a red herring. Plaintiff characterizes this as evidence that Joseph was not in "close range" to Smith, but Plaintiff fails to define what "close range" is or what significance that holds. Plaintiff's own expert opines that stippling would be present at a distance of 30 inches or less—*two and a half feet*—roughly the length of a fully extended arm of a six-foot-tall person. (Exhibit U, Branyon Report at 2.) This does not establish that Smith was a "far" distance from Joseph, and it cannot exclude that Joseph's fist or possibly a weapon was easily within striking distance of Smith. Moreover, a distance of over 30 inches, even assuming *arguendo* that Plaintiff's expert's opinion is to be credited, is not a factor indicative of willful and wanton conduct as a matter of Illinois law. *See e.g., Powell-Watts v. City of Calumet City*, 2016 IL App (1st) 151973-U, ¶¶ 38-39 (2016) (finding no utter indifference or conscious disregard for safety and no jury could find willful and wanton conduct where officer reasonably believed deadly force was necessary to prevent imminent death or great bodily harm, shot decedent at distance of eight feet as he was rapidly closing distance between shooter and another officer.)

Additionally, after being attacked by Joseph, Smith, still in shock from the unprovoked attack, moved away from—not toward—Joseph, who at that time was still moving and continued to pose a potential threat. (Ex. R, Smith Tr. II at 104:11-14; 107:1-108:7, 116:2-3.) Smith then immediately took the elevator to the lobby and called 911 to report the shooting as soon as he regained cell phone service. (*Id.* at 121:21-122:16.)

> "After I discharged my weapon, I was very concerned for Joseph . . . after I discharged my weapon and after he tackled me, he retreated. At that point, I retreated with the other four people to the main elevator lobby, and called 911." (Ex. B, Smith Tr. I at 250:13-23.)

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> "I called to get a paramedic at the first opportunity I had." (Ex. R, Smith Tr. II at 117:10-11.)

The "dangerous situation" (Pl.'s Mot. at 37) and the unprovoked attack on the other residents and employee on the 48th floor was, regrettably, created by Joseph himself—a drug user (Ex. T, Beener Tr. at 28:12-13, 29:14-23; 31:20-32:10, 91:13-15, 94:12-95:16; Exhibit V, Shah Tr. at 64:11-65:10), who chose to ingest several illicit substances that evening, yelled, pounded on doors, attempted to enter others' homes, shouted vulgarities and racial slurs at other residents, threatened and committed violent acts against other residents, and created a dangerous situation for himself and others. (Ex. A, R. Bishopp Tr. at 10:9-12, 66:10-17; Ex. B, Smith Tr. I at 80:20-81:23; Ex. D, Toxicology Report; Ex. G, Nena Tr. I at 66:20-67:7, 73:16-78:3, 80:8-81:24; Ex. N, Delelio Tr. at 14:15-16:1, 17:7-18:24, 34:21-35:24; Ex. P, N. Bishopp Tr. at 122:8-22; Exhibit W, Schott Tr. at 42:17-21.)

None of these facts are evidence of an evil intent required to bring a claim for punitive damages from Smith. Willful and wanton conduct requires a showing of "actual or deliberate intent to harm, without legal justification." *Price v. City of Chicago*, 2018 IL App (1st) 161599, ¶ 29 (1st Dist. 2018). Smith reasonably feared death or great bodily harm to himself and others when he was on the 48th floor and witnessed violence against Nena, violence against Clement (who was knocked unconscious), and violence directed at Smith after Smith yelled warnings to stop and that he was armed, all the while knowing that he was potentially the last line of defense for the Bishopps who were nearby.

Smith's actions on September 14, 2023, were reasonable, taken in self-defense, and are insufficient to support a punitive damages claim. Punitive damages serve a purpose not unlike criminal sanctions and are penal in nature (*Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 188 (1978)),

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but notably, the Cook County State's Attorney's Office assessed the totality of the facts and evidence and elected *not* to criminally prosecute Smith.

Smith's conduct was neither outrageous nor reckless. Reckless conduct "must not only be unreasonable, but it must involve a risk of harm to others substantially in excess of that necessary to make the conduct negligent" and the probability that death or substantial physical harm will result from the conduct "must be substantially greater than is required for ordinary negligence." Restat. 2d of Torts § 500. Even if Plaintiff could prove negligence—which it cannot—the threshold required to add a request for punitive damages is plainly not met by the facts in this case. Plaintiff's motion must be denied.

IV. PLAINTIFF'S MOTION SHOULD ALSO BE DENIED FOR LACK OF STATUTORY AUTHORITY.

Awarding punitive damages "must be expressly authorized by the statute on which the cause of action is predicated" or the right to claim those damages ceases upon an injured person's death. *Vincent v. Alden-Park Strathmoor, Inc.*, 241 Ill. 2d 495, 505 (2011). Plaintiffs have only been authorized to seek leave to add claims for punitive damages for wrongful death and survival actions pursuant to statutory amendments as of August 11, 2023. However, those amendments to the Wrongful Death Act and Survival Act contained in HB 219 did not comply with the three-readings requirement in the Illinois Constitution before being signed into law by Governor Pritzker. Therefore, awarding punitive damages under these provisions is unconstitutional.

The Illinois Constitution states:

> "(d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.
>
> Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.

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> A bill expressly amending a law shall set forth completely the sections amended.
>
> The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met." Ill. Const. 1970, Art. IV, § 8(d).

The bill, HB 219, had two readings in the House, once on January 12, 2023, and once on March 16, 2023. As presented at those readings, the bill was intended to amend the Uniform Interstate Depositions and Discovery Act ("UIDDA"), not the Wrongful Death Act or Survival Act. (*See* 2023 Bill Text IL H.B. 219 introduced Jan. 11, 2023.) That version of the bill was then replaced when House Floor Amendment No. 1 to HB 219 was filed on May 16, 2023. The replacement struck the UIDDA provisions and added a bill to amend the Wrongful Death Act and Survival Act to permit punitive damages where they had previously been excluded in the statute; therefore, the first two readings of the bill addressed a proposed amendment to a completely different statute. The amendment was adopted on the same day, as was a subsequent amendment, and the bill moved to the Senate—all on May 16, 2023. The Senate had three readings, the bill passed, and was signed into law on August 11, 2023.[4]

Illinois does follow the enrolled-bill doctrine, which provides that once a bill is certified as having met the procedural requirements by the Speaker of the House of Representatives and President of the Senate, it is presumed that the constitutional requirements have been met. *Friends of Parks v. Chicago Park Dist.*, 203 Ill. 2d 312, 328-29 (2003). However, the enrolled bill doctrine does not apply here because it assumes compliance where there has been none. As recognized in

[4] See e.g., Murphey-Petros, Challenges to the Constitutionality of the Punitive Damages Amendments to the Illinois Wrongful Death Act and Probate Act, Aug. 24, 2023, available at https://www.wilsonelser.com/publications/challenges-to-the-constitutionality-of-the-punitive-damages-amendments-to-the-illinois-wrongful-death-act-and-probate-act; Johnson & Bell, Illinois Amends Wrongful Death and Survival Acts to Allow for Punitive Damages, Aug. 14, 2023, available at https://johnsonandbell.com/illinois-allows-punitive-damages-wrongful-death-survival-actions/. (last visited Aug. 27, 2026.)

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Friends of Parks, "the legislature ha[s] shown remarkably poor self-discipline in policing itself in regard to the three-readings requirement. *Id.* Justices of the Illinois Supreme Court have recognized that the legislature has had repeated failures to comply with constitutional requirements, as here, such that "continued adherence to the enrolled-bill doctrine should no longer be countenanced." *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 99 (Holder White Dissent). Accordingly, the amendments to the Wrongful Death Act and Survival Act that permit punitive damages to be awarded if available are unconstitutional. Therefore, Plaintiff's request to add a prayer for relief of punitive damages lacks statutory authority and the motion should be denied.

WHEREFORE, for the foregoing reasons, Defendant Garrett Smith respectfully requests that this Court enter an order denying Plaintiff's motion for leave to add a prayer for punitive damages against him and granting any other relief the Court deems just and equitable under the circumstances.

Dated: August 28, 2026

Respectfully submitted,

By: s/ Erin I. Wenger

John J. Scharkey
Robert D. Sweeney
Michael H. King
Erin I. Wenger
SWEENEY SCHARKEY LLC
230 West Monroe Street, Suite 1500
Chicago, Illinois 60606
Tel. (312) 384-0500
jscharkey@ssbpartners.com
rsweeney@ssbpartners.com
mking@ssbpartners.com
ewenger@ssbpartners.com
Firm: 62488

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William H. Hooks
Hooks Law, P.C.
The Barclay Building
3525 South King Drive
Chicago, Illinois 60653
Tel. (224) 553-5252
Attorney No. 04737

Counsel for Garrett M. Smith

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CERTIFICATE OF SERVICE

I certify that on August 28, 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: August 28, 2026 By: s/ Erin I. Wenger