Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, D

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Mariyana T. Spyropoulos
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COOK COUNTY, IL
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IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

DELBERT J. CHARLES 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*. STEVEN LEVY, CONSTANTINE "DEAN" ANDREWS, JOHN CARONA, and ASSOCIA, INC., *Respondents in Discovery*.	Case No. 2024-L-005346 Calendar D Jury Trial Demanded

GARRETT M. SMITH'S AMENDED ANSWER TO PLAINTIFF'S FOURTH AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

Defendant Garrett Mark Smith ("Smith"), through his undersigned counsel, for his amended answer and affirmative defenses to Plaintiff's Fourth Amended Complaint at Law,[1] and counterclaim, states as follows:

PARTIES AND JURISDICTION

1. At all times relevant herein, Plaintiff DELBERT J. CHARLES was a resident of

[1] On June 29, 2026, this Court granted Plaintiff's motion to substitute the Administrator of the Estate, but the Fourth Amended Complaint remains the operative complaint. Smith files this amended answer in accordance with the Court's ruling on his motion to dismiss and order to file an amended answer within 14 days of the date of that ruling.

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Fulton County, Georgia.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

2. At all times relevant herein, ABNERD JOSEPH, deceased, was a resident of Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

3. DELBERT J. CHARLES is the Independent Administrator of the Estate of ABNERD JOSEPH, (hereinafter "JOSEPH") deceased, having been appointed on April 11, 2024.

ANSWER: Admit.

4. At all times relevant herein, Defendant THE LEGACY AT MILLENIUM PARK CONDOMINIUM ASSOCIATION (hereinafter "LEGACY") was a domestic corporation existing under the laws of Illinois with its principal place of business in Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

5. At all times relevant herein, Defendant SUDLER AND COMPANY d/b/a SUDLER PROPERTY MANAGEMENT (hereinafter "SUDLER") was a domestic corporation existing under the laws of Illinois with its principal place of business in Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

6. At all times relevant herein, Defendant GARRETT MARK SMITH (hereinafter "SMITH") was a resident of Cook County, Illinois.

ANSWER: Admit.

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7. At all times relevant herein, Defendant DEBORAH ROMERO (hereinafter "ROMERO") was a resident of Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

8. At all times relevant herein, Defendant DOMINIC TEDALDI (hereinafter "TEDALDI") was a resident of Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

9. At all times relevant herein, Defendant YOUNAN "JONAH" NENA (hereinafter "NENA") was a resident of Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

10. At all times relevant herein, Defendant ANDREW CLEMENT (hereinafter "CLEMENT") was a resident of Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

11. At all times relevant herein, Defendant ROBERT JOHN BISHOPP, JR. (hereinafter "ROBERT BISHOPP") was a resident of Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

12. At all times relevant herein, Defendant NATALIE BISHOPP was a resident of Cook County, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the

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allegation.

13. Pursuant to the Illinois Code of Civil Procedure and the Rules of the Illinois Supreme Court, this matter is properly before the Circuit Court of Cook County, Illinois because the conduct complained of herein occurred in Cook County, Illinois.

ANSWER: The allegation calls for a legal conclusion to which no response is required. To the extent a response is required, Smith denies the allegation.

FACTUAL ALLEGATIONS

14. On September 14, 2023, and prior thereto, 60 East Monroe Street was a 75-story high rise mixed use/condominium building in the City of Chicago.

ANSWER: Smith admits that the Legacy was a high-rise condominium building in the City of Chicago on September 14, 2023, but lacks sufficient knowledge to form a belief as to the truth of the remaining allegation.

15. The aforesaid property's common elements and areas were owned by Defendant LEGACY at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

16. The aforesaid property's common elements were operated by agents and employees of Defendant LEGACY at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

17. The aforesaid property's common elements were controlled by agents and employees of Defendant LEGACY at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the

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allegation.

18. The aforesaid property's common elements were maintained by agents and employees of Defendant LEGACY at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

19. On the aforesaid date and at all times relevant prior thereto, Defendant SUDLER was the property manager for the aforesaid property.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

20. The aforesaid property's common elements were maintained by agents and employees of Defendant SUDLER at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

21. The aforesaid property's common elements were operated by agents and employees of Defendant SUDLER at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

22. The aforesaid property's common elements were controlled by agents and employees of Defendant SUDLER at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

23. Defendant SUDLER and Defendant LEGACY entered into a contract for Defendant SUDLER to be the property manager for the aforesaid property, which was in effect

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on September 14, 2023, and at all times relevant prior thereto.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

24. As property manager for said property, at all times relevant, Defendant SUDLER agreed to train all Defendant LEGACY employees at 60 East Monroe Street, including Defendant NENA.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

25. As property manager for said property, at all times relevant, Defendant SUDLER agreed to manage all Defendant LEGACY employees at 60 East Monroe Street, including Defendant NENA.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

26. As property manager for said property, at all times relevant, Defendant SUDLER agreed to supervise all Defendant LEGACY employees at 60 East Monroe Street, including Defendant NENA.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

27. On September 14, 2023, and at all times relevant, Defendant ROMERO was acting as an agent and/or employee of Defendant SUDLER and/or Defendant LEGACY.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

28. On September 14, 2023, and at all times relevant, Defendant ROMERO was

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acting within the scope of her employment.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

29. On September 14, 2023, and at all times relevant, Defendant TEDALDI was acting as an agent and/or employee of Defendant SUDLER and/or Defendant LEGACY.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

30. On September 14, 2023, and at all times relevant, Defendant TEDALDI was acting within the scope of his employment.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

31. On September 14, 2023, and at all times relevant, Defendant NENA was acting as an agent and/or employee of Defendant SUDLER and/or Defendant LEGACY.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

32. On September 14, 2023, and at all times relevant, Defendant NENA was acting within the scope of his employment.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

33. On September 14, 2023, and at all times relevant prior thereto, decedent JOSEPH was a resident of 60 East Monroe Street, Chicago, Illinois.

ANSWER: Smith admits that Joseph was living at the Legacy on September 14, 2023, but lacks knowledge sufficient to form a belief as to the truth of the remaining allegation and

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therefore denies the remaining allegation.

34. On September 14, 2023, and at all times relevant prior thereto, Defendant SMITH was a resident of 60 East Monroe Street, Chicago, Illinois.

ANSWER: Admit.

35. On September 14, 2023, and at all times relevant prior thereto, Defendant CLEMENT was a resident of 60 East Monroe Street, Chicago, Illinois.

ANSWER: Smith admits that Andrew Clement was living at the Legacy on September 14, 2023, but lacks knowledge sufficient to form a belief as to the truth of the remaining allegation and therefore denies the remaining allegation.

36. On September 14, 2023, and at all times relevant prior thereto, Defendant ROBERT BISHOPP was a resident of 60 East Monroe Street, Chicago, Illinois.

ANSWER: Smith admits that Robert Bishopp was living at the Legacy on September 14, 2023, but lacks knowledge sufficient to form a belief as to the truth of the remaining allegation and therefore denies the remaining allegation.

37. On September 14, 2023, and at all times relevant prior thereto, Defendant NATALIE BISHOPP was a resident of 60 East Monroe Street, Chicago, Illinois.

ANSWER: Smith admits that Natalie Bishopp was living at the Legacy on September 14, 2023, but lacks knowledge sufficient to form a belief as to the truth of the remaining allegation and therefore denies the remaining allegation.

38. On September 14, 2023, and at all times relevant, Defendant SUDLER held itself out to the public as providing the highest level of resident safety and security for condominiums in Chicago.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the

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allegation.

39. At the aforesaid time and place, pursuant to its contract with Defendants LEGACY and SUDLER agreed to "furnish the management services of its management organization, to conduct the management of the condominium as provided in the agreement and to use its best efforts to operate the condominium as a first class-owner-occupied condominium Apartment building within the policy guidelines and financial budget provided by the Association's Board of Directors."

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

40. Pursuant to the condominium management agreement, "the obligation and responsibility to provide security or security services for the condominium shall be solely that of the Defendant LEGACY Board and Association."

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

41. At all times relevant herein, Defendant LEGACY held itself out as providing the highest level of safety and security to its residents as a luxury high rise condominium in Chicago.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

42. Defendant SUDLER was contractually required to submit the annual budget for the safe operation of the property to Defendant LEGACY on an annual basis, pursuant to the condominium management agreement.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

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43. Defendant SUDLER was obligated to properly supervise and train all personnel, required to safely maintain, operate, and manage the property for the safety of the residents, including decedent JOSEPH, pursuant to the aforesaid contract.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

44. Pursuant to the aforesaid contract, all personnel responsible for the safety and security of the 60 East Monroe Street residents were to remain employees of Defendant LEGACY, with the exception of the Defendant SUDLER on site manager, Defendant ROMERO, and her office personnel.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

45. Despite Defendant SUDLER contracting and receiving payment to provide security for residents of 60 East Monroe, Defendant SUDLER is not a security company, and is not licensed as a security company.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

46. Despite Defendant SUDLER contracting and receiving payment to provide security for residents of 60 East Monroe, Defendant SUDLER did not provide any resources to its agents and/or employees for security guard training.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

47. Despite Defendant SUDLER contracting and receiving payment to provide security for residents of 60 East Monroe, Defendant SUDLER never provided any training for

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agents and/or employees to act as security guards.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

48. Defendant SUDLER hired all the Defendant LEGACY employees responsible for providing for the safety and security of JOSEPH and all the 60 East Monroe Street residents on September 14, 2023, and at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

49. Defendant SUDLER supervised all the Defendant LEGACY employees responsible for providing for the safety and security of decedent JOSEPH and all the 60 East Monroe Street residents on September 14, 2023, and at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

50. Defendant SUDLER managed all the Defendant LEGACY employees responsible for providing for the safety and security of decedent JOSEPH, and all the 60 East Monroe Street residents on September 14, 2023, and at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

51. Defendant SUDLER trained all the Defendant LEGACY employees responsible for providing for the safety and security of decedent JOSEPH and all the 60 East Monroe Street residents on September 14, 2023, and at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

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52. Defendant LEGACY employed all the 60 East Monroe Street staff responsible for providing for the safety and security of JOSEPH, and all the 60 East Monroe Street residents on September 14, 2023, except Defendant ROMERO and her staff.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

53. Defendant ROMERO was the property manager for Defendant SUDLER on site at 60 East Monroe Street, from 2014 through September 14, 2023, and at all times relevant.

ANSWER: Smith admits that Deborah Romero was the property manager on September 14, 2023, but Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

54. Defendant TEDALDI was the assistant property manager for Defendant SUDLER on site at 60 East Monroe Street, from 2014 through September 14, 2023, and at all times relevant.

ANSWER: Smith admits that Dominic Tedaldi was the assistant property manager on September 14, 2023, but Smith lacks knowledge sufficient to form a belief as to the truth of remainder of the allegation and therefore denies the remainder of the allegation.

55. Defendants ROMERO and TEDALDI were employees of Defendant SUDLER who were responsible to make sure that the doormen and/or front desk associates, including Defendant JONAH NENA understood their job descriptions.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

56. Defendants ROMERO and TEDALDI were responsible for training the front doormen and/or front desk associates and other employees of Defendant LEGACY that were

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responsible for providing for the safety and security of JOSEPH, deceased, and all the 60 East Monroe Street residents on September 14, 2023, and at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

57. Defendants ROMERO and TEDALDI were responsible for supervising the front doormen and/or front desk associates and other employees of Defendant LEGACY that were responsible for providing for the safety and security of JOSEPH, deceased, and all the 60 East Monroe Street residents on September 14, 2023, and at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

58. Defendants ROMERO and TEDALDI were responsible for managing the front doormen and/or front desk associates and other employees of Defendant LEGACY that were responsible for providing for the safety and security of JOSEPH, deceased, and all the 60 East Monroe Street residents on September 14, 2023, and at all times relevant.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

59. Defendants ROMERO and TEDALDI did not provide any security training for the front doormen and/or front desk associates and other Defendant LEGACY employees who were responsible for the safety and security of JOSEPH, deceased, and all the 60 East Monroe Street residents.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

60. Defendant SUDLER did not provide any security training for the front doormen

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and/or front desk associates and other Defendant LEGACY employees who were responsible for the safety and security of JOSEPH, deceased, and all the 60 East Monroe Street residents.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

61. The front doormen and/or front desk associates hired by Defendants ROMERO, TEDALDI and/or SUDLER, were not previously or properly trained in safety and security at 60 East Monroe Street, Chicago, Illinois.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

62. Defendant LEGACY did not retain or employ any front doormen and/or front desk associates or any staff who had been trained in security or providing for resident safety of the 60 East Monroe Street residents on September 14, 2023.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

63. Defendant SUDLER did not require front doormen and/or front desk associates and other staff responsible for resident security and safety to receive union safety and security training prior to September 14, 2023.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

64. On September 14, 2023, Defendant SUDLER did not hire licensed security staff for resident safety and security, as required by 225 ILCS 447/10-5.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

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65. Defendant LEGACY did not require front door personnel and other staff responsible for resident security and safety to attend union safety and security training.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

66. On September 14, 2023, Defendant LEGACY did not employ licensed security staff for resident safety as required by 225 ILCS 447/10-5.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

67. On September 14, 2023, Defendant NENA did not possess union safety or security training, or licensing as required by 225 ILCS 447/10-5.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

68. On and prior to September 14, 2023, Defendant NENA had not received any training in resident safety or security, nor was he licensed as required by 225 ILCS 447/10-5.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

69. Pursuant to Chicago Municipal Code Section 13-196-204, the property at 60 East Monroe Street was required to have an emergency communication system for the building to communicate emergency instructions to the residents.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

70. Employees and agents of Defendant SUDLER and Defendant LEGACY were required to train Defendant NENA to operate the emergency communication system.

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ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

71. Defendant SUDLER, by and through its agents and employees, knew that Defendant NENA was not capable of operating the resident emergency notification system and chose not to attempt to train him when they left him solely in charge of and responsible for the safety and security of 75 floors and approximately 800 residents for an eight hour shift, beginning at 7:00 p.m. on September 14, 2023.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

72. The safe custom and practice for residential condominium building property management companies is to instruct building personnel that, after 911 had been called, they should wait for the police to arrive and not engage the threat or investigate further.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

73. Defendant SUDLER by and through its agents and employees, and Defendant ROMERO trained Defendant NENA, and other 60 East Monroe Street staff responsible for the security and safety of residents, to disregard safe industry custom and practice and to confront hazardous individuals, investigate and assess, after the police had been called, rather than to wait for the police to arrive.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

74. On September 14, 2023, starting at approximately 7:14 p.m., Defendant NENA began to receive phone calls from residents stating they had called 911 due to a person acting in

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a "crazy" manner who was running around in a bathrobe, pounding on doors, and screaming, and that they were frightened for their safety.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

75. JOSEPH, decedent, was experiencing a mental health crisis on September 14, 2023, at approximately 7:14 p.m. and for a short time prior thereto.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

76. JOSEPH, decedent, was the resident being described by residents to Defendant NENA as acting in a "crazy" manner at the aforesaid time and date.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

77. Defendant NENA responded to the complaints from residents by calling 911 requesting police presence at 60 East Monroe Street due to this threat.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

78. Defendant SMITH, a resident of Defendant LEGACY and neighbor of JOSEPH on the 29th floor, was one of the residents who called 911 from the safety of his unit on the 29th floor, claiming to be afraid of JOSEPH who was acting in a "crazy" manner in the hallway.

ANSWER: Smith admits that he lived on the 29th floor of the Legacy and called 911 on September 14, 2023, after Joseph attempted to forcibly enter Smith's unit in a violent manner while simultaneously threatening Smith with physical violence and death but denies the remainder of the allegation.

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79. After determining that his neighbor, JOSEPH, was no longer in the common hallway on the 29th floor, Defendant SMITH left his unit with one of the two loaded guns he owned and had available to him.

ANSWER: Smith admits that some time after Joseph attempted to forcibly enter Smith's unit in a violent manner while simultaneously threatening Smith with physical violence and death, Smith, fearing for his own safety and the safety of others, left his unit with a firearm that was carried in accordance with his CCL. Smith denies the remainder of the allegation.

80. Defendant SMITH then proceeded immediately to the front desk in the lobby and told Defendant NENA that he had a valid Illinois Concealed Carry License and was armed with a firearm.

ANSWER: Smith admits that he spoke with Mr. Nena in the lobby but denies the remainder of the allegation.

81. At the front desk Defendant, NENA and Defendant SMITH were informed by Defendants ROBERT BISHOPP and NATALIE BISHOPP that the person previously identified as "crazy," decedent JOSEPH, had moved to the 48th floor. Also present for this conversation was Defendant CLEMENT.

ANSWER: Smith admits there was a conversation at the front desk involving Smith, Mr. Nena, Mr. Bishopp, and Mrs. Bishopp, for which Mr. Clement was present. Smith denies the remainder of the allegation.

82. After advising Defendants NENA, CLEMENT, ROBERT BISHOPP and NATALIE BISHOPP that he possessed a concealed firearm, Defendant SMITH agreed to accompany Defendants NENA, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP to confront the "crazy" person on the 48th floor, decedent, JOSEPH.

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ANSWER: Deny.

83. Defendant NENA did not wait for the police to arrive but instead formed a group, consisting of Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP, who went together to confront JOSEPH.

ANSWER: Deny.

84. Defendant NENA did not timely or properly alert Defendant ROMERO to the emergency that was taking place in the building, despite his training that he was required to do so.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

85. Defendant NENA did not wait for the police to arrive and instead went to investigate and assess JOSEPH, pursuant to his Defendant SUDLER training which he received from agents and employees of Defendant SUDLER, including but not limited to Defendant ROMERO.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

86. Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP and NATALIE BISHOPP then proceeded on the elevator to confront this "crazy" person while Defendant NENA stated to Defendant SMITH, "I hope you don't have to use it," referring to the concealed firearm, all within earshot of Defendants SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP.

ANSWER: Deny.

87. The entire discussion at the front desk with Defendants NENA, SMITH,

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ANDREW CLEMENT, ROBERT BISHOPP and NATALIE BISHOPP, for which maintenance worker Hamilton Steele was also present, lasted approximately 27 seconds, according to the Defendant LEGACY lobby surveillance video.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

88. After those 27 seconds passed, Defendants, and each of them, NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP chose not to wait for the trained police officers and/or the Crisis Assistance Response and Engagement Program (hereinafter "CARE") to arrive but instead took it upon themselves to form a vigilante posse to confront JOSEPH, who was experiencing a mental health crisis.

ANSWER: Deny.

89. None of this group, Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP, possessed the necessary licensing, training, or experience to safely confront JOSEPH, who was experiencing a mental health crisis.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

90. None of the Defendant SUDLER or Defendant LEGACY staff, nor any member of this group, Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP were trained in de-escalation, managing a person in a mental health crisis, the use of non-lethal force to subdue an individual or the appropriate criteria for the use of lethal force.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

91. None of this group, Defendants NENA, SMITH, CLEMENT, ROBERT

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BISHOPP, and NATALIE BISHOPP, formed a plan of any kind as to how they would attempt to subdue JOSEPH, other than knowing that SMITH intended to use his handgun as he deemed fit.

ANSWER: Smith denies any plan or intent to "subdue" any individual and denies any intent "to use his handgun as he deemed fit." Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation.

92. At said time and place, SMITH elected to go from a place of safety, his unit behind thick undamaged doors where he possessed at least two handguns, after notifying the police of the emergency and his fear, and then chose to leave his place of safety and place a loaded gun in his pocket to confront his neighbor, JOSEPH, whom he had seen on the floor through his door viewer, because JOSEPH purportedly, "spit" on his door, despite knowing that the police were en route and that police were posted continuously in close proximity to the building.

ANSWER: Deny.

93. Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP and NATALIE BISHOPP knew or should have known that there were manned Chicago Police Department (hereinafter "CPD") vehicles that were posted on Wabash and Michigan Avenues that could easily have been summoned, as they were ultimately summoned by Defendant ROBERT BISHOPP.

ANSWER: Smith denies that he knew or should have known the location of CPD vehicles on September 14, 2023. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation.

94. By the time that CPD arrived, with properly trained officers in de-escalation tactics, and the use of both lethal and non-lethal force, DEFENDANT SMITH already

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discharged his weapon five times, striking JOSEPH's body.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

95. The 911 emergency response system in Chicago at the time had both CPD officers, as well as CARE teams consisting of a police officer, an EMT, and a social worker, who had extensive training and experience in de-escalation, and the use of both lethal and non-lethal force.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

96. Contemporaneous with the time of this shooting, statistics kept by the City of Chicago showed that these trained police and CARE teams had over a 99.5% success rate of responding safely to persons in similar situations to decedent JOSEPH.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

97. JOSEPH experienced conscious fear and mental suffering prior to being shot, and experienced conscious pain and suffering after he was shot prior to his death.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

98. Defendant NATALIE BISHOPP encountered JOSEPH coming off the elevator onto the 48th floor and claims to have seen JOSEPH wearing only a bathrobe and underwear and described him as yelling.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

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99. Defendant NATALIE BISHOPP testified at her deposition on May 27, 2025, that when she got on the elevator, after JOSEPH got off, she told her husband, Defendant ROBERT BISHOPP, "I don't know if we locked our door and he said "Well, we are not going back." (Natalie Bishopp Dep. at 32.).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

100. Defendant NATALIE BISHOPP testified on the aforesaid date that she was afraid JOSEPH would get into her home and that she was worried about her two cats. (Natalie Bishopp Dep. at 34).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

101. Defendant NATALIE BISHOPP testified on the aforesaid date that Defendant ROBERT BISHOPP was also concerned about their unit and two cats. (Natalie Bishopp Dep. at 34).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

102. Defendant NATALIE BISHOPP testified on the aforesaid date that she did not

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notice that JOSEPH was a Black man, and she thought he was coming from the pool. (Natalie Bishopp Dep. at 39-40).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

103. Defendant NATALIE BISHOPP testified that she noticed JOSEPH's robe was open. (Natalie Bishopp Dep. at 41).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

104. Defendant NATALIE BISHOPP testified that JOSEPH was talking to himself in the elevator and, when JOSEPH saw them, he was swearing. (Natalie Bishopp Dep. at 32).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

105. Defendant NATALIE BISHOPP testified that she and her husband, Defendant ROBERT BISHOPP, were afraid of JOSEPH prior to going to the lobby and they were not going to confront him alone. (Natalie Bishopp Dep. at 46).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form

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a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

106. Defendant NATALIE BISHOPP testified that she was afraid that if she confronted someone acting like JOSEPH, he might hurt her. (Natalie Bishopp Dep. at 53).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

107. Defendant NATALIE BISHOPP testified that her husband, Defendant ROBERT BISHOPP, voiced the same concerns about their safety that she had on the elevator ride to the lobby. (Natalie Bishopp Dep. at 53).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

108. Defendant NATALIE BISHOPP testified that her husband, Defendant ROBERT BISHOPP, told Defendant NENA that someone had scared them, (Natalie Bishopp Dep. at 54).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

109. Defendant NENA advised the Defendants BISHOPP that there was an incident on the 29th floor and he thought the individual had moved to the 48th floor.

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ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

110. Defendant NATALIE BISHOPP testified that Defendant NENA advised them the police had been notified, and that he was waiting for them to arrive. (Natalie Bishopp Dep. at 56).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

111. Defendant NATALIE BISHOPP testified that Defendant SMITH then came to the lobby and asked Defendant NENA if the police had arrived and they talked and decided not to wait for the police but to go to the 48th floor. (Natalie Bishopp Dep. at 57).

ANSWER: Smith admits that Natalie Bishopp testified at a discovery deposition on May 27, 2025, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

112. Defendant SMITH has filed a complaint for libel and slander against Defendant Delbert J. Charles et al., where he alleges Defendant NATALIE BISHOPP requested that Defendants SMITH, NENA, and CLEMENT, accompany her and her husband to the 48th floor.

ANSWER: Smith admits that he has filed a separate cause of action alleging defamation *per se* and false light invasion of privacy against several individuals, and the content of the First Amended Complaint in that matter speaks for itself.

113. Defendant SMITH told Defendants ROBERT BISHOPP, NATALIE BISHOPP,

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NENA, and CLEMENT that he possessed a conceal and carry license and handgun before each of them decided to encounter JOSEPH. (Robert Bishopp Dep. at 25-26, 32, 34).

ANSWER: Deny.

114. Defendant CLEMENT testified at his deposition that Defendants ROBERT BISHOPP and NATALIE BISHOPP came to the lobby and told him and Defendant NENA that the individual in the bathrobe (presumably JOSEPH) started screaming that he wanted to kill white people. (Clement Dep. at 89).

ANSWER: Smith admits that Andrew Clement testified at a discovery deposition in this matter, the transcript of which speaks for itself. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation and therefore denies the remainder of the allegation.

115. Defendants NATALIE BISHOPP, ROBERT BISHOPP, CLEMENT, NENA, and SMITH, then decided to go encounter JOSEPH, who they knew was experiencing a mental health crisis on the 48th floor, instead of waiting for the police to arrive.

ANSWER: Denied as to Smith. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation.

116. Defendants NATALIE BISHOPP, ROBERT BISHOPP, CLEMENT, NENA, and SMITH, and each of them, agreed it was NENA's decision for the group to go to the 48th floor, where they knew that JOSEPH was last located, in order to confront JOSEPH.

ANSWER: Denied as to Smith. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation.

117. Defendant NENA previously advised Defendant CLEMENT, while still in the lobby and prior to the shooting, that he was overwhelmed because the building was single staffed

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that night.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

118. At the aforesaid date and time, JOSEPH did not possess any weapons or firearms on the 29th floor, in the elevator, on the 48th floor or at any time relevant herein, as he was only wearing underwear and a bathrobe.

ANSWER: Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

Count I
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH, v. DEFENDANT LEGACY

The allegations in Count I are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 119 through 134 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-118 above as his answer to Paragraph 119 and specifically denies any wrongdoing in Paragraphs 120-134.

Count II
Negligence – Wrongful Death Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT LEGACY

The allegations in Count II are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 135 through 137 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-134 above as his answer to Paragraph 135 and specifically denies any wrongdoing in Paragraphs 136-137.

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Count III
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT SUDLER

The allegations in Count III are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 138 through 143 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-137 above as his answer to Paragraph 138 and specifically denies any wrongdoing in Paragraphs 139-143.

Count IV
Negligence – Wrongful Death Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT SUDLER

The allegations in Count IV are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 144 through 146 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-143 above as his answer to Paragraph 144 and specifically denies any wrongdoing in Paragraphs 144-146.

Count V
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT SMITH

147. DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH, restates, realleges, and incorporates the allegations of Paragraphs 1 through 146 as and for his allegations for this paragraph of this count.

ANSWER: Smith repeats and incorporates by reference his answers to Paragraphs 1 through 146 above as though each were more fully set forth herein.

148. Defendant SMITH owed JOSEPH a duty to act with reasonable care under the

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circumstances.

ANSWER: Smith states that duties arise as an operation of law and not by allegations of a plaintiff, and thus no answer is required. To the extent an answer is required, Smith admits to owing all duties imposed by law, but denies the remainder of the allegation.

149. Defendant SMITH violated his concealed carry training by deliberately leaving a place of safety to encounter JOSEPH.

ANSWER: Deny.

150. Defendant SMITH created the hazardous situation that led to the death of JOSEPH by leaving multiple places of safety to encounter JOSEPH.

ANSWER: Deny.

151. Defendant SMITH was motivated by seeking out the person who had spit on his condominium door on the 29th floor when he went looking for JOSEPH on the 48th floor.

ANSWER: Deny.

152. Defendant SMITH acted with conscious disregard for the safety of JOSEPH when he got onto the elevator with the vigilante group to encounter JOSEPH.

ANSWER: Deny.

153. Defendant SMITH knew that he was not trained in de-escalation, and that he had no training in the use of non-lethal force.

ANSWER: Deny.

154. Defendant SMITH was not legally licensed to act as an armed security person in the protection of the building.

ANSWER: Smith admits he is not a licensed security guard and denies the remainder of the allegation.

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155. Defendant SMITH negligently and carelessly, and with conscious disregard for the safety of JOSEPH when he committed one or more of the following acts or omissions:

a. Failed to stay in his unit and wait for the police.

b. Failed to stay in the lobby and wait for police.

c. Told Defendants NENA, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP that he possessed a firearm.

d. Told Defendants NENA, CLEMENT, ROBERT BISHOPP and NATALIE BISHOPP that he was an Illinois Concealed Carry License holder, creating a misleading sense of safety and security to form a vigilante posse to encounter JOSEPH.

e. Discharged his firearm at JOSEPH.

f. Shot JOSEPH at least five times.

g. Left JOSEPH to die without rendering aid or immediately calling 911.

h. Acted as an armed security guard without going through the required training and licensing required by 225 ILCS 447/10-5 et seq. and 225 ILCS 447/25-20 et seq. to obtain his Permanent Employee Registration Card (hereinafter "PERC") card.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

156. As a further direct and proximate result of one or more of Defendant SMITH's aforesaid acts or omissions, decedent JOSEPH experienced conscious pain and suffering prior to being shot.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

157. As a further direct and proximate result of one or more of the aforesaid acts or omissions, decedent JOSEPH suffered at least six gunshot wounds.

ANSWER: Smith states that the allegations consist of conclusions of law to which no

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answer is required. To the extent an answer is required, Smith denies the allegations.

158. As a further direct and proximate result of the aforesaid acts or omissions, decedent JOSEPH suffered conscious pain and suffering after he was shot before he died.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

159. This matter is brought by his estate pursuant to the Illinois Survival Act, 755 ILCS 5/27-6 and following.

ANSWER: Smith states that the allegation consists of a conclusion of law to which no answer is required. To the extent an answer is required, Smith denies the allegation.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

Count VI
Negligence – Wrongful Death Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT SMITH

160. DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH, restates, realleges, and incorporates the allegations of Paragraphs 1 through 159 as and for his allegations for this paragraph of this count.

ANSWER: Smith repeats and incorporates by reference his answers to Paragraphs 1 through 159 above as though each were more fully set forth herein.

161. As a further direct and proximate result of one or more of the aforesaid acts or omissions by Defendant SMITH, decedent JOSEPH experienced a wrongful death under the Illinois Wrongful Death Act and his heirs and next of kin have suffered a loss of love, society, affection, guidance, support, grief, and other damages pursuant to the Illinois Wrongful Death

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Act, 740 ILCS 180/1 and following.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

Count VII
Willful and Wanton (Punitive Damages to be requested at close of discovery)
DELBERT J. CHARLES as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT LEGACY

The allegations in Count VII are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 161 through 182 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-160 above as his answer to Paragraph 161 and specifically denies any wrongdoing in Paragraphs 162-182.

Count VIII
Willful and Wanton (Punitive Damages to be requested at close of discovery)
DELBERT J. CHARLES as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT SUDLER

The allegations in Count VIII are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 183 through 195 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-182 above as his answer to Paragraph 183 and specifically denies any wrongdoing in Paragraphs 184-195.

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Count IX
Willful and Wanton (Punitive Damages to be requested at close of discovery)
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT SMITH

196. DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH, restates, realleges, and incorporates the allegations of Paragraphs 1 through 195 as and for his allegations for this paragraph of this count.

ANSWER: Smith repeats and incorporates by reference his answers to Paragraphs 1 through 195 above as though each were more fully set forth herein.

197. After Defendant SMITH called 911 from his 29th floor apartment requesting police presence, he called the front desk and notified Defendant NENA that the police had been summoned.

ANSWER: Deny.

198. After being afraid for his own safety, Defendant SMITH left his condominium unit with his loaded gun to look for JOSEPH.

ANSWER: Deny.

199. Defendant SMITH advised Defendant JONAH NENA that he was in possession of a firearm.

ANSWER: Deny.

200. Defendant SMITH left his place of safety in the lobby to deliberately encounter JOSEPH with his firearm.

ANSWER: Deny.

201. Defendant SMITH knew that he was not trained in de-escalation, mental health intervention, safety, security, use of non-lethal force or use of deadly force, nor did he have licensing and training as an armed security guard as required by state law.

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ANSWER: Deny.

202. Defendant SMITH got on an elevator from the lobby with Defendant NENA and three other residents to encounter JOSEPH when he knew that JOSEPH was having a mental health crisis and was acting "crazy."

ANSWER: Deny.

203. Defendant SMITH chose to act as a vigilante and encounter JOSEPH who was having a mental health crisis.

ANSWER: Deny.

204. Defendant SMITH sought vengeance in tracking down JOSEPH with his firearm because he believed that JOSEPH had spit on his door.

ANSWER: Deny.

205. At the aforesaid time and place, Defendant SMITH acted with willful and wanton disregard for the safety of JOSEPH, deceased, in one or more of the following respects:

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.

ANSWER: Smith states that the allegations consist of conclusions of law to which no

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answer is required. To the extent an answer is required, Smith denies the allegations.

206. As a direct and proximate result of one or more of Defendant SMITH's aforesaid willful and wanton actions, JOSEPH was wrongfully shot and killed and experienced horrific emotion and physical pain before his death.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

207. As a further direct and proximate result of Defendant SMITH's willful and wanton actions or omissions, Plaintiff, DELBERT J. CHARLES, requests punitive damages against Defendant SMITH.

ANSWER: Smith states that the allegations consist of conclusions of law and a party's requested relief, to which no answer is required. To the extent an answer is required, Smith denies the allegations.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, deny further discovery, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

Count X
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT ROMERO

The allegations in Count X are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 208 through 228 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-207 above as his answer to Paragraph 208 and specifically denies any wrongdoing in Paragraphs 209-228.

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Count XI
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH, v. DEFENDANT TEDALDI

The allegations in Count XI are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 229 through 256 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-228 above as his answer to Paragraph 229 and specifically denies any wrongdoing in Paragraphs 230-256.

Count XII
Negligence – Wrongful Death
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT ROMERO

The allegations in Count XII are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 257 through 258 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-256 above as his answer to Paragraph 257 and specifically denies any wrongdoing in Paragraph 258.

Count XIII
Negligence – Wrongful Death Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT TEDALDI

The allegations in Count XIII are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 259 through 260 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-258 above as his answer to Paragraph 259 and specifically denies any wrongdoing in Paragraph 260.

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Count XIV
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT NENA

The allegations in Count XIV are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 261 through 269 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-260 above as his answer to Paragraph 261 and specifically denies any wrongdoing in Paragraphs 262-269.

Count XV
Negligence – Wrongful Death Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT NENA

The allegations in Count XV are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 270 through 271 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-269 above as his answer to Paragraph 270 and specifically denies any wrongdoing in Paragraph 271.

Count XVI
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT NATALIE BISHOPP

The allegations in Count XVI are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 272 through 278 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-271 above as his answer to Paragraph 272 and specifically denies any wrongdoing in Paragraphs 273-278.

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Count XVII
Negligence – Wrongful Death Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT NATALIE BISHOPP

The allegations in Count XVII are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 279 through 280 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-278 above as his answer to Paragraph 279 and specifically denies any wrongdoing in Paragraph 280.

Count XVIII
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT ROBERT BISHOPP

The allegations in Count XVIII are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 281 through 287 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-280 above as his answer to Paragraph 281 and specifically denies any wrongdoing in Paragraphs 282-287.

Count XIX
Negligence – Wrongful Death Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. ROBERT BISHOPP

The allegations in Count XIX are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 288 through 289 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-287 above as his answer to Paragraph 288 and specifically denies any wrongdoing in Paragraph 289.

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Count XX
Negligence – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT CLEMENT

The allegations in Count XX are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 290 through 296 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-289 above as his answer to Paragraph 290 and specifically denies any wrongdoing in Paragraphs 291-296.

Count XXI
Negligence – Wrongful Death Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANT CLEMENT

The allegations in Count XXI are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 297 through 298 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-296 above as his answer to Paragraph 297 and specifically denies any wrongdoing in Paragraph 298.

Count XXII
Tortious Intentional Conspiracy to Cause Harm – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANTS NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP

299. DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH, restates, realleges, and incorporates the allegations of Paragraphs 1 through 298 as and for his allegations for this paragraph of this count.

ANSWER: Smith repeats and incorporates by reference his answers to Paragraphs 1 through 298 above as though each were more fully set forth herein.

300. On the aforesaid date, Defendants NENA, SMITH, CLEMENT, ROBERT

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BISHOPP, and NATALIE BISHOPP, entered into an agreement not to wait for the police but instead to confront and subdue the decedent JOSEPH, which included the understanding between them that the firearm discussed with them by Defendant SMITH, might need to be used to accomplish said goal, and to which the Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP acceded consent to do so.

ANSWER: Deny.

301. The purpose of this agreement was to act as unlicensed security guards, and at least in part, to physically subdue the decedent JOSEPH by force or threat of force.

ANSWER: Deny.

302. The conspirators, Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP, then went as a physical group together from the lobby to the elevator, to the 48th floor of the building.

ANSWER: Deny.

303. Defendant NENA, upon hearing sounds from the Decedent JOSEPH that made him believe that the decedent, JOSEPH, was acting "crazy," then led the group of said defendants off the elevator to the left towards the sounds, rather than going to the right, towards the condominium of Defendants ROBERT and NATALIE BISHOPP and safety for the group.

ANSWER: Answering as to Smith only, Smith lacks knowledge sufficient to form a belief as to the truth of the allegation.

304. Defendant NENA then led the group towards the decedent JOSEPH, to directly confront him, despite decedent JOSEPH remaining confined to a small, contained area at the end of the hallway in which he was not visible until the conspirators were less than 15 feet away from the decedent JOSEPH.

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ANSWER: Answering as to Smith only, denied.

305. Despite Defendant NENA recognizing decedent JOSEPH as a resident of the building, being unarmed dressed in a bathrobe and underwear, and who was having a mental health crisis, the group proceeded to confront decedent JOSEPH.

ANSWER: Answering as to Smith only, Smith lacks knowledge sufficient to form a belief as to the truth of the allegation regarding Mr. Nena recognizing Joseph, and denies the remainder of the allegation.

306. Defendant SMITH, while the decedent was unarmed and wearing only a bathrobe and his underwear drew his firearm and shot decedent JOSEPH at least five times, killing him.

ANSWER: Smith admits that: (i) after Joseph threatened Smith with physical violence and death; (ii) after Joseph physically attacked and seriously injured two other men; (iii) after Smith warned Joseph that he was carrying a gun; and (iv) after Joseph violently lunged toward and attached Smith, he reasonably believed that he and other residents were in grave danger and likely to suffer imminent death or great bodily injury. Only then did Smith discharge his firearm, and he did so justifiably and in defense of himself and others. Smith lacks knowledge sufficient to form a belief as to the truth of the remaining allegation.

307. At all times relevant, the Defendant conspirators, and each of them, had a duty to act with reasonable care so as not to cause injury to others, including the decedent, JOSEPH.

ANSWER: Smith states that duties arise by operation of law and not by allegations of a plaintiff, and thus no answer is required. To the extent an answer is required, as to Smith only, Smith admits to owing all duties imposed by law but denies the remainder of the allegation.

308. Notwithstanding said duty, the conspirators, Defendants, NENA, SMITH, CLEMENT, ROBERT BISHOPP and NATALIE BISHOPP, and each of them, breached said

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duty in furtherance of their conspiracy in one or more of the following ways:

a. Acted as unarmed and/or armed security guards without going through the required training and licensing required by 225 ILCS 447/25-5 to obtain a PERC card.

b. Failed to stay in a place of safety such as their units or the lobby and wait for the 911 responders.

c. Attempted to subdue by force or threat of force a fellow tenant of the building who was having a mental health crisis.

d. Proceeded to attempt to subdue a fellow tenant by force or threat of force despite the fact they knew or should have known that not one of them had training in de-escalation, use of non-lethal force or understanding of the justifiable use of lethal force.

e. Failed to warn each other that lethal force was not necessary because decedent JOSEPH was a tenant who was unarmed and having a mental health crisis.

f. While acting in concert as a group, conspirator and Defendant SMITH discharged his firearm at decedent JOSEPH and shot him at least five times.

g. Left decedent JOSEPH to die after injuring him without providing aid or contacting 911 in a timely fashion.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

309. As a direct and proximate result of one or more of the aforesaid acts or omissions by Defendants, decedent JOSEPH was caused to suffer grievous injuries and endure conscious pain and suffering prior to his death.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

310. This matter is brought by his estate pursuant to the Illinois Survival Act, 755 ILCS 5/27-6 and following.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

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WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

Count XXIII
Tortious Intentional Conspiracy to Cause Harm – Wrongful Death
DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH v. DEFENDANTS NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP

311. DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH, restates, realleges, and incorporates the allegations of Paragraphs 1 through 310 as and for his allegations for this paragraph of this count.

ANSWER: Smith repeats and incorporates by reference his answers to Paragraphs 1 through 310 above as though each were more fully set forth herein.

312. JOSEPH left surviving certain heirs and next of kin that have suffered a loss of love, society, affection, support, guidance, grief, and other damages consistent with the Illinois Wrongful Death Act, 740 ILCS 180/1 and following.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

Count XXIV
Restatement sec. 876 Negligently Acting in Concert – Survival Action
DELBERT J. CHARLES, as Independent Administrator of the Estate of
ABNERD JOSEPH v. DEFENDANTS NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP

313. DELBERT J. CHARLES, as Independent Administrator of the Estate of

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ABNERD JOSEPH, restates, realleges, and incorporates the allegations of Paragraphs 1 through 313 [sic] as and for his allegations for this paragraph of this count.

ANSWER: Smith repeats and incorporates by reference his answers to Paragraphs 1 through 312 above as though each were more fully set forth herein.

314. On the aforesaid date, Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP, entered into an agreement to act in concert not to wait for the police but instead to confront and subdue the decedent JOSEPH, which included the understanding between them that the firearm discussed with them by Defendant SMITH, might need to be used to accomplish said goal, and to which the Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP acceded consent to do so.

ANSWER: Deny.

315. The purpose of this agreement was to act as untrained unlicensed security guards, and at least in part, to physically subdue the decedent JOSEPH by force or threat of force, such that each of them knew or should have known that the group intended to unlawfully physically confront and stop decedent JOSEPH by force or threat of force.

ANSWER: Deny.

316. The conspirators, Defendants NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP, then went as a physical group together from the lobby to the elevator, with each others assent and encouragement, to the common area hallway of the 48th floor of the building.

ANSWER: Deny.

317. Defendant NENA, upon hearing sounds from the Decedent JOSEPH that made him believe that the decedent, JOSEPH, was acting "crazy," then led the group of said

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defendants off the elevator to the left towards the sounds, rather than going to the right, which direction is towards the condominium of Defendants ROBERT and NATALIE BISHOPP and relative safety for the group.

ANSWER: Answering as to Smith only, denied. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation.

318. Defendant NENA then led the group towards the decedent JOSEPH, to directly confront him, despite decedent JOSEPH remaining confined to a small, contained area at the end of the hallway in which he was not visible until the conspirators were less than 15 feet away from the decedent JOSEPH.

ANSWER: Answering as to Smith only, denied. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation.

319. Despite Defendant NENA recognizing decedent JOSEPH as a resident of the building, being unarmed dressed in a bathrobe and underwear, and who was having a mental health crisis, the group proceeded to confront decedent JOSEPH.

ANSWER: Answering as to Smith only, denied. Smith lacks knowledge sufficient to form a belief as to the truth of the remainder of the allegation.

320. Defendant SMITH, while the decedent was unarmed and wearing only a bathrobe and his underwear drew his firearm and shot decedent JOSEPH at least five times, killing him.

ANSWER: Smith admits that: (i) after Joseph threatened Smith with physical violence and death; (ii) after Joseph physically attacked and seriously injured two other men; (iii) after Smith warned Joseph that he was carrying a gun; and (iv) after Joseph violently lunged toward and attached Smith, he reasonably believed that he and other residents were in grave danger and likely to suffer imminent death or great bodily injury. Only then did Smith discharge his firearm,

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and he did so justifiably and in defense of himself and others. Smith lacks knowledge sufficient to form a belief as to the truth of the remaining allegation.

321. At all times relevant, the Defendant conspirators, and each of them, had a duty to act with reasonable care so as not to cause injury to others, including the decedent, JOSEPH, and had a duty not to act when they had knowledge with substantial certainty that said conduct would cause harm.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

322. Notwithstanding said duty, the conspirators, Defendants, NENA, SMITH, CLEMENT, ROBERT BISHOPP and NATALIE BISHOPP, and each of them, negligently and carelessly breached said duty in furtherance of their acting in concert, in one or more of the following ways:

a. Acted as unarmed and/or armed security guards without going through the required training and licensing required by 225 ILCS 447/10-5 et seq. and 225 ILCS 447/25-20 et seq. to obtain a PERC card.

b. Failed to stay in a place of safety such as their units or the lobby and wait for the 911 responders.

c. Attempted to subdue by force or threat of force a fellow tenant of the building who was having a mental health crisis by means disproportionate to the threat.

d. Proceeded to attempt to subdue a fellow tenant by force or threat of force despite the fact they knew or should have known that not one of them had training in de-escalation, use of non-lethal force or understanding of the justifiable use of lethal force.

e. Failed to warn each other that lethal force was not necessary because decedent JOSEPH was a tenant who was unarmed and having a mental health crisis.

f. While acting in concert as a group, conspirator and Defendant SMITH discharged his firearm at decedent JOSEPH and shot him at least five times.

g. Left decedent JOSEPH to die after injuring him without providing aid or contacting

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911 in a timely fashion.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

323. As a direct and proximate result of one or more of the aforesaid acts or omissions by Defendants, decedent JOSEPH was caused to suffer grievous injuries and endure conscious pain and suffering prior to his death.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

324. This matter is brought by his estate pursuant to the Illinois Survival Act, 755 ILCS 5/27-6 and following.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

Count XXV
Restatement sec. 876 Negligently Acting in Concert – Wrongful Death
DELBERT J. CHARLES, as Independent Administrator of the Estate of
ABNERD JOSEPH v. DEFENDANTS NENA, SMITH, CLEMENT, ROBERT BISHOPP, and NATALIE BISHOPP

325. DELBERT J. CHARLES, as Independent Administrator of the Estate of ABNERD JOSEPH, restates, realleges, and incorporates the allegations of Paragraphs 1 through 310 as and for his allegations for this paragraph of this count.

ANSWER: Smith repeats and incorporates by reference his answers to Paragraphs 1 through 310 above as though each were more fully set forth herein.

326. JOSEPH left surviving certain heirs and next of kin that have suffered a loss of

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love, society, affection, support, guidance, grief, and other damages consistent with the Illinois Wrongful Death Act, 740 ILCS 180/1 and following.

ANSWER: Smith states that the allegations consist of conclusions of law to which no answer is required. To the extent an answer is required, Smith denies the allegations.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

COUNT XXVI
RESPONDENTS IN DISCOVERY
STEVEN LEVY, CONSTATINE "DEAN" ANDREWS, JOHN CARONA & ASSOCIA, INC.

The allegations in Count XXIV are not directed at Smith and therefore Smith does not answer them. To the extent any allegation in Paragraphs 327 through 331 is construed to allege any wrongdoing against Smith or require an answer, Smith repeats and incorporates by reference his answers to Paragraphs 1-326 above as his answer to Paragraph 327 and specifically denies any wrongdoing in Paragraphs 328-331.

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AFFIRMATIVE DEFENSES

First Affirmative Defense
Comparative Negligence

1. On September 14, 2023, it was the duty of the decedent, Abnerd Joseph ("Joseph"), before and at the time of the occurrence, to use ordinary care for his own safety and the safety of others, including Garrett Smith ("Smith") and the other residents at the condominium building where Joseph lived.

2. Joseph failed to use ordinary care for his own safety and the safety of the other residents at the condominium building where he lived by, among other things, threatening other residents at the building with serious bodily injury and death, violently attacking Andrew Clement, violently attacking Younan Nena, and violently attacking Smith.

3. Joseph's failure to use such ordinary care and/or his provocation of the use of force against himself was the direct and proximate cause of his injury and death.

4. Consequently, if the jury finds that Joseph's failure to use such ordinary care and/or his provocation of the use of force against himself was less than 50% of the total proximate cause of his injury and death, the total amount of Plaintiff's damages must be reduced in proportion to the amount of Joseph's negligence.

5. Alternatively, if the jury concludes that Joseph's failure to use such ordinary care and/or his provocation of the use of force against himself is greater than 50% of the total proximate cause of his injury or death, Plaintiff shall be barred from any recovery whatsoever.

Second Affirmative Defense
Self Defense/Defense of Others

1. On September 14, 2023, the decedent, Joseph, was in a psychotic, violent rage. He attempted to enter Smith's condominium unit by force and threatened Smith with serious

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bodily injury and death. Shortly after making those threats, Joseph violently attacked two other men in the building, Andrew Clement and Younan Nena. Joseph beat Mr. Clement so violently that he could only crawl to safety while others fled; Joseph struck Mr. Nena in the head repeatedly, causing him harm. Immediately after beating and disabling those men, Joseph focused his rage on Smith. Joseph lunged at Smith, knocking Smith to the concrete floor, where he landed on top of Smith.

2. Based on Joseph's actions, Smith reasonably believed that he and the two elderly residents in the hallway with him, Robert Bishopp and Natalie Bishopp, were in grave danger and likely to suffer imminent death or great bodily injury.

3. Based on Joseph's actions, Smith reasonably believed that the use of force was necessary to prevent imminent death or great bodily injury to himself and the two elderly residents who were in the hallway with him.

4. Consequently, Smith was justified in the use of force against Joseph. Such justification bars Plaintiff from any recovery whatsoever.

Third Affirmative Defense
Claims Barred by Statute

1. On September 14, 2023, the decedent, Joseph, was in a psychotic, violent rage. He attempted to enter Smith's condominium unit by force and threatened Smith with serious bodily injury and death. Shortly after making those threats, Joseph violently attacked two other men in the building, Andrew Clement and Younan Nena. Joseph beat Mr. Clement so violently that he could only crawl to the safety while others fled; Joseph struck Mr. Nena in the head repeatedly, causing harm. Immediately after beating and disabling those men, Joseph focused his rage on Smith. Joseph lunged at Smith, knocking Smith to the concrete floor, where he landed on top of Smith.

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2. The decedent, Abnerd Joseph, was an "aggressor" as that term is defined in 720 ILCS 5/7-4 of the Illinois Code of Criminal Procedure because, among other things, he "initially provoke[d] the use of force against himself."

3. Illinois law provides that "in no case shall any act involving the use of force justified under this Section give rise to any claim or liability brought by or on behalf of any person acting within the definition of "aggressor" set forth in [720 ILCS 5/7-4], or the estate, spouse, or other family member of such a person, against the person . . . using such justified force, unless the use of force involves willful or wanton misconduct." 720 ILCS 5/7-1(b).

4. Smith's use of force was justified force and did not involve willful or wanton misconduct. Consequently, and because Joseph was the "aggressor" as set forth in 720 ILCS 5/7-4, Plaintiff is barred from maintaining his claims against Smith.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

Fourth Affirmative Defense
Failure of Underlying Tort

1. On September 14, 2023, the decedent, Joseph, was in a psychotic, violent rage. He attempted to enter Smith's condominium unit by force and threatened Smith with serious bodily injury and death. Smith called 911 to report the verbal attack and attempted break-in by an individual who was later identified as Joseph. Smith later went to the building lobby to report Joseph's violent and threatening behavior and to encourage others to call 911.

2. Robert Bishopp and Natalie Bishopp expressed fear that they had left their unit unlocked and a desire to return to their unit. Thereafter, Smith, Andrew Clement, and Younan

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Nena accompanied the elderly couple to the elevator and ultimately to the 48th floor so the couple could return to their unit.

3. At no time did Smith, Nena, Clement, Mr. Bishopp, or Mrs. Bishopp express or imply an intent to physically subdue Joseph by force or threat of force.

4. At no time did Smith, Nena, Clement, Mr. Bishopp, or Mrs. Bishopp, express or imply an agreement to confront or physically subdue Joseph by force or threat of force.

5. Thus, there was no agreement to confront or physically subdue Joseph by force or threat of force.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

Fifth Affirmative Defense
Failure of Underlying Tort

1. On September 14, 2023, the decedent, Joseph, was in a psychotic, violent rage. He attempted to enter Smith's condominium unit by force and threatened Smith with serious bodily injury and death. Smith called 911 to report the verbal attack and attempted break-in by an individual who was later identified as Joseph. Smith later went to the building lobby to report Joseph's violent and threatening behavior and to encourage others to call 911.

2. Robert Bishopp and Natalie Bishopp expressed fear that they had left their unit unlocked and a desire to return to their unit. Thereafter, Smith, Andrew Clement, and Younan Nena accompanied the elderly couple to the elevator and ultimately to the 48th floor so the couple could return to their unit.

3. Smith possessed a valid license to carry a concealed weapon on September 14, 2023, and was lawfully carrying a gun on September 14, 2023.

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4. At no time did Smith hold himself out to be, assume to act as, or imply he was a licensed or unlicensed security contractor under 225 ILCS 447/5-10.

5. At no time did Clement, Nena, Mr. Bishopp, or Mrs. Bishopp indicate to Smith that any one of them were acting as or intending to act as licensed or unlicensed security contractors under 225 ILCS 447/5-10.

6. There was no agreement to act as unlicensed security guards for any purpose.

WHEREFORE, Defendant Garrett M. Smith respectfully requests that this Honorable Court deny all relief sought by Plaintiff, assess all costs and fees against Plaintiff, and award Smith any other relief that this Court deems just and equitable under the circumstances.

RESERVATION OF RIGHTS

Defendant Garrett M. Smith reserves unto himself all of those defenses set forth in the Illinois Code of Civil Procedure and such other defenses, affirmative or otherwise, as may prove through discovery to be applicable. Smith reserves the right to assert such claims, counterclaims, third-party claims, or other claims as investigation and discovery may prove applicable, and hereby reserves unto himself all of its rights associated with any such claim or potential claim. Smith further reserves the right to amend his Answer and Affirmative Defenses if investigation, discovery, and further information warrant such amendment, and further, to assert any applicable matters of law during the pendency of this action.

JURY DEMAND

Defendant Garrett M. Smith demands a trial by jury of any issue triable of right by jury at common law, under the Constitution of the State of Illinois, or under the United States Constitution.

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COUNTERCLAIM

Count I - Spoliation

1. Two Chicago Police Department sergeants briefly canvassed Joseph's unit after the incident on September 14, 2023. The video from the produced body-worn camera captures what appears to be a black cell phone on the counter of Joseph's apartment. The officers did not remove anything from the unit.

2. Joseph's brother, Delbert Charles, admitted during his deposition that he took Joseph's phone when he gained access to Joseph's unit on September 18, 2023, and "accessed his phone" after getting the passcode from a friend, Jareth Bent.

3. Joseph's family members, including Charles, Nicolle John-Jules, Bryan Bien-Aime, and Jeanna Kelley went to Joseph's unit after the incident and removed his belongings.

4. Charles testified that he searched Joseph's phone at that time and found a recording from the FaceTime call with Yada Beener that took place on September 14, 2023.

5. Charles testified that he looked at text messages and voicemails on Joseph's phone, as well.

6. Joseph's iPhone remained under the control of Plaintiff for several months until it was provided to investigators on December 11, 2023. Upon information and belief, the phone was used on several occasions by Charles and/or Joseph's family members between September 18, 2023, and December 11, 2023, and was not preserved in the state in which was found, purportedly on September 18, 2023.

7. Data was extracted from a gold iPhone, reported to belong to Joseph, by the Chicago Police Department on January 8, 2024, the results of which were later produced in discovery.

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8. No other electronic devices were produced for inspection by Plaintiff in this matter, nor were any disclosed.

9. The data extraction showed that Joseph's iPhone had been synced with multiple other devices.

10. Joseph's shouting and erratic behavior on September 14, 2023, was partially captured on audio and video by his own devices and those of a friend, Yada Beener, with whom he had a FaceTime call on the evening of September 14, 2023, beginning at approximately 7:02 p.m.

11. The audio recording from Joseph's September 14, 2023, FaceTime call with Ms. Beener captured audio of a cell phone (or other device capable of receiving telephone calls) ringing at several separate times during the FaceTime audio recording, suggesting the existence of more than one electronic device in Joseph's unit.

12. Plaintiff had exclusive control over all items in Joseph's unit and Joseph's family members testified to removing all belongings on or about September 18, 2023.

13. Charles testified that the items removed from Joseph's unit were sent to his mother, Nicolle John-Jules, who resides in Tampa, Florida.

14. Plaintiff owed a duty of care to preserve any and all items and electronic devices present in Joseph's unit as it was reasonably foreseeable that those items and electronic devices, in their then-present condition, would be material evidence in a potential civil action.

15. In breach and in violation of the duty, upon information and belief, Plaintiff:

a. Permitted Joseph's iPhone to be removed from Joseph's unit;

b. Permitted Joseph's iPhone to be accessed and used by Joseph's family members;

c. Failed to document any and all items in Joseph's unit in their then-present condition at the time they were found;

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d. Failed to document any and all electronic devices in Joseph's unit in their then-present condition at the time they were found;

e. Failed to disclose that other electronic devices existed at the time of Joseph's death;

f. Failed to otherwise take reasonable steps to safeguard against destruction or otherwise protect other items and electronic devices belonging to Joseph in the condition they were discovered in Joseph's unit.

16. Plaintiff's failure to preserve and document items and electronic devices belonging to Joseph prevents Smith from being fully able to defend himself in the present litigation and substantiate his affirmative defenses, and irreparably harms Smith in this litigation.

WHEREFORE, Defendant/Counter-Claimant Garrett M. Smith respectfully requests that this Honorable Court dismiss with prejudice all claims asserted against Smith in Plaintiff's Fourth Amended Complaint and grant any other relief that this Court deems just and equitable under the circumstances.

Dated: August 3, 2026

By: s/ Erin I. Wenger

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CERTIFICATE OF SERVICE

I certify that on August 3, 2026, I caused a copy of the foregoing to be served on the Clerk of the Circuit Court of Cook County, Illinois via the Odyssey eFileIL system, which will send notice to all counsel of record as listed below.

s/ Erin I. Wenger

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